



Number 1
December 2000

inside

1: Consolidation of legislation 2

2: Six new powers 2

(i) Controlled operations and controlled activities 2

(ii) Diversion of people found drunk in a public place to a 'place of safety' 2

(iii) Pre-court diversion of minor drug offenders to a drug-diversion assessment program 2

(iv) DNA profiling procedures 3

(v) Blood and urine testing of people suspected of committing sexual and other serious offences 4

(vi) Dealing with property held by police 5

3: Other amendments 6

Move-on directions 6

Emergency search powers 6

Notices to appear 6

Disobeying directions 6

Providing name, address and age 6

Recording of identifying particulars 6

Medical and dental procedures 6

Crime scenes 6

Entry inquiries and inspection 6

Searching without a warrant 6

Production orders 7

Detention period 7

State buildings and special events 7

**For further information,
contact Laurie Cullinan on
3360 6032.**

POLICE POWERS

BRIEFING PAPER

Police Powers and Responsibilities Act 2000

The *Police Powers and Responsibilities Act 2000* (PPRA 2000) does three things:

1 It completes the process begun by the PPRA 1997 to consolidate into one Act all police powers.

2 It provides police with new powers relating to:

- (i) controlled operations and controlled activities
- (ii) diversion of people found drunk in a public place to a 'place of safety'
- (iii) pre-court diversion of minor drug offenders to a drug-diversion assessment program
- (iv) DNA profiling procedures
- (v) blood and urine testing of people suspected of committing sexual and other serious offences
- (vi) dealing with property held by police.

3 It amends those parts of the PPRA 1997 that were

confusing or causing operational difficulties. This paper addresses some of the more important amendments in relation to:

- move-on directions
- notices to appear
- disobeying directions
- providing name, address and age
- recording of identifying particulars
- medical and dental procedures
- crime scenes
- entry inquiries and inspection
- searching without a warrant
- production orders
- detention period
- state buildings and special events.

1: CONSOLIDATION OF LEGISLATION

On 1 July 2000, the PPRA 1997 was superseded by:

- the *Police Powers and Responsibilities Act 2000* and
- the *Police Powers and Responsibilities Act and Other Amendments Act 2000*.

These two Acts were then consolidated into one piece of legislation referred to as the PPRA 2000.

In addition, parts of the Police Powers and Responsibilities Code (PPR Code), established under the Police Powers and Responsibilities Regulations 1998, were moved into the PPRA 2000. A new Police Powers and Responsibilities Regulation 2000 also commenced on 1 July 2000.

2: SIX NEW POWERS

(i) Controlled operations and controlled activities

Controlled operations

Chapter 5 allows police to engage in illegal activities in order to investigate serious indictable offences.

The new legislative framework establishes a **Controlled Operations Committee**, which must first grant approval for such operations. The Committee comprises:

- the Chairperson of the CJC or nominee
- the Queensland Crime Commissioner or nominee
- the Commissioner of Police or nominee
- an independent person who is a retired Supreme Court or District Court judge
- anyone else the Police Commissioner believes has the right knowledge or experience.

The Committee's role is to consider applications made to it by an Approving Officer and to approve or vary an approval for a controlled operation.

An **Approving Officer** may be the:

- Commissioner of Police
- Deputy Commissioner of Police
- Assistant Commissioner of Police for Crime Operations
- Chairperson of the CJC
- Queensland Crime Commissioner or Assistant Crime Commissioner [s. 173].

Where a police officer is under investigation by the CJC, section 175 allows the CJC Chairperson to approve the controlled operation without the need for approval of the committee. In those circumstances, the Chairperson must, before approving the operation, obtain the agreement of both the independent member and the Crime Commissioner.

Controlled activity

A controlled activity is where police conceal their identity for the purpose of obtaining evidence of the commission of an offence [s. 190]. Such activities need be authorised only by a police officer of at least the rank of inspector.

Where it is necessary for an officer or police officer of the CJC to engage in a controlled activity, the Chairperson or Director of Official Misconduct may authorise the officer to do so [s. 191].

