

**RECENT CHANGES TO POLICE POWERS
LEGISLATION IN QUEENSLAND: A COMPARISON
WITH THE RECOMMENDATIONS OF THE
CRIMINAL JUSTICE COMMISSION**

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Research Division



BACKGROUND

In 1989, the Commission of Inquiry Pursuant to Orders in Council (the Fitzgerald Inquiry) provided the catalyst for a review of police powers in Queensland. The Fitzgerald Inquiry recommended that the Criminal Justice Commission (CJC) undertake a comprehensive review of police powers — the reform debate to be informed by objective research and analysis. The CJC embarked on this task in November 1990 and produced a series of reports which systematically examined the main issues:

- *Report on a Review of Police Powers in Queensland. Volume I: An Overview*, May 1993.
- *Report on a Review of Police Powers in Queensland. Volume II: Entry, Search and Seizure*, May 1993.
- *Report on a Review of Police Powers in Queensland. Volume III: Arrest Without Warrant, Demand Name and Address and Move On Powers*, November 1993.
- *Report on a Review of Police Powers in Queensland. Volume IV: Suspects' Rights, Police Questioning and Pre-Charge Detention*, May 1994.
- *Report on a Review of Police Powers in Queensland. Volume V: Electronic Surveillance and Other Investigative Procedures*, October 1994.
- *Telecommunications Interception and Criminal Investigation in Queensland: A Report*, January 1995.

The police powers reports culminated in over 150 recommendations relating to the reform of police powers in Queensland. These reports were in turn the subject of a series of reports by the Parliamentary Criminal Justice Committee.

In July 1997, the Government released a Discussion Paper on the 'Review of Police Powers' as a precursor to introducing new police powers legislation. The CJC prepared a substantial submission which drew largely on its previous work. The CJC also prepared further submissions in response to the Police Powers and Responsibilities Bill 1997 and the draft Responsibilities Code.

On 6 April 1998, the new police powers legislation came into effect, consisting of the:

- *Police Powers and Responsibilities Act 1997*; and
- Police Powers and Responsibilities Regulation (No. 1) 1998, which contains the Police Responsibilities Code.

This document provides a summary comparison of the new legislation and the recommendations made by the CJC in its various reports. There were two main reasons for undertaking this analysis:

- to enable the CJC to report on the action taken in response to its reports and submissions; this is an accountability requirement for the CJC and, more specifically, is a performance indicator for the Police and Criminal Justice Research and Reform Subprogram
- to identify aspects of the new legislation which, in the view of the CJC, raise some concerns.

OVERVIEW OF FINDINGS

To a substantial extent, the recommendations advanced by the CJC through the police powers reports have been adopted in the legislation. Some recommendations have not yet been addressed pending the review by the Queensland Police Service (QPS) of police powers in other legislation. Although the recommendations of the CJC with respect to surveillance warrants and covert search warrants have not been completely adopted, the creation of a Public Interest Monitor does provide an additional safeguard.

The main areas where CJC recommendations were not acted on are:

- *failure to provide free legal advice:* The CJC recommended as a fundamental part of a regulated scheme for pre-charge detention questioning that free legal advice be provided to suspects in order to safeguard their rights. The legislation does not adopt this recommendation, nor has additional funding been provided to Legal Aid Queensland for this purpose.
- *absence of a dedicated custody officer position:* The CJC recommended that a custody officer position be created in order to ensure suspects' rights are fully protected (eg. informing suspect of legal rights, ensuring suspect's safety and special needs are met while in custody). The custody officer position was not adopted; instead, such responsibilities lie with the arresting officer.
- *unclear status for voluntary attendees:* The legislation does not adequately address issues relating to volunteers. For instance, the CJC recommended that after a period of 4 hours and at the end of a further 8 hours (taking into account time-outs), the volunteer should be taken before a magistrate or the hearing may be conducted by telephone to ensure that the person freely agrees to remain at the station for questioning. This recommendation has not been incorporated in the legislation.
- *the power to move-on:* Contrary to the CJC recommendation that a general move-on power not be allowed, the legislation provides for broad move-on powers in a wide range of public places.
- *the power to conduct personal searches:* The legislation is less restrictive than the CJC recommended; for instance, there are no clear distinctions between ordinary searches, frisk searches and strip searches, and there is no express limitation recognising that strip searches are to be a last resort.
- *telecommunications powers:* Legislation has not yet been introduced to enable the QPS and CJC to undertake telephone interceptions.
- *use of listening devices without prior judicial approval:* Contrary to the CJC recommendation that listening devices should not be used without judicial approval, the legislation allows a police officer of at least the rank of Inspector to authorise the use of listening devices in emergency situations (that is, where there is reasonable belief of risk of serious injury to a person).

FUTURE DIRECTIONS

It is crucial to the success of police powers reform that the implementation process be closely monitored, particularly as the Act provides for a review within three years (s. 134). As well as being formally involved in that process, the CJC has developed, in consultation with the Review and Evaluation Branch of the QPS' Ethical Standards Command, an ongoing monitoring and research strategy. Findings from this research will be provided on a regular basis to the QPS and the Police Powers Reference Group established by the Minister, and will be disseminated publicly in the form of CJC research reports.



**A COMPARISON OF CJC POLICE POWERS RECOMMENDATIONS WITH THE POLICE POWERS AND RESPONSIBILITIES ACT 1997
AND THE POLICE POWERS AND RESPONSIBILITIES REGULATION 1998**

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
VOLUME II – ENTRY, SEARCH AND SEIZURE		
SEARCH WARRANTS		
<p>Proposed legislation governing search powers Legislation modelled on the <i>Search Warrants Act 1985</i> (NSW) should be introduced (Rec. 12.1). As well as covering entry and search pursuant to a warrant, legislation should also cover:</p> <ul style="list-style-type: none"> ● entry and search of premises without warrant (Rec. 12.2) ● monitoring warrants (Rec. 12.3 – instead of search without warrant in relation to specified Acts) ● stop and search of persons (Rec. 12.4) ● stop and search of vehicles (Rec. 12.5) ● roadblocks (Rec. 12.6) 	<p>Act covers:</p> <ul style="list-style-type: none"> ● entry and search pursuant to a warrant: Part 5 – Searching People, Places and Vehicles With a Warrant (ss. 28–33) ● entry and search of premises without warrant: Part 4 – Searching People and Vehicles Without a Warrant (ss. 26–27); s. 14 ‘Power to enter etc. for relevant Acts’ <p>– not specified in Act but s. 14 provides a general power to do various acts in relation to a ‘relevant Act’ without a warrant</p> <ul style="list-style-type: none"> ● stop and search of persons: s. 26 (Searching persons without warrant) ● stop and search of vehicles: s. 27 (Searching vehicles without warrant) ● roadblocks: s. 24 (Part 3—Roadblocks and Traffic Related Powers) <p>[Act also includes ‘Notice to Produce’ provisions for financial institutions — not addressed by CJC recommendations.]</p>	<p>Recommendations followed generally with exception of ‘monitoring warrants’.</p>

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
<p>Persons authorised to execute search warrants and conduct searches (Recs. 12.1(1) & 9.2) All police officers as defined in section 2.2(2) of the <i>Police Service Administration Act 1989</i> should be authorised to execute search warrants and conduct searches.</p>	<p>s. 28(1) & (2) A p.o.¹ may apply to a justice/magistrate for a warrant to enter and search a place to obtain evidence ...</p>	<p>Rec implicitly adopted.</p>
<p>Persons authorised to issue search warrants (Recs. 12.1(2) & 8.2) The power to issue a search warrant should be restricted to stipendiary magistrates, justices of the peace (Magistrates Courts) and justices of the peace (qualified) as defined in section 1.04 of the <i>Justices of the Peace and Commissioners for Declarations Act 1991</i>, (subject to Rec. 8.12 concerning telewarrants).</p>	<p>s. 28(1) Warrant to be issued by a justice if search relates to evidence of an offence which is <i>not</i> to be used in a forfeiture proceeding [see also s. 28(11) below]. (2) Warrant to be issued by a magistrate if search relates to evidence of an offence which <i>is</i> to be used in a forfeiture proceeding. (3) Warrant to be issued by a Supreme Court judge if search may cause structural damage to a building (11) If a justice (other than person who is a justice of the peace because of the <i>Justices of the Peace and Commissioners for Declarations Act 1991</i>, section 19(1) or (1A) (<i>i.e. present or former judge or magistrate</i>)) refuses to issue a warrant, the p.o. may apply to a magistrate for the issue of the warrant' [must inform magistrate that justice refused to issue warrant (s. 28 (12)). 'Justice' not defined in the Act.</p>	<p>Rec regarding magistrates and justices generally adopted, except categories of justices are broader - includes general 'justices of the peace' appointed before 1991 who have until 30 June 2000 to qualify as JP (Mag Ct) or JP (qualified). Extra requirement for issue of warrant by Supreme Court judge if structural damage anticipated. [see also Telewarrant provisions below]</p>

