

**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 safeguards 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		
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: - 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)	Act covers: - 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' – not specified in Act but s. 14 provides a general power to do various acts in relation to a 'relevant Act' without a warrant - 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) [Act also includes 'Notice to Produce' provisions for financial institutions — not addressed by CJC recommendations.]	Recommendations followed generally with exception of 'monitoring warrants'.

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
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.	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 ...	Rec implicitly adopted.
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).	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.	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]

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

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
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) There should be a search warrant provision allowing for an application for a warrant to search for: • 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; or • a person unlawfully detained. A thing is connected with a particular offence if it is: • 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. 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.	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. In Dictionary (Schedule 3), "evidence of the commission of an offence" is defined as including: - a thing or activity that is or may provide evidence of the offence; and - a thing that will, itself or by or on scientific examination, provide evidence of the commission of the offence; and - a thing that is intended to be used for the purpose of committing the offence; and - a thing that may be liable to forfeiture or may be used in evidence for a forfeiture proceeding. s. 16 It is lawful for a p.o. ... (b) to enter a place the p.o. reasonably suspects is a crime scene. Schedule 3 defines 'primary crime scene' as including '... an offence involving a deprivation of liberty'. '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'.	Rec. adopted, although with a broader focus — all offences. Crime scene provisions cover access to premises where person is unlawfully detained. Rec. regarding 'reasonable grounds' appears to have been followed implicitly.

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
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: - 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; before issuing the warrant.	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]	Rec. adopted.
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	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. 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.	Rec. largely adopted except no requirement to advise of unsuccessful applications. Rec. that officer should inform issuer of steps taken to get info etc may be implicitly followed under s. 28(5).

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
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.	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. see also s. 28(5) above regarding requirement for further information	Rec. adopted.
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.	s. 28(7) The warrant must state— (c) any evidence that may be seized under the warrant. 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.	Rec. adopted.
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.	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.	Partially adopted. Not as restrictive as recommended — applies when 'impracticable to apply in person'; telewarrants can be issued by JP as well as magistrate.

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Covert Execution of Search Warrants (Recs. 12.1 & 8.10) Provision should be made for warrants to be available to covertly enter and search premises in limited circumstances as follows: • 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.	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. 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. 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.	Rec. largely adopted, except refers to ‘organised crime’ not serious indictable offence (defined in Schedule 3). Implicit adoption of rec. regarding justification. RC specifies what information is required in applications for covert search warrants.

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
<i>continued</i> 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.	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. 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.	Rec. adopted except more time allowed to produce report. RC sets out requirements for report.
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.	s. 74(10) The judge may impose any conditions on the warrant that the judge considers are necessary in the public interest.	Rec. has not been adopted although s. 74(10) could permit a direction in terms of the recommendation.
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.	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. 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.	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.

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
<i>continued</i>	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. s. 80(1) The public interest monitor has the functions mentioned in (2) for surveillance warrants and covert search warrants. (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.	*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.

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
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. A warrant obtained by telephone etc. is only to be valid for 48 hours.	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.	Rec. adopted for ordinary search warrants, however no time limit specified re telewarrants etc (at s. 129).
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: • 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; where they are discovered in the course of a reasonable search pursuant to the terms of the original warrant.	s. 28(7)(c) the warrant must state 'any evidence that may be seized' 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'. 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.	Rec. adopted but with wider application. S. 34 refers to 'an offence' not an <i>indictable</i> offence.
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.	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'.	Rec. adopted but power to search persons must be specified under the warrant.

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
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. 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...	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. 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;...	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.
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: • 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. 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.	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... 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.	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.

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
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.	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 ...	Not adopted. No authorisation in warrant required.
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: - 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. 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.	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 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. 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;	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'.
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.	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'	Rec. for re-entry adopted.

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Recording the result of the search (Recs. 12.1(18) & 11.3) 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. 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. The police officer is also to make a written record on the back of the search warrant of the result of execution, including: • 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.	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 (2) The receipt must describe the thing seized and include any other information required under the responsibilities code (3) If the occupier...is not present, the receipt must be left in a conspicuous place s. 112(5) requirement to also record relevant details of the search, arrest or property seized in the register. 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. 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— (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. 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...	Rec. largely adopted, except receipt must be given 'as soon as reasonably practicable' rather than prior to leaving the premises. RC sets out the information to be recorded on receipt. Rec. largely adopted (except no provision to record failure to demand entry and/or use of force).

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
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.	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. see also RC: cl. 48 'Responsibilities of p.o. who seizes a thing under the Act'.	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).

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
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.	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.	Rec. largely adopted — no requirement to record unsuccessful applications for search warrants, other than covert search warrants.
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.	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.	No specific mention in Act – QPS Search Warrant Index records name of issuer.
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.	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.	Rec. adopted.

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
ENTRY AND SEARCH OF PREMISES WITHOUT WARRANT Circumstances in which entry and search without warrant is authorised (Rec. 12.2) Provision should be made to allow police to enter and search premises without warrant in the following circumstances: - 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)	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. 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). s. 31 'Search to prevent loss of evidence' (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).	Rec. adopted. Rec. adopted, except grounds re damage to property are broader. Rec. implicitly adopted.

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
<i>continued</i> • 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) Specific entry without warrant provisions of the following Acts should continue to apply: • <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) 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)	see s. 122 above. see s. 31 above.	Rec. implicitly adopted. Rec partly adopted — broader — applies to 'an offence'.
	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	Rec. adopted.

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
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). 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.	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. 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.). 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.	Rec. adopted. Rec. largely adopted, except police officer is not obliged to inform occupier that information will be recorded in Search Register.

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
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: • 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 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.	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. RC: also cl. 99 lists details to be included in register [see below]	Rec. regarding record of property seized largely adopted except re use of force.
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: • 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.	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. 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.	Rec. adopted, except requirement is only 'as soon as is reasonably practicable'. Rec. adopted except re reason for using force and details of officer-in-charge. *QPS has established a computerised Custody/Search Register.

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Special provisions re entry of dealers' premises during business hours without a warrant (Recs. 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: • <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; 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) Entry to dealers' premises using force should require a warrant (Rec. 10.9)	s. 14 allows entry and inspection powers etc in relation to 'relevant Acts'. 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>. RC: cl. 99 specifies what should be recorded in register for searches — must record details of <i>any</i> search and property, if seized. RC: cl. 13 deals with use of force but a warrant not required.	Rec. adopted. 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. Rec not adopted.
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.	see s. 14 'Power to enter etc. for relevant Acts'; s. 26 'Searching persons without a warrant' RC: cls: 12-15 (Part 3: Entry and Search of Places)	Recs. adopted.
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.	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'	Not yet adopted. *QPS is reviewing police powers in other Acts over the next two years.

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
MONITORING WARRANTS		
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>. 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.	Not included in Act	Rec. not adopted

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
STOP AND SEARCH OF PERSONS		
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: - 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) The following specific search without warrant provisions should be reviewed in more depth in order to ascertain their usefulness (Rec. 7.3): <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 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)	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. (2)(a) that the person has something that may be— (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 the p.o. reasonably suspects may be concealed or the person or destroyed. Not included in Act. Act is exempt under Schedule 1 of Regulation.	Rec. adopted. Requires the review of other Acts. *QPS is reviewing police powers in other Acts over the next two years. Rec. adopted.
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.	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'.	Rec. adopted

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
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.	see s. 26 above	Rec. adopted
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.	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... 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;	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.

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
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.	see s. 111 above; 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. (5) – (6) restricts video recording of search... (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.	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.

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
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>.	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. 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 ...	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.

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
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.	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. 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.	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'.
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.	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 s. 117 on request, a person is entitled to a copy of the register entry.	Rec. adopted but no obligation to inform person of their right to access information on register, only to provide a copy on request.

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
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: • 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. 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.	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). s. 107 — p.o. must give receipt as soon as practicable after seizing property. 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.	Recs. adopted; except in relation to use of force. Rec. adopted, except receipt only to be provided 'as soon as practicable' for all seizures.

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
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: - 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.	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. 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)).	Recs adopted, except in relation to use of force and note of injury.

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
STOP AND SEARCH OF VEHICLES		
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: • 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) to stop and detain the vehicle and search it and anything in it.	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.	Rec. adopted, but broadened to include search for anything intended to be used to cause harm.
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)	No specific provision in PP & R Act.	Not yet adopted. *QPS is reviewing police powers in other legislation over the next two years.

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
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.	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.	Rec. adopted, except in relation to use of force.
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.	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.	Rec. not adopted—general power to search applies to all vehicles, including unattended vehicles.

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
ROADBLOCKS		
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: • 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. 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. 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. 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.	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— (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 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. 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. Not provided for in Act, as power under s. 24 covers a broad range of offences. see s. 112(4) p.o. must give reasons for searching person, vehicle or place.	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). Rec. implicitly adopted — unclear as to rank restriction for nominated person. Not required as Act creates a broader power than CJC recommended. Rec. adopted but no provision to withhold information if suspected it will prejudice operation.

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
VOLUME III — ARREST WITHOUT WARRANT, DEMAND NAME AND ADDRESS AND MOVE-ON POWERS		
ARREST WITHOUT WARRANT		
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): - 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: (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.	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. (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.	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.

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
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) 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) 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) 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)	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>. 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. 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. 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)). Arrest powers in <i>Juvenile Justice Act 1992</i> have been preserved.	Rec. partly adopted — no obligation to first consider other alternatives, but reminder it may be 'more appropriate' to act another way. Rec. adopted. Rec. adopted (provisions also for children at s. 38(3)), but power to unarrest broader. Not yet adopted. *QPS is currently reviewing other legislation.

CJC Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
DEMAND NAME AND ADDRESS A police officer • 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) 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)	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. (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.	Rec. adopted. Rec. adopted.

CJC Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Each time the power to demand name and address is exercised the police officer should be required to (Rec. 14.8): (i) provide in writing his or her name, rank and station to the person whose name and address is requested; (ii) inform the person of the offence that has been or is suspected of having been committed; (iii) explain to the person the reason/s for suspecting that the person may have committed the offence or may be able to assist in inquiries in relation to the offence; and (iv) inform the person that a failure to provide his or her name and address, or the provision of a false name and address, may result in the person being arrested and charged with failing to provide his or her name and address or with providing a false name and address. Existing legislative provisions which are inconsistent with the Commission's Recommendations relating to the power to demand name and address should be amended or repealed, unless there are special circumstances justifying the retention of these provisions (Rec. 14.9)	s. 112 (2) & (3) provides that where a p.o. requires a person to state name/address [at s. 112(1)(f)], the p.o. must inform the person of his/her identifying particulars and show ID card if not in uniform No mention in PP & R Act or RC. No mention in PP & R Act or RC. see s. 23(4) — 10 penalty units.	Rec. partly adopted — only provides for 'informing' the person rather than providing police details in writing. Rec not adopted. Rec not adopted. Rec. adopted. Not yet adopted. *QPS is reviewing police powers in other legislation within the next two years.
MOVE-ON POWER The police should not be given a general move-on power (Rec. 15.1)	ss. 83–88 [Directions to move-on] — Provision applies to 'prescribed place' defined in Schedule 3 to mean for part 11: (a) a shop; or (b) a child-care centre; or (c) a pre-school centre; or (d) a primary, secondary or special school; or (e) premises licensed under the <i>Liquor Act 1992</i>; or (f) a railway station and any railway land around it; or (g) a place declared under section 87 to be a notified area'.	Rec. not adopted — move-on power, while not general, covers a broad range of areas.

Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
VOLUME IV – SUSPECTS' RIGHTS, POLICE QUESTIONING AND PRE-CHARGE DETENTION		
GENERAL FRAMEWORK		
Regulated Scheme of Questioning etc. (Rec. 18.1) A regulated scheme should be introduced governing police dealings with suspects who have been arrested and those who are voluntary attendees, where relevant. The scheme should contain legislative obligations on police officers to inform suspects of their rights and status; the provision of free legal advice to suspects; and legislative provision for limited pre-charge detention for questioning and other investigative purposes.	RC: cl. 63(2) Before questioning the person, the p.o. must caution the person; (3) If the p.o. approaches the person at a place other than a police station/establishment, the caution must substantially comply with the following—"I am (name/rank) of (station/establishment). I wish to question you about (describe offence). Are you prepared to come with me to (place of questioning)? Do you understand that you are not under arrest and you do not have to come with me?"; (4) if the person, while not in the company of a p.o. attends a station/establishment for the purposes of questioning, the caution must comply with the following—"I am (name/rank) of (station/establishment). I wish to question you about (offence). Did you come here of your own free will?"; (5) Before the p.o. start to question the person in custody, he/she must provide following caution—"Do you understand that you are not under arrest? Do you understand that you are free to leave at any time unless you are arrested?"; (6) if p.o. suspects the person doesn't understand caution, the p.o. may ask person to explain it; (7) If necessary, the p.o. must further explain the caution.	Rec. partly adopted — although a regulated scheme of questioning has been created, some important elements are missing, including: no free legal advice scheme; requirements to notify suspects of their rights and status is included in RC rather than Act; pre-charge detention is less restricted than CJC recommended (see below); time limits do not apply to volunteers.
A suspect should be defined as a person who is in the company of a police officer in a police station, police vehicle or police establishment, or is otherwise under police control and is either being questioned, or is to be questioned, to determine his or her involvement (if any) in the commission of an offence.	s. 94(1) A person is "in custody" for this part [safeguards] if the person is in the company of a p.o. for the purpose of being questioned as a suspect about his/her involvement in the commission of an offence [applies only to <i>indictable offences</i>] (2) However, a person is not in custody only because of (1) if the officer is exercising any of the following powers— (a) power conferred under any Act or law to detain and search the person; or (b) power conferred under an Act to require the person to give information or answer questions.	Rec. largely adopted — definition of suspect adopted, but scheme applies only to indictable offences.
The Commission's recommendations regarding pre-charge detention are contingent upon the introduction of a free legal advice scheme.	No reference to free legal advice scheme in the Act, nor has funding been provided to Legal Aid Qld for this purpose.	Rec. not adopted.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
THE STATUS AND RIGHTS OF THE SUSPECT		
Obligation to Inform Suspect of Status (Rec. 19.1) When a police officer requests a suspect to go to, and/or remain at, any place designated by the police officer, the officer should inform the person that he or she is either under arrest, or is not under arrest and is therefore free to leave police company at any time unless and until arrested. If the police officer makes a decision at any time that the person is no longer free to leave, the person should be informed immediately that he or she is under arrest.	s. 113(1) A p.o. who arrests a person without warrant must, as soon as is reasonably practicable after the arrest, inform the person that the person is under arrest and of the nature of the offence for which the person is arrested. RC: see cl. 63 above.	Rec. adopted in Act and Code.
The Right to Remain Silent (Rec. 19.2) The right to remain silent should be retained in its present form. Legislation should make it clear that the proposed scheme of pre-charge detention does not in any way derogate from the right to remain silent.	s. 92 Nothing in this Act affects the right of a person to refuse to answer questions, unless required...by or under an Act. RC: cl. 64 'Cautioning persons in custody about his/her right to silence' [see below]	Rec. adopted.
Obligation to Caution Suspects (Rec. 19.3) Prior to any questioning, a police officer should caution a suspect in the following terms: You have the right to remain silent and you are free to exercise that right at any time. In other words, you do not have to make any statement or answer any questions. If you wish to make a statement or answer any questions, anything you say will be recorded and may be introduced as evidence in court.	s. 99 'Cautioning of persons in custody' requires p.o. to caution the person in the way required under the responsibilities code [see also cl 63]. RC: cl. 64 (2) A p.o. must caution a person...— 'Before I ask you any questions I must tell you that you have the right to remain silent. This means you do not have to say anything, or answer any question or make any statement unless you wish to do so. However, if you do say something or make any statement, it may later be used as evidence. Do you understand this warning?'; (3) If the p.o. suspects the person does not understand, he/she may ask the person to explain the meaning of the caution; and (4) further explain if necessary; (5) If questioning is suspended or delayed, the p.o. must ensure the person is aware the right to remain silent still applies, and if necessary, caution again; (6) if caution is done in the absence of someone who is to be present, it must be repeated in that person's presence.	Rec. adopted.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
THE LENGTH AND PURPOSE OF PRE-CHARGE DETENTION Commencement of Detention (Rec. 20.1) The pre-charge detention scheme should commence at the point of arrest. Nothing in the proposed scheme is to be taken to confer any power to detain a person not under arrest.		
	s. 50(1) A p.o. may detain a person mentioned in s. 48(2) for a reasonable time to investigate, or question the person about— (a) if the person is in custody following an arrest for an indictable offence—the offence for which the person was arrested; or (b) in any case—any indictable offence the person is suspected of having committed, whether or not the offence for which the person is in custody (2) However, the person must not be detained for more than 8 hours, unless the person is charged with an indictable offence or is lawfully held in custody (3) In the 8 hours mentioned in (2) (the ‘detention period’)—(a) the person may be questioned for not more than 4 hours; and (b) the time-out period may be more than 4 hours (4) The detention period starts when the person is— (a) arrested; (b) taken into police custody under s. 49); (c) taken from a watch house; or (d) otherwise in the company of a p.o. for the purpose of questioning the person as a suspect... Provisions apply not only to those arrested, but others in lawful custody: s. 48(2) to a person who—(a) is lawfully arrested for an indictable offence; (b) is refused bail; (c) is in custody because bail has been revoked; or (d) is in custody under a sentence of imprisonment or, for a child, a detention order.	Rec. adopted.

Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
Pre-charge Detention (Recs. 20.2 & 20.3) The Custody Officer, upon being satisfied that the person was lawfully arrested, may authorise the detention of the person for a reasonable period not exceeding four hours on the grounds that it is necessary to: • enable such further investigation and inquiries as are reasonably necessary to determine whether a prosecution will be launched and, if so, the nature of the charges to be laid • complete any necessary documentation which requires the presence of the detained person • establish the identity of the person • conduct other authorised investigative procedures. The reasonable period is to be determined by the Custody Officer by reference to the relevant circumstances (see p. 692). Time-out periods (see p. 695) should be disregarded when calculating the relevant time period for detention. Questioning of the arrested person is not to take place during a time-out period (Rec. 20.4) The operation of this fixed maximum time period should be reviewed after 18 months.	s. 50(3) In the 8 hours mentioned in (2) (the "detention period")— (a) the person may be questioned for not more than 4 hours; and (b) the time-out period may be more than 4 hours RC: cl. 77(1) When deciding what is a reasonable time...a p.o. must consider—(a) whether the person's detention is necessary for the investigation of an indictable offence; (b) the number of indictable offences under investigation; (c) the seriousness and complexity of an indictable offence under investigation; (d) whether the person has indicated a willingness to make a statement or to answer any questions; (e) the person's age, physical capacity and condition, and mental capacity/condition; (f) for a person arrested—any time spent questioning the person before the arrest; (g) the need to delay or suspend questioning of the person for the purpose of time out. (2) If the suspect decides not to answer questions or not to continue answering questions, continuing the detention period may not be reasonable unless—(a) it is necessary to carry out further investigations before charging the suspect; or (b) the suspect consents, or another authority requires the suspect, to participate in an investigative procedure. Operational guideline 36.1: A p.o. who detains a person for investigations or questioning, should be in a position to later satisfy a court that the period of detention was reasonable in the circumstances. s. 134(1) The Minister must ensure the operation of this Act is regularly reviewed (2) The first review must start no sooner than 6 months after the commencement of this section and be completed within 3 years.	Rec. partly adopted — detention period is a 'reasonable period' up to 8 hours, determined by reference to RC, of which questioning is a maximum 4 hours. No Custody Officer established. Rec. partly adopted.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Extension of Detention Period (Rec. 20.5) Before the end of the initial four hour period a police officer may apply to a magistrate to extend the period of detention for a further period of up to eight hours. In any application the onus is on the police officer to satisfy the judicial officer that: - the investigation is being conducted diligently and expeditiously; and - a further period of detention without charge is reasonably necessary to preserve or obtain evidence or to complete the investigation; and - there is no reasonable alternative means of obtaining the evidence other than by the continued detention of the person in custody; and - circumstances exist which made it impracticable for the investigation to be completed within the four hours (see those circumstances relevant to determining a 'reasonable period') OR other circumstances of emergency made it impracticable for the investigation to be completed within that time. In exceptional circumstances, where police have been unable to complete their investigations within the extended period, an application for further extension may be made to a Supreme Court judge who shall specify the further period of detention authorised.	s. 51(1) Subject to s.52, a p.o. may apply for extension of det. period before the period ends. (2) Application. must be made to— (a) a mag.; (b) a JP (mag. ct); or (c) if neither is available — another JP other than a JP (com. for declarations). (3) When making application, p.o. must give to justice/mag. info about any time out reasonably anticipated to be necessary. (5) Justice/mag. may extend det. period for a reasonable time if satisfied—(a) nature/seriousness of offence requires extension; (b) further det. is necessary to preserve/ obtain evidence, complete investigation or continue questioning person about offence/another indict. off; (c) investigation is being conducted properly & without unreasonable delay; (d) the person or their lawyer has been given the opportunity to make submissions. (6) Justice/mag. must state in the order— (a) how much time for time out; & (b) the time, of not more than 8 hours, for which person may be questioned. (8) If total questioning period will, if extended, exceed 12 hours, only a mag. may extend for a reasonable time, of not more than 8 hours on each occasion. Provision under s. 52 for detention period to continue if delay has been caused by a 'reasonably unforeseen time out'. Under s. 51(8), only a magistrate may extend questioning for a period beyond 12 hours, and extensions may be for a reasonable time up to 8 hours on each occasion, without an upper limit.	Rec. partly adopted: (i) extensions may be granted by JPs as well as magistrates; (ii) extensions up to 8 hours questioning plus amount for 'time out' which is not subject to an upper limit, and the definition of 'time out' is different from CJC recommendation; (iii) provision for 'unforeseen delays in detention' to extend detention period. Rec. not adopted — no role for Supreme Court.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Provision should be made for applications to be made by telephone where appearance before a magistrate or a Supreme Court judge is not practicable because of the time of day or the remoteness of the location. The arrested person or his or her legal representative should have the right to be heard on an application for extension. In the case where the application is for an extension for the purpose of further questioning of the person, the application shall not be granted unless the person indicates to the court his or her willingness to be interviewed further.	see s. 129(2), p.o. can apply by telephone for an order 'if, for any reason, it is impracticable to apply in person'. s. 51(5) Justice/mag. may extend det. period for a reasonable time if satisfied—(d) person/person's lawyer, has been given the opportunity to make submissions about the application. RC: cl. 79(1) Application by p.o. for extension of det. period must be made in a way that allows person/lawyer to make submissions about application. (2) Before application is made, p.o. must—(a) tell detained person/lawyer of application; (b) give person copy of application; (c) ask person/lawyer if—(i) agree to application/oppose it; & (ii) if want to make submissions or say anything to justice/mag. (3) Application must state—(a) name/rank/reg no/station; (b) info about person detained—(i) name/age/address; (iii) whether lawfully arrested for indict. offence, refused bail, in custody because bail revoked, or under sentence of imprisonment, or for a child, a det. order; (c) whether, since the questioning/detention started, the person has asked to phone/speak to relative/friend/lawyer/interview friend/carer; (d) when det. period started, how long person has been questioned & delays; (e) the offence to which questioning/ investigation relates & info/evidence about its nature/ seriousness; (f) info/evidence that support a reasonable suspicion person has committed the offence; (g) investigations; (h) why further det. necessary; (i) time sought for time out/purpose & time sought for questioning. (4) Applicant must tell just/mag whether det. person/lawyer wants to make submissions or say anything. cl 77(2) If suspect decides not to answer questions or not to continue answering questions, continuing the det. period may not be reasonable unless—(a) it is necessary to carry out further investigations before charging; or (b) suspect consents, or another authority requires suspect to participate in investigative procedures.	Rec. adopted. Rec adopted.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Procedure at end of detention period (Rec. 20.6) Once the authorised period of detention has expired (including any authorised extension) the police should be required to: • release the person without charge • release the person on the basis that a summons has issued or will issue against the person, or • take the person to the watchhouse or other appropriate facility for the purpose of being charged and * released on bail; or * taken before the first available Magistrates Court. Where a Magistrates Court is not immediately available, no further questioning shall be allowed of the person in custody.	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. (2) Also, for an arrested person who is not a child, it is the duty of a p.o. to release the person at the earliest reasonable opportunity if— (a) the reason for arresting the person no longer exists or is unlikely to happen again... (b) it is more appropriate to take the person before a court... s.39 — A p.o. who arrests a person on a charge of an offence is to take that person before a justice to be dealt with according to law. s. 40 allows a notice to appear which does not involve the delay associated with issuing a complaint. RC: cl. 82(1) As soon as reasonably practicable after a detention period ends, the person detained must be released, unless the person is to be charged with an offence or is to be served with a notice to appear or summons. (2) However, if the person is lawfully held in custody because bail has been refused or revoked or under sentence or detention, the person must be returned to custody in the watch-house, correctional centre or detention centre where the person was held before the detention period started.	Rec. adopted re release of person in RC which deals with requirement to release a person detained under Part 8 of the Act (for investigation of indictable offences; those arrested for indictable offences; refused bail/bail revoked; in custody under a sentence of imprisonment, or for a child, a detention order). Rec re restriction on further questioning has not been specifically addressed.
Provision for Re-Arrest (Rec. 20.7) Once released, a person shall not be re-arrested without warrant and subject to further investigative detention for offence(s) for which the person has previously been arrested, unless new evidence justifying a further arrest has come to light since the release.	s. 38(6) A person suspected of having committed an indictable offence and released under this section can not be re-arrested for the offence unless — (a) the person is harassing or interfering with a person who may be required to give evidence... ; or (b) because of new evidence, a p.o. forms a reasonable suspicion that the person is responsible for the offence; or (c) the person is likely to fail to appear before a court...	Rec. adopted but applies only to indictable offences

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Time Limits for Voluntary Attendees (Rec. 20.8) After a period of four hours and at the end of a further eight hours, taking account of time-out, if the voluntary attendee is still in attendance at the police station, the voluntary attendee and the police officer should be required to appear before a magistrate and satisfy the magistrate that the person freely agrees to remain at the police station for further questioning. Where it is impractical for them to appear before a magistrate, the hearing should be conducted by telephone.	Not addressed.	Rec. not adopted.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
INTRODUCTION OF A FREE LEGAL ADVICE SCHEME Suspect's Right to Free Legal Advice (Rec. 21.1) The Custody Officer (see Chapter Twenty-two) should be required to advise the suspect of his or her right to contact a lawyer. The Custody Officer should advise the suspect that if he or she does not have a lawyer, a free and independent legal advice scheme is available to provide the services of a lawyer at the police station, or, in remote areas, over the telephone. Where a suspect indicates a wish to communicate with a lawyer, the Custody Officer should arrange for the suspect to do so in private and must defer questioning and other investigative procedures involving the suspect until that has occurred. Where the suspect indicates a desire to have a lawyer present for an interview or other procedure, the interview or other procedure should be deferred until the lawyer arrives and has consulted with the suspect. Where a lawyer having agreed to attend does not arrive within a reasonable time (up to two hours) the Custody Officer should make an attempt to contact another lawyer. In such circumstances the suspect is not to be questioned until he or she has had access to legal advice.	s. 95 deals with the rights of 'a person in custody' to speak to a friend/relative/lawyer and to have them present during questioning. The p.o. must delay the questioning for 'a reasonable time' to allow for this to occur. s. 95(4)(b) allows for privacy ('circumstances in which the conversation will not be overheard') only if the person being spoken to is a lawyer and only if it is 'reasonably practicable'. RC: cl. 66(1) Advice to person in custody of right to contact a friend/relative/lawyer must substantially comply with following: 'You have the right to telephone or speak to a friend or relative to inform that person where you are and to ask him/her to be present during questioning. You also have the right to telephone or speak to a lawyer of your choice to inform that person where you are and to arrange or attempt to arrange for the lawyer to be present during questioning. If you want to telephone or speak to any of these people, questioning will be delayed for a reasonable time for that purpose. Is there anyone you wish to telephone or speak to?' (2) P.o. may ask person to explain meaning of advice. (3) If necessary, further explain advice. (4) If person wants to speak to a lawyer, p.o. must without unreasonable delay, make available (a) a regional lawyer list (if avail.) and person has not asked to speak to a particular lawyer & (b) a telephone directory for region. (4) A p.o. must not do or say anything with the intention of—(a) dissuading person from obtaining legal advice; or (b) persuading a person to arrange for a particular lawyer. (6) A reasonable time to delay questioning to allow a friend/relative/lawyer to arrive will depend on particular circumstances including—(a) distance to travel; & (b) when person indicated they would arrive. (7) Reasonable time to delay questioning depends on particular circumstances eg. number/ complexity of matters under investigation. (8) Unless special circumstances exist, a delay of more than 2 hrs may be unreasonable.	Rec. largely adopted — no provision to contact another lawyer if the original lawyer does not arrive within a reasonable time; no free legal advice scheme set up.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
THE ROLE AND RESPONSIBILITY OF THE CUSTODY OFFICER		
The Custody Officer (Rec. 22.1) Where practicable, a senior police officer who is independent of the investigation should exercise the functions of the Custody Officer. Where no officer independent of the investigation is available, approval for one of the investigating officers to exercise the functions of Custody Officer should be sought by telephone from a commissioned officer. The responsibilities of the Custody Officer should be specified in legislation. These responsibilities should include: • informing the suspect of his or her rights • determining whether pre-charge detention is warranted • authorising investigative procedures involving the suspect • identifying and attending to any 'special needs' of the suspect • ensuring that the suspect has medical assistance, rest and refreshment • ensuring proper custody records are maintained. As far as possible the new requirements should be integrated with current QPS procedure.	Not recognised in the Act. Responsibilities are on arresting officer.	Rec. not adopted.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
ENSURING COMPLIANCE WITH THE SCHEME		
Notification of Breaches (Rec. 23.1) Where, in a criminal proceeding, it is revealed that a police officer may have contravened a statutory duty or a general instruction issued by the Commissioner of Police, the Director of Prosecutions or the magistrate who heard the matter, should be responsible for informing the Commissioner of Police of any breach that may warrant criminal, disciplinary or remedial action. The referral should be made even if the court does not exclude any evidence obtained in breach of these requirements.	Not included in Act. Requires the involvement of the Director of Public Prosecutions and Magistrates. The Director of Public Prosecutions has undertaken to inform the Police Powers Reference Group of significant breaches of legislation brought to his attention by prosecutors.	Progressing.
Legislative Recognition of Exclusionary Rules (Rec. 23.2) The circumstances under which unlawfully or improperly obtained evidence is to be admitted in court proceedings should be defined in legislation.	s. 104(13) If a court considers this section has not been complied with or there is not enough evidence of compliance, the court may, despite the noncompliance, admit evidence to which this section applies if, having regard to the nature of and the reasons for the noncompliance and any other relevant matters, the court is satisfied, in the special circumstances of the case, admission of the evidence would be in the interests of justice.	Rec. partly adopted — Act only refers to electronic recording requirements.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Admissibility of Unrecorded Confessions or Admissions (Rec. 23.3) All interviews of suspects undertaken by the police should be electronically recorded. Legislation should be introduced stating that any unrecorded confession or admission not electronically recorded or confirmed on audio or video tape should be inadmissible in a criminal proceeding, unless the prosecution establishes on the balance of probabilities that the circumstances in which the confession or admission was made were exceptional and justify reception of the evidence.	s. 104(1) This section applies to the questioning of a person in custody (2) The questioning must, if practicable, be electronically recorded [Example given in Act: this may be impracticable if there is an immediate confession when police arrive at a crime scene; or, when apprehended after a pursuit...] (3) If the person makes a confession/admission to a p.o. during questioning, it is admissible as evidence ... only if it is recorded as required by this section. (5)-(10) If confession or admission is recorded in writing, the record must be subsequently read to the suspect, and the reading electronically recorded. (13) The court may, despite noncompliance, admit evidence if satisfied 'in the special circumstances of the case', admission would be 'in the interests of justice'. RC: cl. 75(1) If it is not practicable for a p.o. to electronically record the giving to a person in custody of information (incl. a caution), the p.o. must make a written record of the giving of the information and the person's response. (2) The p.o. must make the record as if the Act s. 104(6) to (10) applied to the giving of the information and the response. Operational Procedures Manual: Order 2.14.2 requires police to electronically record interviews of suspects for indictable offences 'where available'.	Rec. largely adopted — electronic recording of questioning only required 'if practicable' but written record must subsequently be electronically recorded. Slightly lower standard for admission by court of evidence obtained in contravention of Act.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
VOLUME V: ELECTRONIC SURVEILLANCE AND OTHER INVESTIGATIVE PROCEDURES		
LISTENING DEVICES AND OTHER FORMS OF ELECTRONIC SURVEILLANCE		
Which Judges May Hear Listening Device Applications? (Rec. 24.1) Judges of the Supreme Court should continue to be solely responsible for hearing and determining listening device applications.	s. 68(3) If the application is for a surveillance warrant for— (a) a class A device or a class A and a class B device to be used together — the application must be made to a Supreme Court judge. [class A devices include listening devices, visual surveillance devices, tracking devices, and any device containing a combination of these.]	Rec. adopted.
Rank of Officer Who May Apply for a Listening Device Warrant (Rec. 24.2) An officer of the QPS of the rank of Inspector or above should be authorised to apply for a warrant to install a listening device.	s. 68(2) A p.o. of at least the rank of Inspector may apply for a warrant authorising the use of a surveillance device.	Rec. adopted.

Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
Offences for Which Listening Device Warrants May Be Sought (Rec. 24.3) Warrants for listening devices should be available only in respect of: • an offence under Part II of the <i>Drugs Misuse Act</i> punishable by 20 years or more imprisonment • an indictable offence punishable by imprisonment for a period of seven years or more where the conduct constituting the offence involves, or would involve, as the case requires: — the serious risk of loss, or the loss of, a person's life — serious risk of, or serious, personal injury — serious damage to property in circumstances endangering the safety of a person — trafficking in drugs — serious fraud — serious loss to the revenue of the State or Commonwealth — official corruption • An indictable offence punishable by imprisonment for a period of seven years or more and which satisfies the following criteria: — two or more offenders and substantial planning and organisation are involved — the offence involves, or is of a kind which ordinarily involves, the use of sophisticated methods and techniques — the offence is committed, or is of a kind which is ordinarily committed, in conjunction with offences of a like kind.	s. 68(4) The p.o. may apply for a surveillance warrant for a class A device only if the offence is a 'serious indictable offence'. Schedule 3 defines 'serious indictable offence' as an indictable offence involving any of the following— (a) serious risk to, or actual loss of, a person's life; (b) serious risk of, or actual, serious injury to a person; (c) serious damage to property in circumstances endangering the safety of any person; (d) serious fraud; (e) serious loss of revenue to the State; (f) official corruption; (g) serious theft; (h) money laundering; (i) conduct related to prostitution or SP bookmaking; (j) child abuse, including child pornography; (k) a drug offence punishable by at least 20 years imprisonment.	Rec. largely adopted — Act has broadened the range of offences for which warrant may be sought to include: • serious theft • money laundering • prostitution/SP bookmaking • child abuse rather than 'organised crime' criteria.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Grounds for Determining Whether to Issue a Warrant (Rec. 24.4) The judge, in considering an application for a listening device warrant, should first be satisfied that there are reasonable grounds for suspecting that a specified offence has been, is being, or is about to be, committed. The judge should also have regard to the following factors before issuing the warrant: • the gravity of the matters being investigated • the extent to which the privacy or safety of any person is likely to be interfered with • the practicality and likelihood of obtaining evidence of the offence by other less intrusive means • the extent to which the prevention, detection or investigation of the offence in question is likely to be assisted • all previous warrants or extensions thereto sought or granted in connection with the investigation in question. This information must be provided to the judge in affidavit form as part of the application documents (subject to the urgent application provisions).	s. 68(11) The issuer may issue a warrant if satisfied there are reasonable grounds for believing a person at a place, or likely to be at a class of place, mentioned in the application has been, is, or is likely to be involved in the commission of an indictable offence' s. 68(10) In particular, and being mindful of the highly intrusive nature of a surveillance warrant, the issuer must consider the following— (a) the nature and seriousness of the suspected offence (b) for a class A device, if the warrant is issued, the likely extent of interference with the privacy of (i) the suspect or (ii) any other occupant of the place (c) the extent to which issuing the warrant would help prevent, detect or provide evidence of the offence (d) the benefits derived from the issue of any previous surveillance warrants in relation to the suspect (e) the extent to which p.o.'s investigating the offence have used or can use conventional ways of investigation (f) how much the use of conventional ways of investigation would be likely to help in the investigation of the offence (g) how much the use of conventional ways of investigation would prejudice the investigation of the offence because of delay or for another reason (h) any submissions made by a monitor. s. 68(5) that the application be sworn and state the grounds on which the warrant is sought	Rec. largely adopted. Rec. adopted, except in relation to the likely interference with the safety of any person. Rec. adopted.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Power to Authorise Entry Onto Premises (Rec. 24.5) The judge, upon issuing a warrant, should have the power to authorise entry onto premises for the purpose of installation, servicing, relocation and/or retrieval of a listening device.	s. 70 A p.o. who exercises powers under a surveillance warrant has the following powers under the warrant— (a) for a surveillance warrant— (i) for a class A device— power to enter a specified place or class of place, covertly or through subterfuge, to install, maintain, replace or remove a surveillance device. Note: s. 68(14) states that the warrant 'must authorise' police to exercise the powers under s. 70 — it may be arguable that a judge could choose not to authorise all the powers under s. 70.	Rec. adopted, except that these powers appear to automatically apply under the warrant.
Power to Authorise to Pass Through, Over, etc. Any Other Place (Rec. 24.6) The judge, upon issuing a warrant for the use of a listening device, should be able to authorise the passing through, from, over and along any other place for the purpose of entering premises specified in warrant.	s. 70 [powers under surveillance warrants] (f): power to pass through, over, under or along a place to get to the place where the surveillance device is to be used. (see s. 68(14) above)	Rec. adopted, except that these powers appear to automatically apply under the warrant.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Power to Authorise the Use of Reasonable Force (Rec. 24.7) The judge, upon issuing a warrant, should be able to authorise the use of such force against property as is reasonably necessary for the purpose of carrying out anything authorised by the warrant. The judge should also be able to authorise the use of reasonable force against any person in the course of effecting an entry or exit of the premises, where it is necessary for the protection of the police officer or the protection of others. Where the force is to be used against a person or the property of a person then present, the police officer should warn that person that force is going to be used, unless it is impracticable to give such a warning. Provision should be made for compensation to the owner for any damage to property.	s. 70 [powers under surveillance warrants] (d) power to use reasonable force to install, maintain, replace or remove a surveillance device. (see s. 68(14) above) 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 p.o., to use reasonably necessary force to exercise the power. s. 126(1) It is lawful for a p.o. exercising powers under this or any other Act against an individual, and anyone helping the p.o., to use reasonably necessary force for exercising the powers. (3) The force a p.o. may use under this section does not include force likely to cause grievous bodily harm to a person or the person's death. RC: cl. 13(1) Section applies if a p.o. intends to enter a place to arrest/detain someone, or to search a place, or to establish a crime scene. (2) Before the p.o. uses force that may cause damage to a place to gain entry, the p.o. must, if reasonably practicable—(a) ask the occupier to allow the p.o. to enter; and (b) give the occupier a reasonable opportunity to allow the entry. s. 131 Compensation is payable if a person suffers loss, unless the person is found guilty of an indictable offence because of the exercise of the powers.	Rec. adopted, except that these powers appear to automatically apply under the warrant. Rec. adopted.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Power to Authorise the Use of Assistance (Rec. 24.8) The judge, upon issuing a warrant, should be able to authorise the use of such assistance as is reasonably necessary to effect the warrant.	s. 123(1) It is lawful for a police officer exercising a power under this Act at a place to take onto the place any person (the "assistant"), equipment, vehicle, animal or material the officer reasonably requires for exercising the power. (2) If the police officer takes an assistant onto the place, the police officer may authorise the assistant— (a) to take stated action at the place; and (b) to exercise stated powers the police officer is authorised to exercise. (3) However, the police officer can not authorise the assistant to arrest a person or demand a person's name and address.	Rec. partly adopted — a general provision for a police officer to use assistance in exercising powers at s. 123, rather than requiring authorisation by a judge.
Power to Authorise Entry by Subterfuge (Rec. 24.9) The judge, upon issuing a warrant, should be able to authorise entry to premises by such means as are reasonably necessary to effect entry, including the use of subterfuge.	see s. 70(a) above.	Rec. substantially adopted.
Power to Authorise Extraction of Electricity (Rec. 24.10) The judge, upon issuing a warrant, should be able to authorise the extraction of electricity from the mains supply where it is reasonably necessary in order to operate the listening device.	s. 70(c) power to take electricity for using a surveillance device.	Rec. substantially adopted.
Power to Authorise Others to Use or Assist with Listening Device (Rec. 24.11) The power to authorise police and/or civilians to assist in effecting the purposes of the warrant should be conferred on the applicant officer who is an Inspector or higher ranking officer. All authorisations should be in writing, stating the name of the person authorised, the task for which the person is authorised (e.g. installation, monitoring, translating etc.), the date of authorisation, and the name and signature of the authorising person. Copies of the authorisations should be given to those authorised and the originals retained on file for inspection by the proposed inspecting agency (see Recommendation 25.3).	s. 68(14) — The warrant must authorise a stated police officer or all police officers to exercise the powers under s. 70. Also, s. 123 (use of assistants) [see above].	Rec. largely adopted. Use of assistants provided under s. 123. Under s. 68(14) the warrant must state which police officer(s) can exercise the powers however authorisations to assistants provided by the police officer exercising a power under the Act (not necessarily an Inspector as recommended by CJC).