(ii) Diversion of people found drunk in a public place to a 'place of safety'

Section 210 allows police to provide a more caring and treatment-focused response to people who are found drunk in a public place. As an alternative to holding such people in a watchhouse, police may take them to a 'place of safety' to allow them to recover from the effects of alcohol.

Examples of a place of safety are:

- a person's home or home of friend/relative
- a community hostel
- a vehicle that is under the control of someone other than police and will deliver the person to a place of safety
- a hospital.

A person will not be released to a place of safety if:

- the person's behaviour may pose a risk to others (e.g. domestic violence)
- the place of safety is unable to care for the person (e.g. a hostel is fully occupied)
- the place of safety is not within a reasonable distance for police to transport the person.

There is no obligation on the intoxicated person to remain at the place of safety. If the person chooses to leave, there is no penalty.

(iii) Pre-court diversion of minor drug offenders to a drug-diversion assessment program

Section 211 provides for people arrested for minor drug offences to be diverted from the criminal justice system to an appropriate drug-assessment program.¹ To qualify, a person must have:

- (a) been arrested or questioned for a minor drug offence
- (b) not also committed an indictable offence (e.g. break and enter to obtain money to purchase drugs)
- (c) no previous convictions involving violence against a person
- (d) admitted to the offence during the electronic record of interview

¹ It is expected that the drug-diversion provisions will commence operation in early 2001, on a date to be announced.

(e) not previously been offered placement in a drug-diversion assessment program.

Police officers are required to offer both adults and children who have previously been cautioned for a drugs offence the opportunity to attend a drug-diversion assessment program. Where a child has not previously been cautioned, the police officer has the option of either cautioning the child or offering the program.

If the arrested person consents to undertaking the program, he/she must sign an agreement acknowledging the obligation to attend and that failure to attend will result in an offence. A copy of the signed agreement must be given to Queensland Health.

(iv) DNA profiling procedures

Chapter 8, part 4, provides police with a DNA profiling system to assist in the identification of offenders. The PPRA 2000 allows for a DNA sampler to take body samples from people (with or without their consent) to determine whether they have committed an indictable offence.

Sample provider

A sample provider is anyone who provides a DNA sample whether or not they are suspected of committing an offence (e.g. the recent Wee Waa case).²

Sample type

Section 296 authorises the sampling of hair or saliva.

Who can take samples

Samples must be taken by an appropriately trained police officer, or a medical doctor or nurse at the direction of a police officer [s. 297].

Place of sampling

Section 298 provides for samples to be taken at the following places:

- a police establishment
- a hospital
- a prison or detention centre
- a place that provides reasonable privacy.

Sampling process

Where the required sample is saliva, sample providers are permitted to take their own mouth swab. When a hair sample is required, the DNA sampler collects the hair (including roots) from the providers [s. 299].

Consent

Before a DNA sample is taken, a police officer must explain both the need for the sample and the process. The officer must then seek the consent of the person from whom the sample is required [s. 300]. It is also a requirement that

the sample provider not be under the influence of alcohol or drugs [s. 300(3)(a)].

Consent must be sought from:

- an adult person [s. 300]
- an impaired person [s. 301]
- a child of 14 years and above [s. 302].

Impaired persons and children of 14 years and over must have a support person present when the explanation for the sample is provided by police [ss. 301(2)(b) and 302(2)(b)].

An impaired person is to be given the opportunity to speak with a support person prior to giving consent [s. 301(2)(a)]. There is, however, no similar provision for children of 14 years and over.

The explanation provided by police, which may or may not be in writing, must cover the following:

- why the sample is needed
- how and where it will be taken
- that the person may refuse to consent
- that a DNA sampler will take the sample
- that the person may withdraw consent at any stage before the sample is taken, including while the sample is being taken
- that a DNA analysis may be performed
- that the results may be recorded in the DNA database and used for investigative purposes by the police service or any other law enforcement agency
- that, if consent is refused, a sample may be taken without consent
- that the sample may be used in evidence before a court [s. 303].