1 Note: 'p.o.' is an abbreviation for 'police officer'.

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
<p>Search warrants in respect of indictable offences, drug offences, weapons offences, stolen goods, detained persons and other specified offences (Recs 12.1(3) & 8.7)</p> <p>There should be a search warrant provision allowing for an application for a warrant to search for:</p> <ul style="list-style-type: none"> • a thing connected with a particular indictable offence; • a thing connected with a particular offence under the <i>Drugs Misuse Act 1986</i>; • a thing connected with a particular offence under the <i>Weapons Act 1990</i>; • a thing stolen, or suspected of being stolen or otherwise unlawfully obtained; <p>or</p> <ul style="list-style-type: none"> • a person unlawfully detained. <p>A thing is connected with a particular offence if it is:</p> <ul style="list-style-type: none"> • a thing with respect to which an offence has been committed; • a thing that will afford evidence of the commission of the offence; or • a thing that was used, or is intended to be used, for the purpose of committing the offence. <p>A reference to an offence is to include a reference to an offence that there are reasonable grounds for believing has been or is to be committed.</p>	<p>s. 28 (1) A p. o. may apply to a justice for a warrant to enter and search a place (search warrant) to obtain evidence of the commission of an offence, other than evidence that may be used in a forfeiture proceeding.</p> <p>In Dictionary (Schedule 3), "evidence of the commission of an offence" is defined as including:</p> <ol style="list-style-type: none"> (a) a thing or activity that is or may provide evidence of the offence; and (b) a thing that will, itself or by or on scientific examination, provide evidence of the commission of the offence; and (c) a thing that is intended to be used for the purpose of committing the offence; and (d) a thing that may be liable to forfeiture or may be used in evidence for a forfeiture proceeding. <p>s. 16 It is lawful for a p.o. . . (b) to enter a place the p.o. reasonably suspects is a crime scene.</p> <p>Schedule 3 defines 'primary crime scene' as including '... an offence involving a deprivation of liberty'.</p> <p>'Reasonable grounds': see s. 31(1) and s. 28(6) where 'the issuer may issue the warrant only if satisfied there are reasonable grounds for suspecting there is at the place ... evidence of the commission of an offence'.</p>	<p>Rec. adopted, although with a broader focus — all offences. Crime scene provisions cover access to premises where person is unlawfully detained.</p> <p>Rec. regarding 'reasonable grounds' appears to have been followed implicitly.</p>

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
<p>Grounds for the warrant (Recs. 12.1(4), 8.3 & 8.11) The issuing authority must be satisfied that there are reasonable grounds to suspect that:</p> <ul style="list-style-type: none"> the objects of search are to be found on the premises for which the warrant is sought or will be on the premises within the next 72 hours; and the objects of search are connected with an offence which has been, is being or may be committed; <p>before issuing the warrant.</p>	<p>s. 28(6) The issuer may issue the warrant only if satisfied there are reasonable grounds for suspecting there is at the place, or is likely to be at the place within the next 72 hours, evidence of the commission of an offence. [see "evidence of the commission of an offence" above]</p>	<p>Rec. adopted.</p>
<p>Authority to be advised of previous applications (Recs 12.1(5) & 8.4) The applicant must advise the issuing authority of any previous applications for a warrant, whether successful or unsuccessful and whether concerning the same circumstances or not, made in the previous 12 months in respect of the subject person or property. Where the circumstances make it impracticable to obtain this information the officer should inform the issuing authority of what steps have been taken to try to obtain the information and the reason why the information was not available at the time of making the application</p>	<p>s. 28(4) The application must— (b) include information specified in the responsibilities code about any warrants issued within the previous year in relation to the place or a person suspected of being involved in the commission of the offence or suspected offence to which the application relates. RC: cl. 26. An application for a search warrant must state the following- (g) if there are relevant previous search warrants- (i) when and where each warrant was issued; (ii) the type of offence to which each warrant is related; (iii) whether anything was seized during a search or any proceeding started after a search.</p> <p>s. 28(5) The justice, magistrate or judge may refuse to consider the application until the p.o. gives the issuer all the information the issuer requires about the application in the way the issuer requires.</p>	<p>Rec. largely adopted except no requirement to advise of unsuccessful applications.</p>
		<p>Rec. that officer should inform issuer of steps taken to get info etc may be implicitly followed under s. 28(5).</p>

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
<p>Where initial application for warrant is refused (Recs. 12.1(6) & 8.5) As a general rule, where an application for a search warrant has been refused, no further application should be made to any magistrate or authorised justice unless further information has been obtained. There should be an exception to this where the initial refusal is by an authorised justice (not being a stipendiary magistrate); one further application may be made to a magistrate without the need for additional information to be obtained. In all cases the applicant should be required to inform the issuing authority of any previous applications for a warrant concerning the same circumstances which were refused.</p>	<p>s. 28(11) If a justice (other than a person who is a justice of the peace because of the <i>Justices of the Peace and Commissioners for Declarations Act 1991</i>, section 19(1) or (1A)) refuses to issue a warrant, the p.o. may apply to a magistrate for the issue of the warrant (12) However, the p.o. must tell the magistrate that the application is made because a justice refused to issue a warrant; also RC: cl. 27 A p.o. who intends to apply to a magistrate for the issue of a search warrant because of the refusal of a justice to issue a search warrant must tell the magistrate the reason the justice gave for refusing to issue the warrant.</p> <p>see also s. 28(5) above regarding requirement for further information</p>	<p>Rec. adopted.</p>
<p>Particularity of objects of search (Recs. 12.1(7) & 8.8) There should be a provision that requires the applicant for a warrant to identify so far as is practicable the objects of search.</p>	<p>s. 28(7) The warrant must state— (c) any evidence that may be seized under the warrant.</p> <p>RC: cl. 26 An application for a search warrant must state the following—... (e) a description of the nature of the thing sought that is reasonably suspected of being evidence of the commission of the offence.</p>	<p>Rec. adopted.</p>
<p>Telewarrants etc. (Recs 12.1(8) & 8.12) Provision should be made for warrants to be available only from stipendiary magistrates by telephone, radio or facsimile only in urgent circumstances or where remoteness of the location precludes obtaining a warrant in the ordinary manner. The maximum period of validity should be 48 hours.</p>	<p>s. 129 A p.o. may apply to the person who may issue the prescribed authority for the prescribed authority [includes warrant, approval, notice to produce or another authority] by phone, fax, radio or another similar facility if, for any reason, it is impracticable to apply for the authority in person.</p>	<p>Partially adopted. Not as restrictive as recommended — applies when 'impracticable to apply in person'; telewarrants can be issued by JP as well as magistrate.</p>

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
<p>Covert Execution of Search Warrants (Recs. 12.1 & 8.10)</p> <p>Provision should be made for warrants to be available to covertly enter and search premises in limited circumstances as follows:</p> <ul style="list-style-type: none"> • The application must relate to a serious indictable offence. • The application must be authorised by officer of the rank of inspector or above. • The application must be made to a Supreme Court judge. • The judge must be satisfied that the grounds indicate circumstances of such seriousness as to justify the covert execution of a search warrant. 	<p>Part 10—Surveillance Powers (ss. 67—82) Covert search warrants s. 74(1) A p.o. of at least the rank of inspector may apply to a Supreme Court judge for a warrant under this section to enter and search a place for evidence of organised crime’. Schedule 3 definition of ‘organised crime’: ‘means an ongoing criminal enterprise to commit serious indictable offences in a systematic way involving a number of people and substantial planning and organisation.</p> <p>s. 74(2) ...application must (a) be sworn and state the grounds on which warrant is being sought; and (b) include info specified in the responsibilities code...’ [re warrants issued in previous year] (4): ‘The judge may refuse to consider the application until the p.o. gives .. all the information’ (6): ‘...being mindful of the highly intrusive nature of a surveillance warrant, the judge must consider ... (includes nature/seriousness of offence; privacy issues; benefits of surveillance vs conventional methods etc) (7): ‘... issue the warrant if satisfied there are reasonable grounds for believing there is...evidence of organised crime.</p> <p>RC: cl. 43 Application for covert search warrant must state the following—(g) if there are relevant search warrants, covert search warrants or surveillance warrants, for each warrant: (i)-(viii)—the type of warrant/device; when/where issued; how long warrant was in force; whether it related to person or place; type of offence; evidence seized during previous search; how it helped in the investigation or other investigation; and any proceeding started after the search or use of the surveillance device (h) anything necessary to satisfy the Supreme Court judge of the things mentioned in s. 74(6) of the Act.</p>	<p>Rec. largely adopted, except refers to ‘organised crime’ not serious indictable offence (defined in Schedule 3). Implicit adoption of rec. regarding justification.</p> <p>RC specifies what information is required in applications for covert search warrants.</p>