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Use of Listening Devices Without Prior Judicial Approval (Rec. 24.12) The use of listening devices should not be allowed without prior judicial approval.	see s. 69 below.	Rec. not adopted — Act allows use without warrant in emergency situations (see below).
Provision for Emergency Warrants (Rec. 24.13) An expedited court procedure, similar to that under section 26 of the <i>Drugs Misuse Act</i>, should be available in emergency circumstances in respect of all listening device applications. (The Drugs Misuse Act provision requires prior judicial approval which may operate for up to 48 hours)	s. 69 deals with 'Emergency use of surveillance devices': (1) This section applies if a p.o. reasonably believes—(a) there is a risk of serious injury to a person; and (b) using a surveillance device may help reduce the risk. (2) A p.o. of at least the rank of inspector may authorise the use of a surveillance device (4) Within two days after authorising the use of a surveillance device, the p.o. who authorised its use must apply to a Supreme Court judge for approval of the exercise of the powers under (2).	Rec. not adopted — section 69 does not require a prior judicial approval, but merely an Inspector authorising. Retrospective approval by a judge must be sought.
Provision for Telephone Applications (Rec. 24.14) Provision should be made for applications for listening device warrants to be made by telephone, fax etc. in urgent circumstances where it is impracticable for the applicant to appear and make the application in the usual manner or in the expedited manner recommended above.	s. 129(2) allows for telephone applications where it is 'impracticable' to apply in person. However, provisions re involvement of Public Interest Monitor (s. 68(6) & (8), s. 80(2)) make this procedure unlikely in relation to surveillance warrants.	Rec. partly adopted — does not require 'urgent circumstances'. However, the creation of a Public Interest Monitor is an added safeguard.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Record-keeping Requirements for Emergency Warrants (Rec. 24.15) Strict record-keeping requirements should apply to the granting of emergency warrants; telephone application provisions should be made consistent with provisions in other statutes for such applications, unless there are strong reasons to depart from these provisions.	s. 78(1) The commissioner must keep a register of applications for surveillance and covert search warrants in way considered appropriate. RC: cl. 102 The following details about applications for surveillance warrants and covert search warrants must be included in the register—(a) when/where application was made; (b) the name of the person or description of the place; (c) the type of indictable offence; (d) type of warrant sought; (e) for a surveillance warrant—the class of surveillance device; (f) whether or not the warrant was issued; (g) how long the warrant was in force; (h) when the powers were exercised under the warrant or, for a surveillance warrant, if a surveillance device was not installed under the warrant, why it was not installed; (i) for covert search warrants—(i) when the initial search under the warrant was completed or, if the place was not searched, why; (ii) whether anything was seized, inspected or photographed; and (iii) a description of anything seized; (j) the benefits derived from the warrant, for example— (i) any proceeding started; (ii) for a surveillance warrant—a brief description of how using a surveillance device helped in the investigation of the offence or another indictable offence or helped prevent, detect or provide evidence of an offence; and (iii) for a covert search warrant—anything seized during a search. (k) information about the return, destruction or disposal of anything seized.	Rec. partly adopted (see above) — applications for approval of emergency use must be kept in register and Public Interest Monitor also will be present.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Maximum Period of Warrant (Rec. 24.16) There should be a statutory maximum period of 28 days for the validity of a warrant. The judge should specify the period, up to that maximum, for which the warrant is to be valid. The judge should direct that, if the investigation ceases prior to that time, use of the listening device is to cease. If an investigation ceases prior to the specified period, an officer of the rank of Inspector or above authorised by the Commissioner, should issue a written notice cancelling the use of the listening device. In respect of emergency permits and telephone warrants, the Commission recommends that the statutory maximum period of validity should be 48 hours.	s. 68(17) A surveillance warrant is in force for 30 days or a shorter time stated in the warrant and may be extended from time to time on application. (19) Despite subsection (17), the warrant stops having effect before the end of the period mentioned ... if the investigation under the warrant ends, unless, while using the surveillance device under the warrant for the original investigation, evidence is gained of another serious indictable offence or, for a tracking device, another indictable offence. (19A) However, subsections (17) and (19) do not prevent the police officer exercising powers under the surveillance warrant after it stops having effect, but only for removing the surveillance device to which the warrant relates. s. 69 [Emergency use of surveillance devices] (4) Within two days after authorising the surveillance device, the p.o. who authorised its use must apply to a Supreme Ct judge for approval of the exercise of the powers...	Rec. largely adopted — rather than police cancelling the use of device, the warrant automatically ceases to have effect if investigation ceases, unless evidence is gained of another serious indictable offence. See above re emergency warrants. No specific provision in Act limiting period of validity for telephone warrants.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Applications for Extension of Warrant (Rec. 24.17) An extension of a warrant should be for a specified period not exceeding 28 days, or until the investigation ceases, whichever is the earlier. On an application for an extension the following material should be put before the judge: — information addressing all the criteria required to be addressed upon an application for a warrant in the first instance — particulars of any change in circumstances and new information relevant to the granting of the application — whether any information relevant to the offence was obtained under the original warrant and, if so, a brief description of that information — all previous documentation put before the judge in relation to the granting of the original warrant in relation to the investigation in question and any subsequent extensions — a statement by the applicant that all matters both supportive of and adverse to the application have been included in the application.	s. 68(17) A surveillance warrant is in force for 30 days or for a shorter time and may be extended from time to time on application. (18) The provisions of this section for an application for a warrant apply to an application for an extension with all necessary changes' [see also sections 19 & 19A above] RC: cl. 36 Application for extension of surveillance warrant must state—(a) applicant's name, rank, reg number & station; (b) class/type of device being used under the warrant; (c) the serious indictable offence or, for a class B device, the indictable offence, to which the warrant relates; (d) the particulars of the person/place stated in the warrant; (e) if there are relevant previous warrants, for each warrant— (i) when/where warrant was issued; (ii) how long the warrant was in force; (iii) the class of device to which the warrant related; (iv) whether the warrant related to a person or place; and (v) the type of offence to which the warrant related; (f) information or evidence of any of the following that may be relied on to support a reasonable belief that an offence of the type stated in the application has been , is being, or is about to be committed—(i) for an application relating to a person—that the person have been, is, or is likely to be, involved in the commission of the offence; (ii) for an application relating to a place—that a person at the place has been, is, or is likely to be, involved in the commission of the offence; (iii) for an application for use of a class A device in the office of a practising lawyer—that the lawyer is involved in the offence, (g) information necessary to satisfy the issuer of the things mentioned in the Act, s. 68(10); (h) for an application for a class A device that is a tracking device or a class B device—a description of how the use of the device in or on any vehicle or other moveable object relating to the offence or a person involved in the offence, is likely to assist in the investigation of the offence.	Rec. largely adopted — does not require applicant's statement that all matters both supported and adverse have been included. However, the presence of the Public Interest Monitor will act as an added check.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Requirements Governing Application Procedures and Content of Warrant (Rec. 24.18) Legislation should set out the requirements necessary for an application and should require that the following matters be addressed in the application and be specified in the warrant: (a) the offence in respect of which the warrant is granted (b) the name of the person whose conversations may be recorded or listened to, to the extent that such persons can be identified (c) the period during which the warrant is to be in force (d) the grounds upon which the warrant is to be issued (e) the name of the person to whom the warrant is to be issued (f) the premises on/in which a device is to be used (g) particulars of any application for a warrant to use a listening device in relation to the person or premises named in the present application (h) the time within which the person authorised to use the device is required to report back to the court (i) whether the authorisation is to install, service, relocate and/or retrieve a device	s. 68(5) Surveillance warrant application must— (a) be sworn and state the grounds on which the warrant is sought; and (b) include information specified in the responsibilities code about any warrants issued within the previous year in relation to the place or suspect specified in the application. RC: cl. 35 Application [for surveillance warrant] must state the following— (a) applicant's name, rank, reg. number, station; (b) the class & type of device to be used under the warrant; the serious indictable offence to which application relates or, for a class B device, the indictable offence; (d) if the application relates to a person—(i) the applicant reasonably believes the person has been, is, or is likely to be, involved in the offence; (ii) person's name, if known; (iii) description of the class of place where the person is likely to be; & (iv) if the application is for use of a device in a public place where the person is likely to be—that fact; (e) if application relates to a place the applicant reasonably believes has been, is being, or is likely to be involved in the commission of the offence—a description of the place; (f) if the application is—(i) for a class A device that is a tracking device or a class B device—that the device is for use in a vehicle or other moveable object relating to the offence or the person; or (ii) to install a visual surveillance device in a dwelling—the parts of the dwelling in which the device is proposed to be installed; or (iii) for use of a class A device in the office of a practising lawyer—the person is a practising lawyer and the device is to be used in the person's office; (g) if there are relevant previous warrants, for each warrant—(i) the class of device to which the warrant related; (ii) when/where the warrant was issued; (iii) how long the warrant was in force; (iv) whether warrant related to a person/place; (v) type of offence to which the warrant related;	Rec. largely adopted, RC provides comprehensive list of requirements. The creation of a Public Interest Monitor is an added safeguard.

Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
<i>continued</i> (j) whether entry is authorised for that purpose (k) whether entry of premises adjoining the specified premises for the purpose of gaining entry is authorised (l) whether there is authority to use force if necessary for the purpose of installation, etc. (m) whether there is authority to use such assistance as is necessary for the purpose of installation etc. (n) a requirement for the device to be retrieved (o) any other conditions and restrictions (for example, in relation to privileged conversations). The warrant must also state the date of issue and the name of the issuing judge.	(vii) how a previous covert search or surveillance warrant helped in the investigation or another investigation; (viii) any proceedings started after the search or use of the surveillance device; (h) information or evidence of any of the following that may be relied on to support a reasonable belief that an offence stated in the application has been, is being, or is about to be, committed—(i) for an application relating to a person—that the person has been, is, or is likely to be, involved in the commission of the offence; (ii) for an application relating to a place—that a person at the place has been, is, or is likely to be, involved in the commission of the offence; (iii) for an application for use of a class A device in the office of a practising lawyer—that the lawyer is involved in the offence; (i) information necessary to satisfy the issuer of the things mentioned in the Act, section 68(10) [factors issuer must consider, being mindful of intrusive nature of surveillance warrants]; (j) for an application for a class A device that is a tracking device or a class B device—a description of how the use of the device in or on any vehicle or other moveable object relating to the offence or a person involved in the offence, is likely to assist in the investigation of the offence.	