Any explanation and consent that is not in writing must be electronically recorded [s. 304(2)]. A written explanation and consent provided by a child or impaired person must also be signed by the support person [s. 304(3)].

If consent is withdrawn at any time prior to a sample being taken, the DNA sampler must immediately stop taking the sample [s. 314(4)]. If a sample is taken prior to consent being withdrawn, the DNA analysis of the sample may be used in evidence [s. 314(5)].

DNA samples without consent

A sample can be taken without consent where proceedings for an indictable offence have been commenced against a person either by arrest, notice to appear or complaint and summons [s. 307]. A police officer requiring the sample may detain the person for no more than one hour while the officer seeks the approval of a relevant commissioned officer. The commissioned officer may authorise the further detention of the person for a reasonable time to obtain a sample.

² The residents of the New South Wales town of Wee Waa voluntarily provided their DNA samples in an effort to find the person who had raped and bashed an elderly member of their community.

Prior to taking a sample from an impaired person, the person must be given the opportunity to speak with a support person and have the support person present when the sample is taken [s. 306(2)].

Where the intended DNA provider is a child and proceedings have been commenced against the child by way of arrest, attendance notice or complaint and summons, the police officer must obtain an order from the Children's Court authorising the taking of the DNA sample [s. 312].

Where it is not necessary to take a DNA sample immediately from an arrested person, a 'DNA sample notice' may be delivered to the person requiring the person to attend a stated police establishment within seven days of issue of the notice [s. 308(2)].

If during court proceedings the court is satisfied it is necessary to take a DNA sample, the court may order the person charged:

- a) to be held in custody for up to one hour for the purpose of taking a sample, or
- b) to report within seven days at a stated police establishment to provide a sample [s. 309].

Convicted persons

Section 310 of the PPRA 2000 provides that where a person has been found guilty of an indictable offence the court may order the person to provide a DNA sample.

DNA sample of a prisoner

All prisoners serving a term of imprisonment for an indictable offence are required to provide a DNA sample. This provision will expire after three years [s. 311].

Use of force

In the process of obtaining a DNA sample, reasonably necessary force may be used by DNA samplers and anyone helping them [s. 314].

Sample analyses

Except in relation to DNA samples taken from prisoners, DNA results may be analysed more than once to ensure the accuracy of the analysis [s. 315(1)(d)]. The results of a DNA sample may be used for the purpose of any investigation conducted by police or a law enforcement agency [ss. 315(2), 317(4) and 318]. All DNA samples must be kept in a secure place and the results of analyses stored on a DNA database [ss. 315 and 317].

Destruction of samples and analyses

DNA samples and the results of analyses must be destroyed within a reasonable time if:

- police discontinue the arrest
- charges are dismissed by a court
- the person is found not guilty
- the person is not charged with an indictable offence within a year after taking the sample [s. 316(1)].

A DNA sample will not be destroyed if:

- the person is charged with a further indictable offence
- the person has been found guilty of another indictable offence
- the sample and results are required for the investigation of another indictable offence
- the person has been found unfit for trial because of mental illness [s. 316(2)].

(v) Blood and urine testing of people suspected of committing sexual and other serious offences

Protection for victims and others

The purpose of part 5 is to assist victims of certain alleged sexual offences in receiving counselling and medical attention. The legislation provides for blood and urine samples to be taken from alleged sexual offenders to find out whether they have a communicable disease.

Part 5 also covers people, other than the victim, who may have had blood, saliva or another bodily fluid transmitted to them during or soon after the commission of a sexual offence of the type listed in section 320(1) [s. 320(2)].

Sexual offence type

The sexual offences include:

- rape
- sexual assault involving penetration of a penis into the victim's mouth
- incest committed against a child under 12
- sodomy of a child under 12
- carnal knowledge of a girl under 12
- abuse of an intellectually impaired person involving penetration of a penis into the victim's mouth
- a serious assault if blood, saliva or another bodily fluid:
 - has penetrated, or may have penetrated, the victim's skin
 - has entered, or may have entered, a mucous membrane of the victim [s. 320].