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
<p><i>continued</i></p> <ul style="list-style-type: none"> The police officer must report to the judge as soon after the execution of the warrant as is reasonably practicable and not later than 72 hours after execution and the report should include a written report of the details of its execution. 	<p>s. 76(1) Within 7 days after executing a covert search warrant, a p.o. must give to the Supreme Court judge who issued the warrant and the monitor a report complying with the responsibilities code on the exercise of the powers under the warrant.</p> <p>RC: cl. 46 A report on the exercise of powers under a covert search warrant must be accompanied by a copy of the warrant and state the following (a)-(g)-reporting p.o's name, rank, registered number & station; when/where warrant was issued; the organised crime related offence mentioned in warrant; when the powers under the warrant were exercised; the facts and circumstances of compliance with the warrant and its conditions; particulars of anything seized, inspected, photographed; a description of any order sought in relation to anything seized/photographed and the reason for the order.</p>	<p>Rec. adopted except more time allowed to produce report.</p> <p>RC sets out requirements for report.</p>
<ul style="list-style-type: none"> The judge is then to provide a direction to the police officer specifying the details and circumstances of the search of which the occupier is to be informed in writing and the period of time within which the occupier must be provided with such information. Details of the search are to be recorded on the Search Register as soon as is practicable but access to those details is to be strictly limited until the occupier has been provided with the information. 	<p>s. 74(10) The judge may impose any conditions on the warrant that the judge considers are necessary in the public interest.</p> <p>s. 78(1) The commissioner must keep a register of applications for surveillance and covert search warrant... (2) the register is not open to inspection by anyone other than the commissioner, a p.o. making an application; a monitor.</p> <p>RC: cl. 102 The following details about applications for surveillance/covert search warrants must be included in register-... (i) for covert search warrants-... (ii) whether anything was seized/inspected/photographed; (iii) a description of anything seized.</p>	<p>Rec. has not been adopted although s. 74(10) could permit a direction in terms of the recommendation.</p> <p>Rec partly adopted - Act limits access to the register (no mention of providing the info to the occupier-covert); RC specifies details which should be recorded in register for surveillance/covert search warrants.</p>

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
<p><i>continued</i></p>	<p>s. 79(1) The Governor in Council may appoint a person (the 'public interest monitor') to monitor applications for, and the use of, surveillance warrants and covert search warrants.</p> <p>s. 80(1) The public interest monitor has the functions mentioned in (2) for surveillance warrants and covert search warrants.</p> <p>(2) The functions are—(a) to monitor compliance by police officers with this part in relation to...applications (b) to appear at any hearing of an application to a Supreme Court judge or magistrate...to test the validity of the application, and for that purpose at the hearing—(i) present questions for the applicant to answer and examine or cross-examine any witness; and (ii) to make submissions on the appropriateness of granting the application; and (c) to gather statistical information about the use and effectiveness of surveillance warrants and covert search warrants; and (d) whenever the public interest monitor considers it appropriate—to give to the commissioner a report on noncompliance by p.o.'s with this part.</p>	<p>*Although several recommendations regarding covert search warrants and surveillance warrants not adopted, the spirit of the recommendations are adopted via the creation of a Public Interest Monitor.</p>

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
<p>Period of validity of warrant (Recs. 12.1(10), 8.13 & 8.12) There should be a provision which states that an ordinary search warrant is only valid for seven days or for such other period as is specified in the warrant.</p> <p>A warrant obtained by telephone etc. is only to be valid for 48 hours.</p>	<p>s. 28(7)(e) the warrant ends 7 days after it is issued or, if it relates to something likely to be at a place within the next 72 hours, 72 hours after it is issued.</p>	<p>Rec. adopted for ordinary search warrants, however no time limit specified re telewarrants etc (at s. 129).</p>
<p>What may be seized during the search (Recs. 12.1(11) & 9.7) A provision should be included to allow a police officer executing a warrant to seize anything mentioned in the warrant and to seize:</p> <ul style="list-style-type: none"> • things other than those named in the warrant which provide evidence of the offence contained in the search warrant; and • things which provide evidence of an indictable offence not mentioned in the warrant; <p>where they are discovered in the course of a reasonable search pursuant to the terms of the original warrant.</p>	<p>s. 28(7)(c) the warrant must state 'any evidence that may be seized'</p> <p>s. 29(i) powers under search warrant include 'to seize a thing found at the relevant place, or on a person found at the relevant place, that the p.o. reasonably suspects may be evidence of the commission of an offence to which the warrant relates'.</p> <p>s. 34(1) This section applies if a p.o. lawfully enters a place, or is at a public place, and finds...a thing the officer reasonably suspects is evidence of the commission of an offence. (2) The p.o. may seize the thing...if under a warrant, whether or not the offence is one in relation to which the warrant is issued.</p>	<p>Rec. adopted but with wider application. S. 34 refers to 'an offence' not an <i>indictable</i> offence.</p>
<p>Search of persons on premises (Recs. 12.1(12) & 9.8) Provision should be made to allow a police officer to search persons who are present during the execution of a search warrant in circumstances where the police officer has reasonable grounds to suspect that the objects of search are being carried on or concealed upon the person.</p>	<p>s. 29(h) police powers under search warrant includes 'if authorised under the warrant—power to search anyone found at the relevant place for anything sought under the warrant that can be concealed on the person'.</p>	<p>Rec. adopted but power to search persons must be specified under the warrant.</p>

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
<p>Copy of the search warrant to be given to the occupier (Recs 12.1(13), 9.6, 9.5 & 11.2) Provision should be made to require a police officer executing a warrant to provide a copy of the search warrant to the occupier upon entry to the premises or, where the premises are unoccupied, to leave a copy in a conspicuous place. This is to be done immediately after the officer identifies himself or herself and prior to reading out the terms of the warrant. However, this requirement is subject to Recommendation 8.10 concerning covert search warrants. The back of the occupier's copy should have on it a summary of the rights of the occupier and the authority conferred by the warrant.</p> <p>Identification to Occupier (Rec. 9.5) Wherever practicable the officer in charge should identify him/herself to the occupier of the premises upon which a warrant is to be executed. This should occur at the time when a demand for entry is made...</p>	<p>s. 30(1) If a p.o. executes a search warrant for a place that is occupied...must give to the occupier...a copy of the warrant and a statement summarising the person's rights and obligations... (2) If the occupier is not present...must leave the copy in a conspicuous place.</p> <p>RC: cl. 28 The statement p.o. must give to the occupier...must state the following-(a)-(h) a search warrant has been issued; occupier is entitled to a copy of the warrant; nature of police powers under the warrant; senior officer must state name/details;...</p>	<p>Rec. largely adopted by Act and RC - does not specify when this is to be done nor that terms of warrant should be read out.</p>
<p>Demand for entry and use of force to enter premises (Recs. 12.1(14) & 9.4) As a general principle a demand for entry is to be made before force is used to effect entry. No demand for entry need be made prior to using force where:</p> <ul style="list-style-type: none"> • to make a demand for entry is likely to endanger the life or safety of any person; • to make a demand for entry is likely to result in the loss or destruction of material evidence of an indictable offence; or • the warrant authorises a covert search. <p>Where the circumstances require that force be used, the police officer shall only use such force as is reasonably necessary. Where entry is made by force the police officer must record the reasons for using such force in his or her official police notebook or in some other appropriate manner and subsequently enter the reasons on the Search Register.</p>	<p>s. 125 It is lawful for a p.o. exercising a power under this or any other Act in relation to a thing, and anyone helping the police, to use reasonably necessary force...</p> <p>RC: cl. 13(1) This section applies if a p.o. intends to enter a place to arrest or detain someone, or to search a place, or to establish a crime scene. (2) Before the p.o. uses force that may cause structural damage to a place to gain entry to the place, the p.o. must, if reasonably practicable-(a) ask the occupier to allow the p.o. to enter the place; and (b) give the occupier a reasonable opportunity to allow the entry. (3) It may not be reasonably practicable for a p.o. to comply with subsection (2) if, for eg-(a) there is an immediate or sudden need to use force; (b) reasonable expectation that, if warned, the person may dispose/destroy evidence; (c) immediate search is necessary to protect the safety of any person.</p>	<p>Recs largely adopted. Act adopts measure of 'reasonably necessary force'. RC specifies there should be a request for entry if reasonably practicable, prior to using force. There is no provision in Act or RC to record reasons for using force.</p>