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Protection of Legal Professional Privilege (Rec. 24.19) Specific legislative recognition should be given to legal professional privilege by providing that no private conversations are to be listened to or recorded at the office or residence of a legal representative, or any other place ordinarily used by legal representatives for the purpose of consultation with clients, unless the court is satisfied that there are reasonable grounds to believe that the legal representative, any other person practising with him or her, employed by him or her, or any other such legal representative or member of the legal representative's household, has been or is about to become a party to an offence in respect of which the warrant is sought. The judge should have a discretion to order whatever other conditions he or she thinks are in the public interest to protect confidential conversations, including a requirement that the conversations be live monitored, or that specified steps be taken to ensure as far as possible that privileged conversations are not recorded. The legislation should require that, where there are grounds to suspect that privileged communications will be intercepted, that fact be disclosed in the application to obtain the warrant.	s. 68(13) The issuer must not issue a warrant for the use of a class A device in the office of a practising lawyer unless the application for the warrant relates to the lawyer's involvement in a serious indictable offence. (15) — issuer may impose any conditions considered necessary in the public interest. RC: cl. 35(h)(iii)—application for use of a class A device in the office of a practising lawyer must show evidence to support a reasonable belief that the lawyer is involved in the offence. Provisions do not cover lawyer's residence or other places ordinarily used for consultations with clients.	Rec. partly adopted — Act only refers to lawyer's office and lawyer's involvement (does not cover lawyer's residence). No requirement to disclose in application that there are grounds to suspect privileged communications will be intercepted.
Installation of Visual Surveillance Devices in Private Property (Rec. 24.20) Entry onto private property for the purpose of installing a visual surveillance device should be permitted under the authority of a warrant issued by a judge of the Supreme Court, or with the consent of the owners or lawful occupiers of the property. The warrant requirements which apply to listening devices should apply equally to visual surveillance devices.	s. 70(a)(i) see above — includes power to enter to instal a device. “class A device” ‘does not include a visual surveillance device installed in a public place, or with the occupier's consent, a private place’.	Rec. largely adopted. Surveillance device as defined includes a visual surveillance device except where installed in a public place or with occupier's consent. Powers under warrant include power to enter.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Vehicle Tracking Devices (Rec. 24.21) Where a tracking device is of a basic type which simply emits a signal to assist in locating and tracking a vehicle and is to be attached to the outside of a vehicle on public property, use of the device should be authorised in writing by an officer of the rank of Inspector or higher. Where the installation of the device involves entry to the vehicle or entry onto private premises, or the device is of a type that stores data or has a listening device capability, the device should not be used without the authority of a judge of the Supreme Court. The warrant requirements which apply to listening devices should apply equally to tracking devices.	“class B device” defined in the Act as ‘a tracking device installed in a vehicle or other moveable object without covert entry to a building by the person installing it’ s. 68(3) If the application is for a surveillance warrant for— (a) a class A device or a class A and a class B device to be used together— the application must be made to a Supreme Ct judge; or (b) a class B device— the application must be made to a magistrate s. 68 (requirements for application) includes all surveillance warrants.	Rec. adopted with stricter controls — use of a tracking device without entry must be authorised by a magistrate, not a police officer (unless in the case of emergency use); use requiring entry must be authorised by judge. Rec. adopted — the warrant requirements apply equally to listening and tracking devices.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
RECORD KEEPING AND REPORTING REQUIREMENTS Requirement to Report Back to the Judge Who Issued the Warrant (Rec. 25.1) Legislation should require the applicant for a listening device warrant to report to the judge who issued the warrant within two weeks after the retrieval of the device and that the report contain the following information: - the names of the persons whose conversations were recorded or listened to, or whose movements were monitored, if those persons are known - the period during which the device was used, including details of any previous extensions and/or circumstances of cancellation - particulars of any other warrants for devices granted for the same offence - particulars of the premises or place where the device was installed or used - particulars of the general use made, or to be made, of the information or evidence obtained by use of the device - particulars of the installation, servicing, relocation and/or retrieval of the device.	s. 68(15) The issuer may impose any conditions on the warrant that the issuer considers are necessary in the public interest including, but not limited to— (a) a condition requiring regular reporting to the issuer on activities under the warrant; (16) The issuer may, after considering any report made under ss. 15(a), require the destruction of any recordings made that are not related to the offence mentioned in the warrant, unless the recording relates to the investigation of another indictable offence. RC: cl. 39(1) This section applies if, as a condition of a surveillance warrant, a Supreme Court judge imposes a condition requiring a report on activities under the warrant. (2) Within the time stated in the condition, the p.o. coordinating the investigation must ensure a report complying with this section is given. (3) The report must be accompanied by a copy of the warrant and state—(a) reporting officer's name/rank/reg. no/station; (b) when the warrant was issued; (c) type of serious indictable offence or, for a class B device, the type of indictable offence, to which warrant relates; (e) if the warrant had ended—the surveillance device is no longer being used; (f) the facts and circumstances of compliance with the warrant and any of its conditions of issue; (g) for a warrant authorising the use of a listening device or a visual surveillance device—(i) whether any recording, photograph or transcript kept, includes information not related to the offence mentioned in the warrant; (ii) whether the information relates to an investigation of another indictable offence started because of information obtained under the warrant or is linked to another offence under investigation; (iii) how long the listening device or visual surveillance device was used under the warrant; and (iv) how many people were involved in the conversation or the activity monitored and, if known, each person's identity.	Rec. largely adopted — RC specifies most matters to be included in report but reports are only ordered at the discretion of the issuer.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Production of an Annual Report (Rec. 25.2) An annual report on the use of electronic surveillance devices should be tabled in Parliament by the Minister responsible for the legislation. The report should be prepared or audited by the Ombudsman or some other independent body (see Recommendation 25.3). The report should include the information listed on p. 803 (explain briefly — number of applications, number of investigations resulting in charge, statistics re use of warrants, total cost etc).	s. 79 — Office of public interest monitor established. s. 80(2) Functions include gathering 'statistical information about the use and effectiveness of warrants'. s. 81(1) As soon as practicable..., the public interest monitor must prepare and give to the Minister a written report on the use of surveillance warrants and covert search warrants under this Act. (2) The Minister must table a copy in the Assembly within 14 sitting days. (3) The annual report must not contain information that— (a) discloses or may lead to the disclosure of the identity of any person who has been, is being, or is to be, investigated; or (b) indicates a particular investigation has been, is being, or is to be conducted.	Rec. largely adopted — public interest monitor to prepare report for tabling by Minister. Act does not specify the types of information to be reported, only what should <i>not</i> be reported.
Provision for Independent Auditing (Rec. 25.3) The Ombudsman, or some other independent body, should be charged with conducting regular inspections to ensure records and registers relating to electronic surveillance are being maintained and stored in accordance with the Act.	s. 80(2) The functions of the public interest monitor include (a) 'to monitor compliance by p.o.'s ... in relation to matters concerning applications for surveillance warrant and covert search warrants'; and (d) to report to the commissioner on noncompliance.	Rec. adopted.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Purposes for Which Information Obtained by the Use of Surveillance Devices Can Be Disclosed (Rec. 25.4) Legislation authorising the use of surveillance devices should include a provision which states the purposes for which material obtained from the use of a surveillance device can be disclosed to persons other than those authorised under the warrant. A written record should be kept of what information has been disclosed to what person and for what purpose. These records should be available for scrutiny by the proposed inspecting agency (see Recommendation 25.3).	s. 71(1) Applies to information that has not been disclosed in a proceeding in open court and was obtained by using a surveillance warrant (the "relevant information"). (2) p.o. who obtained relevant information must not disclose information to someone other than— (a) judge/mag. who issued the warrant or ...hearing an application for an extension or ... [other applications]; (b) a court taking evidence about a charge of an offence in which the information is evidence; (c) the commissioner or person authorised by the commissioner; (d) another p.o. involved in— (i) the investigation into the relevant criminal activity for which the powers were exercised; or (ii) an investigation of any indictable offence started because of information obtained under the warrant...; or (iii) a proceeding in which the information is evidence; (e) a declared law enforcement agency; (f) a public prosecutor, but only for use in a proceeding in which the information is evidence or for an application for an extension of the warrant or ...[other warrant applications]; (g) a lawyer representing a person in a proceeding in which the information is evidence; (h) a monitor; or (i) a person transcribing or making copies of recordings. s. 72(1) The commissioner must keep a register of information disclosed under s. 71(2)(d)(ii) or (e)...(3) register must state (a) name of person to whom info disclosed; (b) brief particulars of info disclosed/reasons for disclosing; & (c) when the info was disclosed. cl. 104 A p.o. who discloses information under s. 71 must ensure the info required to be stated in the register under s. 72 is enter in the register as soon as practicable after the information is given. see s.80(2) above.	Rec. adopted but register must also be kept for information disclosed to another police officer investigating any indictable offence related to information obtained under the warrant or disclosed to a law enforcement agency.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Destruction and Storage Requirements (Rec. 25.5) All records, whether in writing or otherwise, of any information obtained by the use of a surveillance device pursuant to a warrant, should be destroyed unless required for a permitted purpose as outlined in Recommendation 25.4. The Commissioner of Police should be required to cause the destruction of records and that compliance with the destruction requirements be the subject of independent oversight. Pending destruction, the records should be kept in a secure place with access restricted to those authorised to deal with such records.	s. 73(1) The commissioner must keep all information obtained under a surveillance warrant and transcripts of records made under the warrant in a secure place. [also provided for at s. 72(2)] (2) The commissioner must ensure any recording or photograph made under the powers of a surveillance warrant or a transcript or copy made... is destroyed as soon as practicable after it is no longer required. (3) Subsection (2) does not prevent information relevant to any offence of which anyone has been convicted being preserved for any period or indefinitely if there is any possibility that an issue about the conviction may arise. RC: cl. 41 A person must not remove information obtained under a surveillance warrant or transcripts of recordings made under the warrant from the secure place in which the info/recording is kept, other than for 1 of the following purposes—(a) to take it to another secure place; (b) to disclose it to someone to whom relevant info may be disclosed; (c) to destroy it. cl. 42(1) Section applies if a provision of the Act or an order of a Supreme Court judge requires the destruction of information obtained under a surveillance warrant or any transcripts of recordings made under the warrant. (2) If the information is an audio or video recording, the recording must be destroyed by incinerating it or electronically or magnetically erasing it. (3) If the information is a transcript, the transcript must be destroyed by incinerating or shredding it.	Rec. largely adopted, with records able to be maintained if they relate to a conviction and there is any possibility that an issue about the conviction may arise. No specific mention of independent oversight of the destruction of records, but Public Interest Monitor's functions include reporting to the Commissioner on non-compliance with the legislative scheme (s. 80(2)(d)).

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Notification of a Person that He or She Has Been the Subject of Electronic Surveillance (Rec. 25.6) There should be a legislative requirement that, upon a report back to the judge, the judge may, in his or her discretion, direct that the persons who were the subject of the surveillance, or are to be charged arising out of the investigation, be notified of the fact of the surveillance. A discretion should be conferred on the judge to refuse to make the order for notification if to do so would be likely to jeopardise a current or future investigation. The applicant for the warrant should be given the opportunity to be heard prior to the judge directing notification.	No provision found in the Act.	Rec. not adopted.

Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
BODY SEARCHES AND EXAMINATIONS		
Consent to an Examination Prior to Arrest (Rec. 26.1) The safeguards in section 259 of the <i>Criminal Code</i> should also apply to persons not under arrest who have consented to an examination.	s. 60(1) Before a doctor or dentist performs a medical or dental procedure under this part, a p.o. must tell the person on whom it is to be performed—(a) that the act can not be done without the person's consent or a magistrate's approval; and (b) that the person has the right to have 2 people of his or her choice present while it is being done... s. 62(1) This section applies if a person suspected of committing an indictable offence consents to the performance of a medical or dental procedure on the person under this section. (2) The consent must be written or electronically recorded. RC: cl. 87(1) Section applies if a person wishes to have an independent person present while a medical/dental procedure is being performed. (2) A reasonable time to delay performing the medical/dental procedure to allow the independent person to arrive at the place where the procedure is to be done will depend on the particular circumstances, for eg—(a) how far person has to travel; and (b) the time person indicated he/she would arrive. (3) Unless special circumstances exist, a delay of more than 2 hrs may be unreasonable.	Rec. adopted.
Video-taping of Consent to an Examination (Rec. 26.2) Where a person consents to a procedure, either prior to or following arrest, such consent should be audio or video recorded, where practicable. Where that is not practicable, consent should be in writing.	See previous at s. 62(2) — no requirement of electronic recording 'where practicable', but RC Operational Guideline 38.1 states 'it is preferable to electronically record consent' to a procedure.	Rec. largely adopted.
Restriction of Section 259(3) of the <i>Criminal Code</i> to Post-arrest Situations (Rec. 26.3) The power to take body samples and conduct examinations under section 259(3) of the <i>Criminal Code</i> should be available only in relation to persons who have been arrested.	s. 64 [Performing medical and dental procedures without consent] (1) This section applies if— (a) a person is in custody for an indictable offence and (b) a magistrate approves the performance of the procedures...	Rec adopted.

Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
Offences for which Section 259(3) of the Criminal Code Should Be Available (Rec.26.4) The powers under section 259(3) of the <i>Criminal Code</i> should be available only in respect of a person in lawful custody upon a charge of committing an indictable offence. A magistrate, in considering whether to authorise an examination or procedure under that section, should also have regard to: • the intrusive and/or humiliating nature of the procedure • the seriousness of the offence • the age and health of the suspect • the degree of the suspect's alleged involvement in the offence.	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 to the procedure. (2) The application must be sworn and state the grounds on which it is made. (3) The magistrate may refuse to consider the application until the p.o. gives the magistrate all the information...(4) The magistrate must not approve the performance of a medical or dental procedure unless satisfied— (a) the person is in lawful custody for an indictable offence; and(b) there are reasonable grounds for believing performing the procedure may provide evidence of the commission of the offence... RC: cl. 86 An application for an order to perform a medical/dental procedure on a person... must state— (a) name/rank/reg no/station of applicant; (b) name/ age of person in lawful custody; (c) whether person is lawfully arrested for an indictable offence/refused bail/had bail revoked; (d) type of indictable offence to which application relates; (e) whether application is for a medical or dental procedure; (f) information or evidence about the nature/seriousness of offence; (g) information/evidence that may support a reasonable belief that performing the procedure may provide evidence of the offence.	Rec. largely adopted — applies to indictable offences, but magistrate is not required by legislation to consider all recommended factors (suspects age, health or degree of alleged involvement in offence, or the intrusive nature of the proceeding).
Power to Transport a Person in Custody to Have a Procedure Undertaken (Rec. 26.5) Section 259 of the <i>Criminal Code</i> should include a power to take the person in lawful custody a reasonable distance at the request of the medical practitioner or dentist to have a procedure undertaken.	s. 63(5) The magistrate may order that the person be taken to a stated appropriate place for the performance of the procedure.	Rec. adopted.

Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
Suspect's Right to Be Heard in an Application Under Section 259 of the Criminal Code (Rec. 26.6) Section 259 of the <i>Criminal Code</i> should be amended to provide specifically that the person receive prior notice of an application under that section and be allowed the right to be heard, to call evidence and to be legally represented (unless the magistrate orders otherwise).	Not specifically stated that person has a right to be heard, legally represented etc when police applying to magistrate for order to conduct examination.	Rec. not adopted.
Searches Under Section 17 of the Drugs Misuse Act (Rec. 26.7) The safeguards applying to the conduct of intrusive procedures under section 259 of the <i>Criminal Code</i> should also apply to intrusive procedures conducted under section 17 of the <i>Drugs Misuse Act</i>.	see ss. 62—64 above. The Act does not differentiate between types of offences for examinations — only 'indictable offence'. The QPS is currently reviewing other legislation with a view to repeal relevant provisions.	Rec. adopted.
Power to Search a Person in Custody (Rec. 26.8) Section 259(1) of the <i>Criminal Code</i> should be amended to authorise the police to search a person in custody upon a charge of committing an offence and seize items with which the person may seek to harm himself or herself or other persons.	s. 56(1) This section applies if a person— (a) is lawfully arrested, refused bail, or is in custody because bail has been revoked; or (b) is in custody under a sentence of imprisonment or, for a child, a detention order; or (c) is otherwise lawfully detained under another Act. (2) A p.o. may search and re-search a person to whom this section applies. (3) A p.o. may seize from the person anything found... that the p.o. reasonably suspects may provide evidence of the commission of an offence. (4) Also, the p.o. may take and retain, while the person is in custody, anything that— (a) may endanger anyone's safety; or (b) may be used for an escape; or (c) the p.o. reasonably considers should be kept in safe custody while the person is in custody.	Rec. largely adopted — grounds expanded. *QPS is currently reviewing police powers in other legislation.

Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
FINGERPRINTS AND OTHER PARTICULARS Power to Take Fingerprints (Rec. 27.1) There should be a single statutory power to fingerprint a person for the purposes of: - maintaining complete criminal records or - the investigation of the offence for which the person was arrested, summonsed or issued with a Field Court Attendance Notice (FCAN). This power should be exercisable only: - following the arrest of the person or the issue of a summons or an FCAN to the person - upon the order of a court at the time of the person's appearance before the court in answer to a charge, summons or FCAN, or - upon the order of the court after the person has been found guilty of an offence by a court. The power should be available in respect of the following offences: - indictable offences (contained in the <i>Criminal Code</i> or other statutes) - offences contained in the proposed Summary Offences Act which carry a prescribed penalty which includes imprisonment - offences contained in the <i>Regulatory Offences Act</i> which, if repeated, may result in the person being charged under the <i>Criminal Code</i> and - offences in other statutes which, upon repeat conviction, require the imposition of a mandatory term of imprisonment.	s. 57(1) If a p.o. starts a proceeding against a person for a "relevant offence" (an offence for which the max. penalty is at least 1 yr's imprisonment; or an offence against this Act or the <i>Regulatory Offences Act 1985</i>, the <i>Vagrants, Gaming and Other Offences Act 1931</i>, or the <i>Weapons Act 1990</i>)— (a) if the person is in custody...any p.o. may, as soon as is reasonably practicable, take or photograph...identifying particulars; or (b) if a p.o. decides to start the proceeding by notice to appear or complaint and summons— the p.o. may— (i) before or when serving the notice...detain the person for the time reasonably necessary to take or photograph...; or (ii) by written notice, require the person to attend at a stated police station within 48 hours ...to take or photograph...; or (c) if the person is to be released after arrest for the offence— a p.o. may detain the person for the time reasonably necessary to take or photograph... (2) A notice under (1)(b)(ii) must be given to the person with the notice to appear or complaints and summons and may be proved on oath or by deposition under the <i>Justices Act 1886</i>, section 56(3) ... (5) If, in a proceeding for a charge of a relevant offence against a person— (a) a p.o. applies to a magistrate for an order for taking identifying particulars of the person; and (b) the magistrate is satisfied it is necessary to take or photograph the person's identifying particulars to assist in— (i) identifying the person...;(ii) confirming the person's identity; (iii) finding out the person's criminal history; or (iv) keeping criminal records; the magistrate may order that the particulars be taken and the person charged be held in custody for up to 1 hour to enable them to be taken...	Rec. largely adopted — some changes to types of offences where power is available, but circumstances are as recommended.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Police Officers Authorised to Take Fingerprints (Rec. 27.2) All police officers should have the power to take fingerprints within the limits defined by the Commission's recommendations.	see s. 57(1) above (any p.o. can take fingerprints).	Rec. adopted.
Destruction of Fingerprints (Rec. 27.3) The police should be required to destroy the fingerprint records of a person automatically upon the expiration of a specified period after the person is not found guilty of the charge or if the person has not been charged or the charge is not proceeded with. Automatic destruction should apply to all hard copy records of fingerprints and entries on any electronic databases.	s. 58 If a person is found not guilty of a relevant offence or is not further proceeded against, any identifying particulars taken in relation to the offence must be destroyed within a reasonable time in the presence of a justice, unless—(a) the person has been proceeded against on a charge of another relevant offence that has not been decided; (b) the person has been found guilty of another relevant offence; (c) the identifying particulars are required as evidence in relation to another relevant offence alleged to have been committed...; or (d) the person is not proceeded against because he or she has been found incapable of standing trial because of mental illness.	Rec. largely adopted — although exemptions are broader and no specific date given, only 'within a reasonable time'. Provisions also apply to any other identifying particulars.
Independent Oversight of Destruction (Rec. 27.4) An independent monitoring body should be responsible for ensuring compliance with the destruction regime.	s. 58 above — must be destroyed in the presence of a justice.	Rec. adopted.

Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
Fingerprinting of Juveniles (Rec. 27.5) There should be no power to fingerprint juveniles below the age of 10 years. In the case of juveniles aged 10 to 15 years, the consent of the juvenile and the parent or guardian should be required before fingerprinting can take place. Where consent is refused, a Children's Court order should be obtained. Further, an independent person should be present when the juvenile is printed. Where a court order is required, the court should take account of the following factors in deciding whether to order fingerprinting: — the seriousness of the circumstances surrounding the commission of the offence — the alleged degree of participation by the child in the commission of the offence — the age of the child. In the case of juveniles aged 15 years and over, the adult provisions should apply, but an independent person should be required to be present when the prints are taken.	s. 57 which gives power to fingerprint persons in custody for a 'relevant offence' (i.e. basically an offence punishable by one year's imprisonment, as well as other regulatory offences etc) applies to juveniles. No requirement for juvenile's consent or presence of independent person. No distinction for children under 10 years. For juveniles who have not been arrested, s. 57(8) provides that sections 10, 10A and 10B of the <i>Juvenile Justice Act 1992</i> continue to apply (i.e. police to apply for a court order for taking of identifying particulars, another person to be present when particulars are taken, and destruction of particulars).	Rec. not adopted — no distinction between ages of children and no restriction on fingerprinting children under 10 years; no requirement for juvenile aged 10-15 to consent where fingerprints are not taken under a court order. Provisions of <i>Juvenile Justice Act 1992</i> meet some of CJC's recommendations.
Destruction of Juvenile's Fingerprint Records (Rec. 27.6) The fingerprint records of a juvenile should be destroyed automatically if the juvenile is not found guilty or the police do not proceed with the charge. Where: • a juvenile has been found guilty of one or more offences but does not have a conviction recorded against him or her, and • the juvenile has not been found guilty of an offence as an adult the fingerprint records of the juvenile should be destroyed upon the expiration of five years from the date of sentence or from the expiration of the sentence for the last offence of which the juvenile was found guilty.	see s. 58 above — general provisions for destruction of particulars apply where juvenile has been arrested. Under s. 10B of the <i>Juvenile Justice Act 1992</i>, identifying particulars taken by virtue of a court order must be destroyed within specified times where no sentence order has been made. No provision for automatic destruction after 5 years where a conviction has not been recorded and person has not been found guilty of an offence as an adult.	Rec. partly adopted — Act provides for destruction of fingerprints where person is found not guilty or not proceeded against, subject to exceptions. No provision for automatic destruction after 5 years.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
The Power to Take Other Particulars (Rec. 27.7) The single statutory power to take fingerprints and the associated destruction requirements should also apply to the taking of photographs. The proposed Custody Officer, or Officer-in-Charge of the station, should be authorised to order the taking of footprints or toeprints, voiceprints or handwriting samples, where: • a person has been arrested or issued with an FCAN or summons for an offence • a print or sample is necessary to assist in the investigation of the offence.	“identifying particulars” defined as “(a) any of the following-- (i) palm prints; (ii) fingerprints; (iii) handwriting; (iv) voice prints; and (b) includes photographs of a person’s identifying features” .	Rec. adopted.
Use of Reasonable Force (Rec. 27.8) Except in the case of voiceprints and handwriting samples, police should be able to exercise such force as is reasonably necessary to obtain the particulars required.	s. 57(7) A p.o. may use reasonable force other than for obtaining identifying particulars that are handwriting or voice prints.	Rec. adopted.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
IDENTIFICATION BY EYEWITNESS		
Suspect's Participation in an Identification Parade (Rec. 28.1) A suspect should not be compelled to participate in an identification parade.	s. 59 [Identification of suspects] (3) The p.o. may ask a person to take part in an identification parade. (4) The person may refuse to take part in the parade. RC: cl. 91(1) A p.o. must, if reasonably practicable, electronically record asking a person to take part in an identification parade and the person's response. (2) If not practicable, the p.o. must make a written record of the question and response. (3) p.o. must make the record as if s. 104(6)-(10) [recording of questioning etc] applied. (4) If reasonably practicable, the p.o. must cause the behaviour and position of each person in the parade to be photographed or otherwise electronically recorded.	Rec. adopted.
Participation of Members of the Public in an Identification Parade (Rec. 28.2) Participation in an identification parade should continue to be on a voluntary basis only. To encourage participation, a scheme should be developed whereby participants in an identification parade are paid a suitable fee for their assistance.	see s. 59 above.	Rec. adopted — participation in a parade voluntary but no provision to develop a scheme to pay people for their assistance.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Requirement to Conduct an Identification Parade (Rec. 28.3) The police should be required to conduct an identification parade provided that it is practicable to do so, where identification is in issue and the suspect is prepared to co-operate. Where it is not practicable to hold an identification parade, the attempts made and the reasons why it was not practical should be recorded in the Custody Index.	s. 59(1) It is lawful for a p.o. to use 1 or more of the following procedures to help gather evidence of the identity of a person suspected of having committed an offence— (a) an identification parade... RC: Operational guideline 39 states that if it is 'not practicable' to conduct an identification parade, the p.o. 'should consider' other identification procedures. OPM: Policy 2.11.4 states that police 'should use identification parades to identify suspects where there is a witness to an offence'. Case law (e.g. the High Court in <i>Alexander v. R</i> (1981) 145 CLR 395) confirms that parades are the preferred means of identification of an offender.	Rec. partly adopted — police are empowered, but not required, to use identification parades by legislation, but OPM policy requires this. No statutory requirement to record why identification parades are not held.
Use of Methods Other than Identification Parades (Rec. 28.4) Where it is impractical to conduct an identification parade, the police should conduct a group identification or photographic identification.	s. 59(1) above and RC Operational guideline 39.1 above.	Rec. partly adopted — police officer may use any identification procedure.
Video-taping of Identification Procedures (Rec. 28.5) Police should be required to video-tape any identification procedure involving an eyewitness.	RC: cl. 91(4) If reasonably practicable, the p.o. must cause the behaviour and position of each person in the identification parade to be photographed or otherwise electronically recorded.	Rec. partly adopted — police officer must record behaviour and position of each person, but not necessarily the conduct of the procedure before the eyewitness.
Legislation Governing Identification Procedures (Rec. 28.6) The regulation of identification procedures should be the subject of legislation.	s. 59 of Act and RC cls 88-98.	Rec. adopted.

Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
CRIME SCENE PRESERVATION		
Preserving a Crime Scene in a Public Place (Rec. 29.1) Police should be granted a power to define and mark out a crime scene on public property and to give such reasonable directions as are necessary to prevent the loss, damage, destruction or concealment of evidence or the introduction of new material to the scene. Where a person refuses to comply with a reasonable direction, after having been warned by police that such action could result in arrest, the police should be empowered to arrest and charge that person with obstructing a police officer in the performance of the officer's duties.	s. 17(1) If a p.o. enters a place that may be a crime scene, or is lawfully at a place, and decides the place is a crime scene, the p.o. may establish a crime scene and exercise the powers in section 20. (2) As soon as reasonably practicable after the responsible officer establishes the crime scene, a p.o. must apply under section 18 for a crime scene warrant... s. 20 sets out powers at crime scene, which include: to enter the crime scene, give directions etc and to remove a person from a crime scene when the person fails to comply with directions to leave. ['crime scene' is broadly defined to include both 'primary' and 'secondary' crime scenes (see over).] s. 120 — offence of assaulting or obstructing police. RC: cl. 17-25 relate to crime scenes cl. 21(1) This section applies if it is necessary for a p.o. at a crime scene to give 1 of the following directions to a person and the person contravenes the direction— (a) a direction to leave the crime scene or remove a vehicle from the crime scene; (b) a direction not to enter the crime scene; (c) a direction to maintain a continuous supply of electricity at the place. (2) The p.o. must, if reasonably practicable— (a) warn the person it is an offence to contravene the direction and the person may be arrested for contravening it; and (b) give the person a reasonable opportunity to comply with the direction.	Rec. adopted.

Recommendation	<i>Police Powers and Responsibilities Act 1997/Regulation 1998</i>	CJC recommendation status
Entry to Private Property to Preserve a Crime Scene (Rec. 29.2) Police should be empowered to enter private property without a warrant to preserve the scene of a crime where they have reasonable grounds to suspect that: • an offence carrying a maximum of seven years imprisonment or more has been committed on the property, and • if they do not enter immediately, material evidence of the offence may be lost, concealed, damaged or destroyed, or new material introduced to the crime scene.	“crime scene” is defined as “a primary and secondary crime scene” “primary crime scene”: a place— (a) ‘where a 7 year imprisonment offence or an offence involving deprivation of liberty has happened; and (b) it is necessary to protect for the time reasonably necessary to search for and gather evidence of the commission of the offence’ “secondary crime scene”: a place— (a) ‘where there may be evidence, of a significant probative value, of the commission of a serious violent offence that happened somewhere else; and (b) it is necessary to protect for the time reasonably necessary to search for and gather evidence of the commission of the offence’. s. 17: a p.o. can enter a place that may be a ‘crime scene’.	Rec. largely adopted — definition of crime scene is broader than recommended.
Preserving a Crime Scene on Private Property (Rec. 29.3) Police should be empowered to give reasonable directions as are necessary to preserve the scene of a crime on private property. The lawful occupier or his or her invitees should not be excluded unless they refuse to comply with those directions Where a person refuses to comply with a reasonable direction after having been warned by police that such action could result in arrest, the police should be empowered to arrest and charge that person with obstructing a police officer in the performance of the officer’s duty.	see s. 20, s. 120 and cl. 21 (RC) above. No provisions for the lawful occupier/invitees to be allowed to remain unless they refuse to comply with directions. see s. 120 above.	Rec. largely adopted, except re right of occupier to remain.

Recommendation	Police Powers and Responsibilities Act 1997/Regulation 1998	CJC recommendation status
ENSURING COMPLIANCE WITH THE COMMISSION'S PROPOSED SCHEME Exclusion of Unlawfully or Improperly Obtained Evidence (Rec. 30.1) A legislative provision should be introduced in Queensland which provides: Evidence that was obtained: (a) improperly or in contravention of the law; or (b) in consequence of an impropriety or of a contravention of the law is not to be admitted in a criminal proceeding unless the desirability of admitting the evidence outweighs the undesirability of admitting evidence that has been obtained in the way in which the evidence was obtained. Without limiting the matters that the court may consider, in determining whether the desirability of admitting the evidence outweighs the undesirability of admitting evidence that has been obtained in this way, the following matters are to be taken into account: • the probative value of the evidence • the importance of the evidence in the proceeding • the nature of the relevant offence, cause of action or defence and the nature of the subject-matter of the proceeding • the gravity of the impropriety or contravention • whether the impropriety or contravention was deliberate or reckless • whether the impropriety or contravention was contrary to or inconsistent with a right of a person recognised by the International Covenant on Civil and Political Rights • whether any other proceeding (whether or not in a court) has been or is likely to be taken in relation to the impropriety or contravention • the difficulty (if any) of obtaining evidence without impropriety or contravention of an Australian law.	s. 7 This Act does not affect the common law under which a court in a criminal proceeding may exclude evidence in the exercise of discretion. s. 104(1) — This section applies to the questioning of a person in custody. (2) The questioning must, if practicable, be electronically recorded ... (13) If a court considers this section has not been complied with or there is not enough evidence of compliance, the court may, despite the non-compliance, admit evidence to which this section applies if, having regard to the nature of and the reasons for the noncompliance and any other relevant matters, the court is satisfied, in the special circumstances of the case, admission of the evidence would be in the interests of justice.	Rec. partly adopted — legislation generally consistent with recommendation but not as extensive or as explicit as recommended by CJC.