Part 5 does not apply to an assault involving:

- penetration of the anus or vagina by an object
- the transfer of blood or other bodily fluid in a way other than by penetration of the anus, vagina, mucous membrane or skin of the victim
- spitting saliva onto unbroken skin [s. 320(3)].

Protection of identifying information

The identity of both the sample provider and the victim is protected by section 321 of the PPRA 2000, which excludes the *Libraries and Archives Act 1988*³ and *Freedom of Information Act 1992* from applying to any records of the testing process results.

³ Soon to be renamed the *Public Records Act 2000*.

Court application and appeal

If a sample is required from a person who is reasonably suspected of committing the sexual offence, an order must be given by a Magistrates Court/Children's Court authorising the taking of the sample [s. 322]. A copy of the application must be delivered to offenders and they must be advised of their right to have legal representation at the hearing (s. 322[4]). Where the offender is a child, notice of the application must also be given to the parent and Chief Executive Officer (CEO), Family Services, or a person nominated by the CEO [s. 323(2)].

An appeal may be made to the District Court against any court order and must be done so immediately [s. 326]. The appeal does not automatically stay the order for DNA testing and a stay must also be sought with the appeal [s. 326(3)]. The court is obliged to hear the appeal within 48 hours of the original order [s. 326(4)].

Sampling process

A police officer must ask only a medical doctor or nurse to take the blood or urine sample [s. 327]. Reasonably necessary force may be used by a doctor, nurse and anyone helping to take the sample [s. 327(5)]. The sample must be immediately sent to Queensland Health for testing [s. 327(6)].

Disclosure of DNA results

Section 329(1) provides that results of a DNA analysis may only be disclosed to the:

- victim
- alleged offender
- doctor or health professional who is treating the victim or alleged offender
- counsellor of the victim or alleged offender
- person nominated by the CEO of Queensland Health who, as part of his/her duties, must be told the results.

Any breach of the section will result in a maximum penalty of 40 penalty units or six months' imprisonment.

Any person to whom the results are lawfully disclosed must not disclose the information to anyone other than the people nominated under section 329(1) [s. 329(2)].

The disclosure restrictions specified in section 329(1) and (2) do not apply to either the victim or the sample provider, unless the disclosure is a public disclosure through the media identifying the victim or the sample provider [s. 329(3)].

Inadmissibility of DNA results

Test results of the blood or urine sample are not admissible in evidence [s. 330].

(vi) Dealing with property held by police

Chapter 11, part 3, provides the framework for a more efficient, safe and accountable way for handling property in the possession of police.

What is property?

Property covers:

- any item seized by police
- lost property delivered to police
- anything that otherwise comes into police possession in the course of performing their duties [s. 420].

Exceptions to those categories are:

- a vehicle or animal that has been removed from a road under section 60
- a blood, urine or saliva sample taken for identifying purposes under chapter 8, part 3
- a hair or saliva sample taken for DNA analysis under chapter 8, part 4
- a blood or urine sample taken for analyses of a communicable disease under chapter 8, part 5
- a blood or urine sample taken for blood alcohol analyses under section 80 of the *Transport Operations (Road Use Management) Act 1995* [s. 420(2)].

Receipt of property

A police officer who comes into possession of an item must deliver it, as soon as practical, to the appropriate property officer or property point. Reasonable efforts must be made to locate the owner of any property before destroying it.

Any item seized by police must be returned to the owner if the police officer is satisfied that it is no longer necessary to retain the item and it is lawful for the owner to have it back [s. 423(1)].

Where appropriate, an item may be photographed, tested or examined, or secondary evidence gathered in relation to the item [s. 423(3)]. The Act allows for an item to be retained by police for a reasonable time where it is assessed that the owner may cause harm to himself/herself or that it would prevent a breach of the peace or act of domestic violence [s. 423(3)]. An item will not be returned if the Commissioner of Police believes it is inappropriate to return the item because of the nature or value of the item (e.g. fibres in a carpet) [s. 423(4)].