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
<p>Use of assistants to execute warrant (Recs. 12.1(15) & 9.3) Consistent with the emphasis on the need for prior judicial authorisation, the issuing authority must authorise the attendance of a person acting in good faith and in aid of a police officer. Where a class of individuals is named, the assistance is to be limited to those who are necessary for the execution of the warrant. A police officer should be authorised to call for additional assistance in exceptional circumstances where the presence of a particular person is necessary but was not foreseen at the time of applying for the warrant.</p>	<p>s. 123(1) It is lawful for a p.o. exercising a power under this Act... to take onto the place any person, equipment, vehicle, animal or material the officer reasonably requires for exercising the power ...</p>	<p>Not adopted. No authorisation in warrant required.</p>
<p>Time of execution of warrant (Recs. 12.1(16) & 9.1) A search warrant is to be executed between 6am and 10pm unless specifically authorised by the issuing authority. The grounds upon which the issuing authority may authorise execution outside those hours include, but are not limited to, the following:</p> <ul style="list-style-type: none"> ● the execution of the warrant by day is unlikely to be successful because, for example, it is issued to search for a thing which is likely to be on the premises only at night or other relevant circumstances will only exist at night; ● there is likely to be less risk to the safety of any person if it is executed at night; or ● an occupier is likely to be on the premises only at night to allow entry without the use of force. <p>Where the warrant has been issued to search for a person unlawfully detained, it can be executed at any time of the day or night.</p>	<p>s. 28(7)(d) The warrant must state if the warrant is to be executed at night—the hours when the place may be entered</p> <p>RC: cl. 26 An application for a search warrant must state the following—... (h) if the application requests authority for the exercise of any of the following powers—the reason it is necessary to exercise the power—... (iv) power to execute the warrant at night and the hours at night when it is necessary to enter the place.</p> <p>RC Operational guideline 19.1: Before a p.o. searches a place under a search warrant, the p.o. coordinating the search must— (a) check the time of the day or night when the place may be searched under the warrant;</p>	<p>Rec. largely adopted — while no specified time periods are included in the Act, the application must specify reason for execution at night and the warrant must specify hours; s. 28(7)(d) and RC operational guidelines refer to the execution of search warrants at 'night'.</p>
<p>Re-entry to premises (Recs. 12.1(17) & 9.9) The power to enter premises authorised by a search warrant includes a power to re-enter any part of the premises where the re-entry is so associated in time or circumstance that it may properly be regarded as part of the initial entry and search authorised by the warrant.</p>	<p>s. 29(a) Powers under search warrant include 'power to enter the place... and to stay on it for the time reasonably necessary...' "enter" defined as 'includes re-enter the place'</p>	<p>Rec. for re-entry adopted.</p>

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
<p>Recording the result of the search (Recs. 12.1(18) & 11.3)</p> <p>Provision should be made to require the police officer to complete a list of any property seized and give a copy to the occupier (or leave it in a conspicuous place if the premises are unoccupied) prior to leaving the premises.</p> <p>This requirement would, of course, be subject to Recommendation 8.10, where the search has been conducted covertly. Where the volume of material or other circumstances surrounding the seizure make it impracticable to complete the list of property taken at the scene, this is to be noted and a list of property is to be provided to the occupier as soon as is reasonably practicable thereafter.</p>	<p>s. 107(1) If a p.o. seizes anything under this Act...as soon as is reasonably practicable after seizing...give or cause to be given to the person from whom it is seized or the occupier... a receipt for the thing</p> <p>(2) The receipt must describe the thing seized and include any other information required under the responsibilities code</p> <p>(3) If the occupier...is not present, the receipt must be left in a conspicuous place</p> <p>s. 112(5) requirement to also record relevant details of the search, arrest or property seized in the register.</p> <p>RC: cl. 49: 'A receipt given for a thing seized must include (a)-(g)—date/time it was seized; if taken from a person their name, address, telephone contact (if known); if taken from an occupied place, the occupier's name, address, telephone contact (if known); description of thing seized; name/rank, station and telephone contact of p.o. who seized the thing; where the thing will be taken (if known); the date the receipt is issued.</p>	<p>Rec. largely adopted, except receipt must be given 'as soon as reasonably practicable' rather than prior to leaving the premises.</p> <p>RC sets out the information to be recorded on receipt.</p>
<p>The police officer is also to make a written record on the back of the search warrant of the result of execution, including:</p> <ul style="list-style-type: none"> • the reason for any failure to demand entry and/or the use of force to effect entry; • any injury or damage which occurred or allegedly occurred at the time of executing the warrant; • the date, time and place of the search; and • the name, rank and station of the officer in charge of the search. 	<p>s. 118 A p.o. who executes a warrant or order must, if reasonably practicable, write the following on the back of the original warrant or order...and sign the document—</p> <p>(a) the date and time of execution; (b) the name of the person on whom it was executed; (c) if supplied—the name of the occupier of the place; (d) the name, rank, registered number, if any, and station of the p.o.</p> <p>RC: cl. 99 The following details of a search must be included in the register—(b) for a search of a vehicle—(vii) whether anything was damaged because of the search... (c) for a search of a place other than a vehicle... (v) whether anything was damaged because of the search...</p>	<p>Rec. largely adopted (except no provision to record failure to demand entry and/or use of force).</p>

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
<p>Report to Issuing Authority (Recs. 12.1(19) & 11.4) The police officer in charge of the execution of the search warrant is to report the outcome to the issuing authority within 10 days of execution or expiry of the warrant. (In the case of covert searches, the report must be made no later than 72 hours after execution of the warrant, see Recommendation 8.10). Where property has been seized the issuing authority is to make an order as to where the property is to be held.</p>	<p>s. 108(1) Within 28 days after a p.o. seizes anything as evidence, the officer must apply to a justice of the peace (mag. ct) or a magistrate for an order under subsection (4)...unless— (a) a proceeding has been started...(b) consent to the continued keeping of the thing has been given...(c) it is returned under s. 110. (4) The issuer may, in relation to the thing, order— (a) that it be kept in the possession of a p.o. until the end of any proceeding...(b) that it be photographed and returned to the owner...on the condition the person undertakes to produce it before a court...; (c) that it be dealt with by way of a proceeding under the <i>Justices Act 1886</i>, s. 39 or a forfeiture proceeding; or (d) it be disposed of or destroyed in the way the issuer orders.</p> <p>see also RC: cl. 48 'Responsibilities of p.o. who seizes a thing under the Act'.</p>	<p>Rec. partly adopted re ordinary search warrants through requirement to seek order re property seized. No obligation to report if no property seized. Rec. largely adopted re covert search warrants (see above).</p>

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
<p>Search Register (Recs. 12.1(20), 11.5 & 8.6) The police officer, as soon as is reasonably practicable after the completion of a search, is to enter the details of the search, including the result of the search onto a secure computerised Search Register. Any order made by the issuing authority with respect to the custody of seized property, should also be entered on the register. The only persons to have access to information on the Search Register will be police officers and the person the subject of the search or his or her legal representative (subject to Recommendation 8.10). Details of all applications for search warrants should also be entered into the Search Register.</p>	<p>s.112(5) requirement to record relevant details of the search, arrest or property seized in the register. see also s. 108(1) & (4) re orders made by the issuer about the seized property. s. 117(2) if the person to whom the information relates asks [in the register], a p.o. must as soon as reasonably practicable, given to the person a copy or print-out of the information (3) does not apply to information which cannot be disclosed under this or other Acts. RC: cl. 48 requires p.o. to record reason for keeping thing seized; cl. 99 describes details of search which must be included in the register and at (d) information about the return, destruction or disposal of anything seized; cl. 101 specifies which details about search warrants (& notices to produce) which must be included in the register. cl. 102 specifies details re applications for covert search warrants.</p>	<p>Rec. largely adopted — no requirement to record unsuccessful applications for search warrants, other than covert search warrants.</p>
<p>Monitoring the issue of Search Warrants (Rec. 8.1) A process should be put in place for senior police to monitor the use of services of justices of the peace who are qualified to issue warrants so as to ensure that police do not rely inappropriately upon a particular justice of the peace.</p>	<p>RC: Operational guideline: 17.5 To avoid suggestion of bias that may lead a court to question the validity of a warrant, a p.o. should not apply to a justice who is a member of the police service.</p>	<p>No specific mention in Act - QPS Search Warrant Index records name of issuer.</p>
<p>No General Warrants (Rec. 8.9) General warrants authorising entry and search of 'any' premises for the object of search, without having to specify the offence to which the suspicion relates, should not be introduced.</p>	<p>s. 28(1) A p.o. may apply to a justice for warrant to enter and search a place. s. 28(7)(b)(i) The warrant must state—if the warrant is issued in relation to an offence. the offence for which the warrant is issued... RC: cl. 26 An application for a search warrant must state the following...(b) a description of the place to be searched (d) the offence to which the application relates.</p>	<p>Rec. adopted.</p>

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
<p>ENTRY AND SEARCH OF PREMISES WITHOUT WARRANT</p> <p>Circumstances in which entry and search without warrant is authorised (Rec. 12.2)</p> <p>Provision should be made to allow police to enter and search premises without warrant in the following circumstances:</p> <ul style="list-style-type: none"> to arrest a person where the police officer has reasonable grounds to suspect that the person is on the premises (Rec. 10.1) where a police officer has reasonable grounds to suspect that entry is necessary in order to prevent injury to a person or to prevent serious damage to property (Rec. 10.1) where a police officer has reasonable grounds to suspect that anything that may afford evidence of the commission of a drug offence² is, or is in possession of a person, in, on or about any place or land and that it will be concealed or destroyed unless that place or land is entered and searched immediately (Recommendation was to maintain the power in s. 18(12) of the Drugs Misuse Act) (Rec. 10.2) 	<p>s. 15(1) A p.o. may enter and stay for a reasonable time on a place to arrest a person, or detain a person under another Act, or arrest a person named in a warrant (2) However...only if the p.o. reasonably suspects the person to be arrested or detained is at the dwelling.</p> <p>s. 122(1) It is lawful for a p.o. to enter a place if p.o. reasonably suspects there is an imminent risk of injury to a person...or an offence involving damaging property... Provisions for search of persons/place in (3).</p> <p>s. 31 'Search to prevent loss of evidence'</p> <p>(1) This section applies if a p.o. reasonably suspects a thing at or about a place, or in the possession of a person at or about a place is evidence of the commission of an offence and the evidence may be concealed or destroyed unless the place is immediately entered and searched. (2) the p.o. may enter the place and exercise the powers under s. 29 (other than power to do something that may cause structural damage) as if they were conferred under a search warrant. (3)-(9).</p>	<p>Rec. adopted.</p> <p>Rec. adopted, except grounds re damage to property are broader.</p> <p>Rec. implicitly adopted.</p>

2 That is an offence under Part II of the *Drugs Misuse Act 1986*.

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
<p><i>continued</i></p> <ul style="list-style-type: none"> where a police officer has reasonable grounds to suspect that a person is in possession of and is threatening to use any weapon such that death or injury to any person is likely to be caused unless the premises are entered immediately (Rec. 10.3) where a police officer has reasonable grounds to suspect that material evidence of an offence carrying a maximum period of seven years imprisonment or more is, or is in possession of a person, in, on or about any place or land and that it will be concealed or destroyed unless the premises are entered immediately without the order of the court (Rec. 10.14) <p>Specific entry without warrant provisions of the following Acts should continue to apply:</p> <ul style="list-style-type: none"> <i>Crimes (Confiscation of Profits) Act 1989</i>, s. 32 (Rec. 10.4) <i>Domestic Violence (Family Protection) Act 1989</i>, s. 32 (Rec. 10.5) <i>State Counter-Disaster Organization Act 1975</i>, s. 25 (Rec. 10.6) <i>Public Safety Preservation Act 1986</i>, s. 8 (Rec. 10.7) <i>Casino Control Act 1982</i>, s. 113 (Rec. 10.8) <i>Noise Abatement Act 1978</i>, s. 33 (Rec. 10.10) <p>Section 43 of the <i>Traffic Act 1949</i> should be reviewed to determine whether it should be the subject of a search warrant (Rec. 10.11)</p>	<p>see s. 122 above.</p> <p>see s. 31 above.</p> <p>exempt-Schedule 1, RC exempt-Schedule 1, Act exempt-Schedule 1, Act exempt-Schedule 1, Act exempt-Schedule 1, RC Act repealed and incorporated in <i>Environmental Protection Act 1994</i>: exempt-Schedule 1, Act exempt-Schedule 1, Act</p>	<p>Rec. implicitly adopted.</p> <p>Rec partly adopted — broader — applies to 'an offence'.</p> <p>Rec. adopted.</p>

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
<p>Information to be given concerning the search (Recs. 12.2(22) & 11.6) The police officer, upon entering the premises, should identify himself or herself (including proof that he or she is a police officer). Before conducting the search, the officer should inform the occupier of the reason for the search (including the Act under which the search is authorised).</p> <p>On completion of the search the officer should inform the occupier that details of the search will be entered into the Search Register and information concerning the search will be provided to the person or his or her legal representative upon request at the police station.</p>	<p>s. 112 if a p.o. searches/arrests a person or searches a place (other than a public place) (2) 'the p.o. must, as soon as is reasonably practicable, inform the person'... (a)/(b) police identification details; see also (3). (4) if the p.o. is searching a person/vehicle/place, other than under a search warrant, the p.o. must state the purpose of the search and reason for seizing any property.</p> <p>RC: cl. 28 details statement p.o. must give to the occupier when executing search warrant (includes nature of powers; identification of senior p.o.).</p> <p>s. 112 (5) relevant details of search/arrest/property seized to be recorded in the register s. 117(2) if the person to whom the information relates [in the register] asks, a p.o. must as soon as reasonably practicable, given to the person a copy or print-out of the info (3) this does not apply to info which cannot be disclosed under this or other Acts.</p>	<p>Rec. adopted.</p> <p>Rec. largely adopted, except police officer is not obliged to inform occupier that information will be recorded in Search Register.</p>

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
<p>Result of Search (Recs 12.2(23) & 11.6) A police officer who enters and searches premises without a warrant must record the following information in his or her official notebook or in some other appropriate manner as soon as practicable after the search:</p> <ul style="list-style-type: none"> • whether any property was seized and, if so, a description of that property; • whether any force was used and, if so, the reason for using force; • whether any injury or damage occurred or allegedly occurred and, if so, the details of such injury or damage; • the date, time and place of the search; and • the name, rank and station of the officer in charge of the search <p>Where property is seized the police officer should provide the occupier with a list of property seized or if the premises are unoccupied, leave it in a conspicuous place. Where the volume of material seized or the circumstances surrounding the seizure make it impracticable to complete the list at the scene this is to be noted and a list is to be provided as soon as is reasonably practicable.</p>	<p>s. 112(5) a p.o. exercising a power in subsection 1(a) searches or arrests a person; (b) searches a vehicle; (c) searches a place other than a public place; or (d) seizes any property, must record in the register the relevant details of the search, arrest or property seized.</p> <p>RC: also cl. 99 lists details to be included in register [see below]</p> <p>s. 107(1—3) requires p.o. as soon as is reasonably practicable to give the occupier a receipt of all items seized describing the thing seized and include any other info required under the responsibilities code [see RC: cl. 49 above]. Receipt to be left in conspicuous place if occupier not present.</p>	<p>Rec. regarding record of property seized largely adopted except re use of force.</p> <p>Rec. adopted, except requirement is only 'as soon as is reasonably practicable'.</p>
<p>Search Register (Recs. 12.2(24) & 11.6) The following details of the search are to be entered onto the computerised Search Register as soon as is reasonably practicable:</p> <ul style="list-style-type: none"> • the reason for the search (including the Act under which it is authorised); • a description of the premises searched; • whether any property was seized and, if so, a description of that property; • whether any force was used and, if so, the reason for using force; • whether any injury or damage occurred or allegedly occurred and, if so, the details of such injury or damage; • the date, time and place of the search; and • the name, rank and station of the officer in charge of the search. 	<p>RC: cl. 99 The following details of a search must be included in the register—(a) for a search of a person; (b) for a search of a vehicle; (c) for a search of a place other than a vehicle—(i) if known, name of person in possession of the place/detained; (ii) when/where search took place; (iii) purpose of search; (iv) description of anything seized; (v) whether anything was damaged; (d) information about the return, destruction or disposal of anything seized.</p>	<p>Rec. adopted except re reason for using force and details of officer-in-charge. *QPS has established a computerised Custody/Search Register.</p>

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
<p>Special provisions re entry of dealers' premises during business hours without a warrant (Rees. 12.2(25), 10.13) Provision should be made to require police officers who enter dealers' premises without a warrant under any of the following provisions as amended in accordance with Recommendation 10.13 namely:</p> <ul style="list-style-type: none"> ● <i>Pawnbrokers Act 1984</i>, section 50(1)(b) and (2); ● <i>Second-hand Dealers and Collectors Act 1984</i>, section 57(1)(b) and (2); ● <i>Auctioneers and Agents Act 1971</i>, section 56; ● <i>Weapons Act 1990</i>, section 4.6; <p>to record the entry and other required information in the Search Register. Where no property is seized, they are only required to enter details in their official notebook or in some other appropriate manner (Rec. 11.7)</p> <p>Entry to dealers' premises using force should require a warrant (Rec. 10.9)</p>	<p>s. 14 allows entry and inspection powers etc in relation to 'relevant Acts'.</p> <p>RC: (s. 5) lists the relevant Acts which includes the Acts recommended by CJC as well as <i>Nature Conservation Act 1992</i>, <i>Drugs Misuse Act 1986</i>, <i>Racing and Betting Act 1980</i>.</p> <p>RC: cl. 99 specifies what should be recorded in register for searches — must record details of <i>any</i> search and property, if seized.</p> <p>RC: cl. 13 deals with use of force but a warrant not required.</p>	<p>Rec. adopted.</p> <p>Rec. largely adopted — Act may not require police to make any record where search is conducted but only the power to enter and inspect is exercised.</p> <p>Rec not adopted.</p>
<p>Application of other provisions (Rec. 12.2(26)) The provisions of the clauses dealing with what may be seized, the search of persons on premises, the demand for entry and use of reasonable force, the use of assistants (clause 15) and the re-entry to premises (clause 17) should apply to a lawful entry and search conducted without warrant.</p>	<p>see s. 14 'Power to enter etc. for relevant Acts'; s. 26 'Searching persons without a warrant'</p> <p>RC: cls: 12-15 (Part 3: Entry and Search of Places)</p>	<p>Recs. adopted.</p>
<p>Entry to make enquiries under the Traffic Act (Rec. 10.11) The power conferred by section 43 of the <i>Traffic Act 1949</i> to enter premises to make enquiries etc. which a police officer is authorised to make under the <i>Traffic Act 1949</i> should be reviewed to determine whether it should be the subject of a search warrant.</p>	<p>s. 13(1): 'This section does not authorise entry to a private place if a provision of this Act or another Act provides for entry under a search warrant in the particular circumstances'</p>	<p>Not yet adopted. *QPS is reviewing police powers in other Acts over the next two years.</p>