Court application after 30 days

Within 30 days after an item is seized by police, an application must be brought by police before the Magistrates Court for an order directing how they may deal with the item. Section 427(1) specifies the types of orders that may be made. An order is not necessary where:

- proceedings have been commenced and the presence of the item is relevant

- the owner of the item has given consent to the continued possession of the item by police
- the item is of no value
- the item is perishable
- the item is a dangerous drug or utensil for manufacturing drugs
- the item is a weapon and the owner does not have lawful possession
- the item has been given to another law enforcement agency
- the item has been returned to the owner under section 423 or 424 [s. 426(2)].

Where proceedings have been discontinued or the owner of the item withdraws consent, an application must then be made to the Magistrates Court for an order allowing the police to continue holding the item [s. 426(3)].

Forfeited property

Where appropriate, forfeited property is to be given to charities or organisations that can make better use of the item (e.g. clothing to charities and hydroponics equipment to schools for agricultural purposes) [s. 429].

Where an item has been in the possession of police for over 60 days, the Commissioner of Police must first make all reasonable efforts to notify the owner of the intention to order the forfeiture of the item [s. 438]. Where appropriate, the Commissioner may sell the forfeited item by public auction and thereafter place the proceeds in a consolidated fund, after payment of the expenses of the sale and seizure and storage of the item [s. 441].

Destruction of drugs

Where a dangerous drug is seized, destruction of the drug must take place as soon as possible after seizure — but not before the following procedures:

- The drug must be photographed where it was found, weighed, counted and a representative sample taken [s. 431].
- A destruction notice must be given to the person from whom the drug was taken [s. 432]. The notice allows the person 30 days to request a representative sample of the dangerous drug for the purpose of analysis by an independent analyst. If no response is received from the person within the 30-day period, the Police Commissioner may destroy the evidence.

The drug evidence is not to be destroyed where there is a discrepancy between the findings of the independent analyst and the findings of the government analyst.

3: OTHER AMENDMENTS

The PPRA 2000 has completed the consolidation of, and clarified, several of the powers that existed in the PPRA 1997, the PPR Code and other legislation. Some of the more important amendments relate to:

■ Move-on directions

The Act consolidates legislation allowing move-on directions in the following areas:

- Queen Street Mall
- Fortitude Valley Mall
- Chinatown Mall
- local government declared malls
- South Bank Parklands.

In addition, racing venues and war memorial sites have been included.

Police must explain the reason for the move-on direction [s. 39(4)].

■ Notices to appear

Notices to appear were introduced by the PPRA 1997 as an alternative to the watchhouse bail process. On receipt of the notice, the defendant is given 14 days to appear before the stated court.

A minor amendment to the Act now allows the 14-day period to be waived in circumstances where it is inappropriate to wait the time (e.g. when the defendant has overseas or interstate travel commitments) [s. 215(3)].

■ Disobeying directions

Section 445 of the Act provides that an offence is committed if, without reasonable excuse, a person fails to obey a direction of a police officer. Where the direction is to provide information, it is a reasonable excuse if the person believes that to provide the information would be incriminating. Before the person is arrested for disobeying a direction, police must:

- warn the person that it is an offence to disobey a direction unless they have a reasonable excuse, and
- provide the person with a reasonable opportunity to comply with the direction [s. 391].

■ Providing name, address and age

Police may request a person's name, address, age and evidence of the information given [ss. 32–35]. Section 33 of the Act lists the 'prescribed circumstances' in which the power may be exercised.

Specific age-related offences are covered by sections 34 and 35 and relate to where a person's age is relevant to the right to be on premises (e.g. licensed premises, a casino or club).

■ Recording of identifying particulars

The Act created a new notice — **Identifying Particulars Notice** — which increased from 48 hours to seven days the time allowed for defendants to attend a police station to have their photograph taken and identifying particulars recorded [s. 272(2)].

■ Medical and dental procedures

Medical and dental procedures have been expanded to include safeguards similar to those that apply to questioning a suspect (see chapter 8, part 3). Those safeguards are:

- the right to speak with a friend or relative prior to the examination and have the person present at the procedure
- the right to speak with a lawyer prior to the examination and have the lawyer present at the procedure
- the procedure must be delayed for a reasonable period to allow the suspect's friend, relative and/or lawyer to attend.

■ Crime scenes

Chapter 3, part 3, consolidates and clarifies the powers relating to crime scenes, which were previously contained in the PPR Code. The powers relate to the establishment of a crime scene, the examination of the crime scene and the exclusion of persons from entering and/or dealing with the evidence at the crime scene.

■ Entry, inquiries and inspection

Chapter 2, part 1, allows police to enter premises without it amounting to trespass. What is a 'reasonable time' for entry and staying on the premises has been clarified in sections 18 and 21.

■ Searching without a warrant

Section 28 consolidates the prescribed circumstances in which police may search **persons** without a warrant to include:

- where a person unlawfully has possession of an explosive
- where a person has possession of an antique firearm and is not a fit and proper person to hold such an item
- where a person engages in fraudulent acts or cheating while at a casino
- where a person has committed, is committing or intending to commit:
 - an offence against the *Racing and Betting Act 1980*
 - an offence against the *Corrective Services Act 1988*
 - an act that threatens the security or management of a prison or prisoner.

Section 30 has similarly expanded the prescribed circumstances where a **vehicle** may be searched without a warrant.

Section 31 allows police to **enter a public place** without a search warrant and stay for a reasonable time for the purposes of searching the premises, seizing and taking photographs of evidence, digging up land and opening anything that is locked.

■ Production orders

Chapter 3, part 5, allows police, where they reasonably suspect the existence of a 'property-tracking document' to exist, to make application to the Supreme Court for an order requiring the property-tracking document to be produced. The document must relate to a serious offence of which a person has been found guilty or which police reasonably suspect has been committed. The court may order the document(s) be inspected, seized, copied and/or extracts taken. The new provisions consolidate powers that had previously existed in the *Crime (Confiscation) Act 1989*.

■ Detention period

The post-arrest detention regime, which operated under the PPRA 1997, is replicated in the PPRA 2000 with some minor amendments, namely:

- section 193 allows police to seek an extension of the detention period when applying for a removal order
- where a child is the subject of a removal order, the CEO of Family Services must be notified [s. 206]
- police may take people detained for post-arrest questioning to a place other than a police station [s. 211].

■ State buildings and special events

Chapter 9 consolidates and clarifies those powers that existed under the *State Buildings Protective Security Act 1983*. Police have specific powers that they may exercise in state buildings and at declared special events. Police may screen persons intending to enter either a state building or a special-event site. The screening process may involve:

- a personal search of the persons through removal of the persons' outer clothing
- a frisk search, or
- requesting reasons from the persons for their entry to the site.

Police may, if necessary refuse entry to the person or remove them from the building or special-event site.

Division 4 provides for the appointment of persons to assist police at special events ('authorised persons') [s. 345]. Authorised persons may exercise only those powers that are specified in their appointment [s. 345(3)].

This paper is also available on the CJC's Intranet and website.

Criminal Justice Commission
140 Creek Street
Brisbane

PO Box 137 Brisbane Albert Street
Qld 4002

Telephone: (07) 3360 6060
Toll Free: 1800 06 1611
Facsimile: (07) 3360 6333
Email: mailbox@cj.c.qld.gov.au
Website: www.cjc.qld.gov.au

© Criminal Justice Commission 2000

Apart from any fair dealing for the purpose of private study, research, criticism or review, as permitted under the *Copyright Act 1968* (Cwlth), no part may be reproduced by any process without permission. Inquiries should be made to the publisher, the Criminal Justice Commission (Queensland).