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
MONITORING WARRANTS		
<p>Monitoring warrants (Recs. 12.3 & 10.12) The power to enter and search without warrant contained in section 62 of the <i>Art Unions and Amusements Act</i> should be replaced by a provision that allows for the issuing of monitoring warrants similar to those contained in the <i>Nature Conservation Act 1992</i>.</p> <p>There should be a general provision setting out the nature of monitoring warrants and the manner in which they are applied for and issued. There then should be a list of the statutory provisions which contain the circumstances in which a monitoring warrant should be required.</p>	Not included in Act	Rec. not adopted

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
<p>STOP AND SEARCH OF PERSONS</p> <p>Circumstances in which police may stop and search a person (Rec. 12.4(28)) There should be a provision allowing for the detention and search of a person where a police officer has reasonable grounds to suspect that:</p> <ul style="list-style-type: none"> the person is in possession of anything that may afford evidence of an offence under the <i>Drugs Misuse Act 1986</i> (Rec. 7.1) the person is in unlawful possession of a weapon under the <i>Weapons Act 1990</i> (Rec. 7.1) the person is in possession of anything stolen or reasonably suspected of being stolen or otherwise unlawfully obtained (Rec. 7.2) a search of a person is necessary where the delay occasioned by the need to obtain a warrant is likely to result in the concealment, loss or destruction of material evidence of the commission of an indictable offence punishable by a maximum of seven years imprisonment or more (Rec. 7.5) <p>The following specific search without warrant provisions should be reviewed in more depth in order to ascertain their usefulness (Rec. 7.3):</p> <ul style="list-style-type: none"> <i>Casino Control Act 1982</i>, section 106; <i>Racing and Betting Act 1980</i>, section 235; <i>Health Act 1937</i>, section 131; <i>Vagrants, Gaming and Other Offences Act 1931</i>, section 31; and <p>The Commission recommends that the power contained in section 32(1)(a) of the <i>Crimes (Confiscation Act) 1989</i> be retained (Rec. 7.4)</p> <p>Power to stop and detain (Recs. 12.4(29) & 7.6) There should be a clear statutory provision that authorises a police officer to stop and detain a person for so long as is reasonably necessary to provide the information required by Rec. 11.6 and to conduct a search of the person.</p>	<p>s. 26(1) A p.o. who reasonably suspects any of the circumstances mentioned in (2) exist may, without a warrant, stop, detain and search a person and anything in the person's possession.</p> <p>(2)(a) that the person has something that may be—</p> <ul style="list-style-type: none"> (i) a weapon the person may not lawfully possess (ii) an unlawful dangerous drug (iii) stolen property (iv) unlawfully obtained property (v) tainted property (vi) evidence of the commission of a 7yr imprisonment offence <p>the p.o. reasonably suspects may be concealed or the person or destroyed.</p> <p>Not included in Act.</p> <p>Act is exempt under Schedule 1 of Regulation.</p> <p>see s. 26 above and s. 116 which states that 'a p.o. who detains a person for a search must not detain the person any longer than is reasonably necessary for the purpose'.</p>	<p>Rec. adopted.</p> <p>Requires the review of other Acts. *QPS is reviewing police powers in other Acts over the next two years.</p> <p>Rec. adopted.</p> <p>Rec. adopted</p>

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
<p>Search of the person's property (Recs. 12.4(30) & 7.7) A provision should allow the police officer to also search the property of a person if there are reasonable grounds to suspect that the object of search is contained therein.</p>	<p>see s. 26 above</p>	<p>Rec. adopted</p>
<p>The extent of the search (Recs 12.4(31) & 7.7) The search should be conducted with a minimum of intrusion to individual privacy governed by what is the object of search and, where conducted in the street or other public place, should not require the removal of more than outer clothing. Where, upon removal of outer clothing, the police officer is still unable to determine whether or not the person is in possession of the suspected property, a 'frisk' search of the suspect may be conducted by an officer of the same sex as the suspect. The search should be conducted where the person is detained or elsewhere if it is reasonably requested by the suspect to avoid embarrassment.</p>	<p>s. 111 'Protecting the dignity of persons during search' (2) A p.o. may require the person to remove items of clothing. (3) if it is necessary to remove all clothing (plus provision for underwear), the search must be conducted in a place providing reasonable privacy for the person. (4) Unless an immediate search is necessary, the p.o. or person acting at the direction of p.o. who is conducting search must be of the same sex as person searched or, a doctor under direction of p.o. (5) If the p.o. seizes clothing...the p.o. must ensure the person is left with or given reasonably appropriate clothing. (6) if it is impracticable to search for a thing that may be concealed on a person where the person is, the p.o. may take the person to a place with adequate facilities...</p> <p>RC: cl. 6(1) A p.o. searching a person must—(a) ensure, as far as reasonably practicable, the way the person is searched causes minimal embarrassment; (b) take reasonable care to protect the person's dignity; (c) unless necessary—restrict a search in public to an examination of outer clothing; and (d) if a more thorough search is necessary but does not have to be conducted immediately—conduct a more thorough search out of public view. (2) Before taking a person to another place for a search because it is impracticable to search for a thing that may be concealed on the person where the person is, the p.o. must consider the following—(a) whether the thing sought may be concealed on the person; (b) whether for an effective search, the search should be conducted somewhere else; (c) the need to protect the dignity of the person;</p>	<p>Rec. largely adopted — no provision in Act or Code for the person who is searched to request it to be conducted elsewhere however, the police officer is required to search in private area when necessary to protect the person's dignity and avoid embarrassment etc (see also below). No distinction in Act between an ordinary search and a 'frisk search'. CJC recommendation limited searches in public to those not requiring the removal of more than outer clothing — legislation is broader.</p>

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
<p>Strip searches (Rec. 12.4(32) & 7.8) A search requiring the removal of more than outer clothing should be conducted as a matter of last resort. It should be conducted in a private place by an officer of the same sex as the suspect. No member of the opposite sex is to be present at the search or within view of the place where the search is to be conducted except at the express request of the suspect. Due regard is to be paid to the intrusive nature of the search and consideration is to be given as to whether the particular circumstances of the case warrant such an intrusion.</p>	<p>see s. 111 above;</p> <p>RC: cl. 7(1) Section applies if p.o. conducts a search that involves removal of all items of clothing or outer clothing from-(a) the upper/lower part of a female;(b) the lower part of a male. (2) If reasonably practicable--(a) p.o. conducting search must, before the srch-(i) tell the person he/she will be required to remove clothing; (ii) why it is necessary; & (iii) ask for person's cooperation; and (b) the person must be given the opportunity to remain partly clothed during srch. (3) search must be conducted as quickly as reasonably pract. and person searched must be allowed to dress as soon as srch is finished. (4) p.o. conducting the search must ensure, as far as reasonably pract, the person being searched can not be seen by anyone of opposite sex or by anyone who does not need to be present.</p> <p>(5) - (6) restricts video recording of search...</p> <p>(7) p.o. conducting the search must not make physical contact with the genital and anal area of the person, but may require person to hold his/her arms in air or stand with legs apart and bend forward to enable a visual examination; (8) if person is a child or someone else who, because of medical/psychiatric or intellectual disability, may not be able to understand purpose of search, p.o must conduct search in presence of-(a) for a child-an interview friend; or (b) for someone else-a person the p.o. considers is able to give appropriate support. (9) p.o. may search in the absence of person in (8)(a,b) if reasonably suspects-(a) delay is likely to result in concealed/destroyed evidence; (b) immediate search is necessary to protect safety of a person.</p>	<p>Rec largely adopted though Act is less restrictive allowing for a person other than a police officer or doctor to conduct the search; possible video taping of search. No statement in Act that strip search is to be of last resort, only that it is 'necessary' for person to remove all clothing other than underwear or all clothing.</p>

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
<p>Body Cavity Searches (Rec. 12.4(33) & 7.10) A provision is to be included in the Act to allow a police officer of or above the rank of inspector who reasonably suspects that a person has secreted within his or her body cavities a dangerous drug, to request the person to submit to an internal examination by a medical practitioner. Where the person does not consent to such an examination, the police officer should apply to a stipendiary magistrate for an order that the person be examined. This provision for application to a magistrate should be in similar terms to that contained in the current section 259 of the <i>Criminal Code</i>.</p>	<p>s. 62 (1) If a person suspected of committing an indictable offence consents to the performance of a medical or dental procedure... (3) A doctor may do any of the following that may provide evidence of the commission of the offence—(a) examine the person's body, including orifices... s. 63 (1) If a person is in custody for an indictable offence, a p.o. may apply to a magistrate for an order approving the performance of a medical or dental procedure ... whether or not the person has consented... RC: cl. 86 lists the required information when applying for an order to approve a medical/dental procedure: p.o. details; person's details; type of indictable offence; nature/seriousness of offence; information/evidence that may be relied on to support reasonable belief that performing the procedure may provide evidence of the commission of the offence.</p>	<p>Rec. adopted — provisions in Act also apply to other indictable offences; provisions do not limit the rank of police officer to being at least an inspector.</p>
	<p>s. 64 (1) If (a) a person is in custody for an indictable offence; and (b) a magistrate approves the performance of the procedures; and (c) a p.o. asks a doctor or dentist to perform the procedures. (2) A doctor acting in good faith may do any of the following that may provide evidence of the commission of the offence—(a) examine the detainee's body, including the orifices ...</p>	

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
<p>Use of reasonable force (Rec. 12.4(34) & 7.9) A police officer may use reasonable force only as a last resort where the suspect has made it clear that he or she will not co-operate with the police officer conducting the search.</p>	<p>s. 126(1) It is lawful for a p.o. exercising powers under this or any other Act against individual, and anyone helping the p.o., to use reasonably necessary force for exercising the powers.</p> <p>RC: cl. 10 (1) If a person obstructs a search of him/herself, another person or a vehicle, a p.o. must, if reasonably practicable—(a) warn the obstructing person it is an offence... (b) tell the person that the p.o. may use reasonable force to search a person/vehicle; and (c) give the person a reasonable opportunity to stop obstructing the search before using force; (2) it may not be reasonably practicable for a p.o. to comply with (1) if, for example—(a) there is an immediate or sudden need to use force; (b) there is a reasonable expectation that, if warned, the person may immediately dispose of, or destroy, evidence; or (c) an immediate search is necessary to protect the safety of any person.</p>	<p>Rec. adopted but not as restrictive — while the Act limits force to 'reasonably necessary' force as the CJC recommended, a warning need not be given if it is not 'reasonably practicable'.</p>
<p>Information to be given concerning the search (Rec. 12.4(35) & 11.6) The police officer should, after detaining the person and prior to conducting the search, identify himself or herself (including proof that he or she is a police officer) and explain the reason for the search. On completion of the search the officer should also inform the person that details of the search will be entered on the Search Register at the officer's station and the person or his or her legal representative will be entitled to access to that information.</p>	<p>s. 112 (2) & (d) supplying officer's details etc after search; (4) state purpose of search and reason for seizing property; (5) record in the register relevant details of the search/arrest/property seized</p> <p>s. 117 on request, a person is entitled to a copy of the register entry.</p>	<p>Rec. adopted but no obligation to inform person of their right to access information on register, only to provide a copy on request.</p>

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
<p>Result of Search (Rec. 12.4(36) & 11.6) A police officer who stops and searches a person without a warrant must record the following information in his or her official notebook or in some other appropriate manner as soon as is practicable after the search:</p> <ul style="list-style-type: none"> ● whether any property was seized and if so a description of that property; ● whether any force was used and if so, the reason for using force; ● a note of any actual or alleged damage to property or injury resulting from the search, if applicable; ● date, time and place of search; and ● the officer's name, rank, station and signature. <p>Where property is seized the police officer should provide the person with a list of property seized. Where the volume of material seized or circumstances surrounding the seizure make it impracticable to complete the list at the scene this is to be noted and a list is to be provided as soon as is reasonably practicable.</p>	<p>s. 112 sets out obligations if a police officer does, among other things, search a person. s. 112(5) — record in the register the relevant details of the search or property seized (see cl. 99 of RC for specific details—only use of force details not required).</p> <p>s. 107 — p.o. must give receipt as soon as practicable after seizing property.</p> <p>RC: cl. 49 A receipt given for a thing seized must include the following—(a) date/time thing was seized; (b) of taken from a person—name/address/telephone contact, if known; (c) if taken from an occupied place—name/address/telephone, if known; (d) a description of thing seized; (e) name/rank/station/contact of p.o. who seized thing; (f) where the thing will be taken, if known; (g) date the receipt is issued.</p>	<p>Recs. adopted; except in relation to use of force.</p> <p>Rec. adopted, except receipt only to be provided 'as soon as practicable' for all seizures.</p>

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
<p>Search Register (Recs. 12.4(37) & 11.6) The following details are to be entered onto the computerised Search Register as soon as is reasonably practicable:</p> <ul style="list-style-type: none"> ● the reason for the search (including the Act under which it is authorised); ● the name of the person or a description of the person searched; ● whether any property was seized and if so a description of that property; ● whether any force was used and if so, the reason for using force; ● a note of any actual or alleged damage to property or injury resulting from the search, if applicable; ● date, time and place of search; and ● the name, rank and station of the officer in charge of the search. 	<p>No specific provision dealing with the mechanics of the search register, but QPS has established a computerised search register. See s. 112(5) and cl. 99 above for details to be recorded in search register.</p> <p>Register entry re officer details not required by Act, but p.o. who is conducting the search must inform suspect of these details (see s. 112(2)).</p>	<p>Recs adopted, except in relation to use of force and note of injury.</p>

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
<p>STOP AND SEARCH OF VEHICLES</p> <p>Circumstances in which a police officer may stop and search vehicles (Rec. 12.5(38)) There should be a provision allowing for a police officer without a warrant who has reasonable grounds to suspect that:</p> <ul style="list-style-type: none"> ● a vehicle or anything in it may afford evidence of the commission of an offence under the <i>Drugs Misuse Act 1986</i> (Rec. 7.11) ● there is in a vehicle or in anything in it a weapon liable to seizure under the <i>Weapons Act 1990</i> (Rec. 7.11) ● there is in a vehicle or in anything in the vehicle anything stolen or reasonably suspected of being stolen or otherwise unlawfully obtained, or (Rec. 7.11) ● a search of the vehicle or anything in it is necessary where the delay occasioned by the need to obtain a warrant is likely to result in the concealment, loss or destruction of material evidence of the commission of an indictable offence punishable by a maximum of seven years imprisonment or more (Rec. 7.13) <p>to stop and detain the vehicle and search it and anything in it.</p> <p>There should be a review of the specific powers to stop vehicles and search without a warrant for betting instruments (s. 235 <i>Racing and Betting Act 1980</i>) and animals (s. 679B(1)(b) <i>Criminal Code</i>) (Rec. 7.12)</p>	<p>s 27 (1) A p.o. who reasonably suspects any of the circumstances...in (2) exist may, without warrant, stop a vehicle, detain a vehicle any occupants of the vehicle and search the vehicle and anything in it. (2) The circumstances ... are that the vehicle may have in it...-- (a) unlawful possession of weapon; (b) unlawful dangerous drug; (c) stolen property; (d) unlawfully obtained property; (e) implement used for housebreaking; vehicle stealing or administration of dangerous drug; (f) tainted property; (g) evidence of the commission of a 7yr imprisonment offence which reasonably suspects may be concealed or destroyed; or (h) something intended to be used to cause harm.</p> <p>No specific provision in PP & R Act.</p>	<p>Rec. adopted, but broadened to include search for anything intended to be used to cause harm.</p> <p>Not yet adopted. *QPS is reviewing police powers in other legislation over the next two years.</p>

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
<p>Information-giving and record-keeping requirements in stop and search of vehicles (Rec. 12.5(39)) The information-giving and record-keeping recommendations outlined earlier in respect of search of persons without warrant should also apply to searches of vehicles without warrant.</p>	<p>s. 112(5) applies to search of vehicles except where stopped at a roadblock. RC: cl. 99(c) for search of a place other than a vehicle, following details to be included in register—(i) if known—the name of the person in possession of the place and anyone detained; (ii) when/where search took place; (iii) purpose of the search; (iv) description of anything seized; & (v) whether anything was damaged because of the search.</p>	<p>Rec. adopted, except in relation to use of force.</p>
<p>Search without a warrant of an unattended vehicle (Recs. 12.5(40) & 7.14) Police officers should be authorised to search without a warrant an unattended vehicle, whether or not it involves breaking into the vehicle, only where a police officer has reasonable grounds to suspect that an explosive substance or the like is contained therein or where the power in s. 25 of the <i>State Counter-Disaster Organization Act 1975</i> applies.</p>	<p>see s. 27(2)(h) — a p.o. may without warrant stop and detain a vehicle where the vehicle may have in it 'something the person intends to use to cause harm to himself or herself or someone else'. RC: cl. 8(4) and (5) requires p.o. who searches unattended vehicle to leave a notice in a conspicuous place about the search, officer's details and that a record of search may be obtained; also, vehicle is to be left secured at least to same extent as before it was searched.</p>	<p>Rec. not adopted—general power to search applies to all vehicles, including unattended vehicles.</p>

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
ROADBLOCKS		
<p>The establishment of a roadblock (Recs. 12.6(41) & 7.15) The establishment of a roadblock may be authorised in writing by a police officer of, or above, the rank of inspector where there are reasonable grounds to suspect that there is in a vehicle or any vehicle:</p> <ul style="list-style-type: none"> • a person whose arrest is sought in connection with an offence carrying a maximum period of imprisonment of 14 years or more; • a person who has escaped from lawful custody; or • the victim of an abduction. <p>In cases of urgency, a roadblock can be authorised by an officer of any rank provided it is reported to an officer of or above the rank of inspector as soon as is practicable.</p> <p>The Commissioner of Police or the Deputy Commissioner (Operations) may authorise the establishment of a roadblock in a specified area in which there has been a heavy incidence of criminal activity which by its seriousness and/or its frequency in his or her opinion warrants the establishment of a roadblock.</p>	<p>s. 24(1) A p.o. may establish a roadblock if the p.o. reasonably suspects a roadblock may be effective to apprehend or locate a person in a vehicle who—</p> <ul style="list-style-type: none"> (a) has committed a 7yr imprisonment offence; (b) may be unlawfully depriving someone else of liberty; (c) is being unlawfully deprived of liberty; (d) has escaped from lawful custody; or (e) may be endangering the life or safety of someone else <p>RC: cl. 9 provides factors to be considered before deciding to establish roadblock including effect on road/public safety; likelihood of dangerous situation if person is located at roadblock; risk to police/public; risk to other drivers; location eg close to school; physical construction of roadway; weather conditions.</p> <p>No mention of urgent cases but cl. 9(3) requires senior officer at roadblock to record details of roadblock and whether person was located/arrested. Copy of record is to be given to person nominated by the commissioner.</p> <p>Not provided for in Act, as power under s. 24 covers a broad range of offences.</p>	<p>Rec. adopted but power significantly broadened to allow roadblock for 7yr offence and where the life/safety of someone else is endangered; no restriction on rank of police officer (for authorising roadblock).</p> <p>Rec. implicitly adopted — unclear as to rank restriction for nominated person.</p> <p>Not required as Act creates a broader power than CJC recommended.</p>
<p>Information to be provided to all drivers stopped (Rec. 7.15) The police officer who stops a vehicle at a roadblock should be required to give the reason for the roadblock to the person in charge of the vehicle prior to taking any further action to search the vehicle unless there are reasonable grounds to suspect that giving the reason will prejudice the operation.</p>	<p>see s. 112(4) p.o. must give reasons for searching person, vehicle or place.</p>	<p>Rec. adopted but no provision to withhold information if suspected it will prejudice operation.</p>

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
<p>VOLUME III — ARREST WITHOUT WARRANT, DEMAND NAME AND ADDRESS AND MOVE-ON POWERS</p>		
<p>ARREST WITHOUT WARRANT</p>		
<p>There should be a legislative provision that clearly states that a police officer can only arrest a person without a warrant where the officer has reasonable grounds to suspect that (Recs 13.1-13.5):</p> <ul style="list-style-type: none"> ● the person has committed or is committing an offence (whether indictable, simple or regulatory); <u>and</u> ● arrest is necessary to achieve one of the following purposes: <ul style="list-style-type: none"> (i) to establish the identity of the person; (ii) to ensure the appearance of the person before the court; (iii) to prevent the continuation or repetition of the offence or the commission of another offence; (iv) to obtain or preserve evidence relating to the offence; (v) to prevent the harassment of, or interference with, a person who may be required to give evidence in respect of the offence; (vi) to prevent the fabrication of evidence in respect of the offence; or (vii) to preserve the safety or welfare of any person. 	<p>s. 35(1) It is lawful for a p.o., without warrant, to arrest a person the p.o. reasonably suspects has committed or is committing an offence (a suspect) if it is reasonably necessary for 1 or more of the following reasons—(a) prevent the continuation/repetition of offence or another offence; (b) make inquiries to establish the person's identity; (c) if a person contravenes a requirement under s. 57(1)(b)(ii) [power to fingerprint, photograph etc—to obtain identifying particulars]; (d) ensure the person's appearance before a court; (e) obtain/preserve evidence; (f) prevent harassment/interference with a person who may be giving evidence; (g) prevent fabrication of evidence; (h) preserve safety/welfare of any person; (i) prevent a person fleeing; (j) because the person has committed an offence against s.120 [assault etc of p.o.]; (k) because of the nature/seriousness of offence.</p> <p>(2) Also, it is lawful for a p.o., without warrant, to arrest a person the p.o. reasonably suspects has committed/ing an indictable offence, for questioning the person about the offence under part 8 or investigating the offence.</p>	<p>Rec. largely adopted, but grounds in Act broadened to include obstruction of police officer; the nature/seriousness of the offence. In addition, those limiting factors do not apply where a police officer arrests a suspect for questioning or investigation of the offence.</p>

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
<p>The provision should be drafted so as to impose a positive obligation on a police officer to first consider alternatives to arrest (Rec. 13.4)</p> <p>Consideration should be given to implementing a Field Court Attendance Notice scheme similar to that being implemented in New South Wales as an alternative to the Complaint and Summons procedure (Rec. 13.6)</p> <p>There should be a specific legislative provision requiring a police officer to release an arrested person where the officer no longer has reasonable grounds to suspect that the person has committed or is committing an offence (Rec. 13.7)</p> <p>Existing legislative provisions which are inconsistent with the Commission's Recommendations relating to the power to arrest without warrant should be amended or repealed, unless there are special circumstances justifying the retention of these provisions (Rec. 13.8)</p>	<p>s. 40(1) The object of this section [Division 2 —Alternative to arrest] is to provide an alternative way for a p.o. to start or continue a proceeding against a person who is not a child that does not involve the delay associated with issuing a complaint and summons under the <i>Justices Act 1886</i>.</p> <p>RC: cl. 83 'Alternatives to arrest' — 'a p.o. must remember it may be more appropriate' to start proceeding by notice or summons; cl. 84 'Arrest may be discontinued where it is more appropriate to take the person before a court by notice to appear or complaint and summons.</p> <p>s. 40(2) If a p.o. reasonably suspects that a person has committed/ing an offence, the p.o. may issue and serve a notice to appear on the person.</p> <p>s. 38(1) It is the duty of a p.o. to release an arrested person at the earliest reasonable opportunity if the person is no longer a suspect. "Unarrest" power also applies where the reason for arrest no longer exists or is unlikely to happen again if person released, and it is more appropriate to proceed by notice or summons (s. 35(2)).</p> <p>Arrest powers in <i>Juvenile Justice Act 1992</i> have been preserved.</p>	<p>Rec. partly adopted — no obligation to first consider other alternatives, but reminder it may be 'more appropriate' to act another way.</p> <p>Rec. adopted.</p> <p>Rec. adopted (provisions also for children at s. 38(3)), but power to unarrest broader.</p> <p>Not yet adopted. *QPS is currently reviewing other legislation.</p>

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
<p>DEMAND NAME AND ADDRESS</p> <p>A police officer</p> <ul style="list-style-type: none"> should be able to demand the name and address of a person who the police officer has reasonable grounds to suspect is committing or has committed an offence (Recs 14.1-14.3) investigating an indictable offence should be able to demand the name and address of a person who is found at, or in close proximity to, the scene of the offence and who the officer has reasonable grounds to suspect may be able to assist in inquiries in relation to the indictable offence (Rec. 14.4) executing a warrant or serving a summons should be able to demand the name and address of a person who the police officer has reasonable grounds to suspect is the person named in a warrant or summons (Rec. 14.5) <p>In all cases it should be a simple offence, subject to monetary penalty, for a person deliberately to refuse to provide his or her name and address when required to do so by the police officer, or to provide a false name and address. Police should be authorised to arrest without warrant a person who has failed to provide his or her name and address or who the police officer has reasonable grounds to suspect has provided a false name and address (Rec. 14.7)</p>	<p>s. 23(1) [Power to require name and address] 'This section applies if a p.o. -- (a) finds a person committing an offence; (b) reasonably suspects a person has committed an offence; (c) reasonably suspects a person may be able to help in the investigation of an indictable offence because the person was near the place... (d) is attempting to execute a warrant or serve a summons or other court document on a person.</p> <p>(4) When making the requirement, the p.o. must warn the person it is an offence to fail to state correct name or address or fail to provide evidence of correctness... unless the person has a reasonable excuse. Maximum penalty -- 10 penalty units. s. 35(1)(b) p.o. may arrest without warrant to make inquiries about person's identity when person is reasonably suspected of committing/ed offence.</p>	<p>Rec. adopted.</p> <p>Rec. adopted.</p>