QUEENSLAND POLICE SERVICE

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Hon Dean Wells MP
Acting Chair
Legal Affairs, Police, Corrective Services and Emergency Services Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Wells

I refer to your correspondence dated 12 October 2011 requesting further information in response to issues raised in the Legal Affairs, Police, Corrective Services and Emergency Services Committee to assist with the examination of the Police Powers and Responsibilities and Other Legislation Amendment Bill 2011 (The Bill).

Please find attached information to assist the Committee in its final deliberations.

Attachment 1 is specific to your correspondence of 12 October 2011. Attachment 2 addresses further issues identified by the Committee on 13 October 2011.

Please do not hesitate to contact Senior Sergeant Robert Utz of the Legislation Development Unit on 3015 5983 or email Utz.RobertD@police.qld.gov.au if you have any further queries.

I trust this information is of assistance.

Yours sincerely

R ATKINSON
COMMISSIONER

Attachment 1 - Response to the Information Request of the Legal Affairs, Police, Corrective Services and Emergency Services Committee

Police Powers and Responsibilities and Other Legislation Amendment Bill 2011

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1. ***The statistics and anecdotal evidence of incidents where items, which could have been used as weapons or to effect an escape, have been found left in a vehicle or on a person following a search (e.g. at the watchhouse) of a person detained under ss. 50-52 of the Police Powers and Responsibilities Act 2000 (PPRA).***

- The Queensland Police Service (QPS) does not keep statistics concerning the types of items or numbers of occasions that items, which may have been used as weapons or to effect escape, have been left in police vehicles.
- Operational police have provided anecdotal evidence that drugs and items such as screwdrivers were the most common items located in a police vehicle at the conclusion of a shift;
- Further, watchhouse officers indicate that batteries, lighters, knives, syringes and razor blades are often located on persons presented at the watchhouse. Many of these items are carried on the person or in their bags.

2. ***Advice on the alternatives to the pat down powers considered by the PPRA Review Committee.***

- Alternatives to the pat down powers for minors were not formally recorded in the PPRA Committee minutes. However, alternatives that were put forward included:
  - Do nothing.
  - Search power without the power to charge a minor for possession of any liquor found.
  - Extend the current search powers under s. 603 (Power to seize potentially harmful things) of the PPRA (Attachment 1.1).
  - Introduce frisk searches in a manner similar to Division 5 Powers for special event sites (Attachment 1.2).

3. ***The excerpts from the operational procedures manual the Deputy Commissioner (Specialist Operations) referred to during the hearing regrading homeless persons, children and people for whom special considerations apply.***

- Section 6.3.11 'Homeless persons' of the Operational Procedures Manual (OPM) is located in Chapter 6 'Special Needs Groups'. It provides guidance to operational police in relation to general policy, cross cultural issues, individuals with specific intellectual, physical or health needs and mentally ill persons.

- Although s. 6.3.11 of the OPM deals specifically with people who are homeless, other sections of this Chapter could be referred to if the homeless person displayed other issues such as mental illness, alcohol dependency or was a child.
- In relation to children, Chapter 6 (Attachment 1.4) orders an officer to consider a child as having a special need. Chapter 5 'Children' (Attachment 1.5) of the OPM provides specific policy in relation to children. The QPS subscribes to the Charter of Youth Justice Principles set out in the *Youth Justice Act 1992* (YJA).

6.3.11 Homeless persons

PROCEDURE

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

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

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

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

(iv) if the person is a child consider s.5.4 : 'Children - General Information' of this Manual; and

(v) ensure the homeless or destitute person is not recorded as a missing person on the Service computer system. If the person is recorded as a missing person, see s.12.6.1: 'Responsibility of officers who locate a missing person' of this Manual.

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

4. *What specific training will be provided to front line officers in the use of the pat down powers (in respect to both clause 6 and clause 8)?*

- The development and implementation of all learning products in relation to new and amended legislation for the QPS is undertaken by the Education and Training Support Program (ETSP).

- While ETSP are unable to provide a definitive answer as to which learning products will be used to train front line officers in the use of pat-down search powers, they have advised that a range of learning products are available including: train the trainer for face to face training, online learning products, printed materials and audio and video products.
- To support any new or amended legislation, the QPS develops specific operational policies which are reflected in any learning product developed by ETSP. For example, a policy for the pat-down search provisions for minors may require a police officer to consider the effectiveness of tip out powers prior to any other action, e.g. YJA caution or Liquor Infringement Notice.
- Other options are available to convey changes in policy and operating procedures. This could include, a Commissioner's Circular (pre-curser to Operational Procedures Manual), inclusion of the policy in the First Response Handbook, electronic dissemination via the intranet or a state wide email.
- The QPS currently provides ongoing mandatory training to all police officers from Recruit to Inspector in many areas of operational policing. In this regard, the Operational Skills and Tactics (OST) Program designs and develops operational skills training programs that will equip officers with the necessary skills, knowledge, competence and ability to deal with policing incidents safely, efficiently and effectively. This includes researching, designing and developing 'Good Practice Guides' to cover all areas of operational skills and tactics.
- Officers in their first year as police officers are always partnered with a senior officer who monitors their performance.

5. ***What monitoring and controls will be applied to a controlled activity under clause 101?***

- Chapter 2.9 of the QPS OPM currently provides the policy and procedures to be complied with by police when initiating a controlled activity (Attachment 1.3).
- Controlled activities are legislatively required to be authorised by an officer at or above the rank of Inspector (Commissioned Officer).
- In assessing an application, the Commissioned Officer is to consider risk of harm to any person and whether the matter may be dealt with by a controlled operation.
- Applying for a controlled activity is similar to applying for a search warrant. The policy requires the investigating or applicant officer to provide details about the involvement of the target person in the offence

under investigation. The policy also requires the inclusion of details about the reliability of the information and an intelligence assessment.

- Further controls are applied to controlled activities by:
  - Requiring all officers who undertake covert duties in a controlled activity to have successfully completed the QPS 'Controlled Activity Course' provided by the QPS Covert and Surveillance Unit. While it is possible that an applicant police officer may not have completed this training, the police officer who undertakes a role in the controlled activity must have completed this training.
  - Ensuring staff in the State Crime Operations Command have undertaken psychometric testing prior to performing controlled activities.
  - Rotating staff attached to various groups and units with State Crime Operations Command on a regular basis (rotation every 12 months for plain clothes officers and every three years for detectives).

6. ***The technical issues raised in the submission from the Queensland Law Society and the Crime and Misconduct Commission.***

<u>Queensland Law Society</u>

1. Referral of suspects and defendants to police preferred solicitors - The Queensland Law Society has indicated that the practice of police referring a defendant to a particular solicitor, at whatever stage of the proceeding, creates a real or perceived conflict of interest.

- During the last three years, there has only been 1 complaint in relation to police officers referring defendants or suspects to particular lawyers. This complaint was made within the last month.
- The QPS is working with the Queensland Law Society (QLS) in the development of a regional lawyer list. Based on current progress, it is envisaged that the list will be available and published on the QPS intranet site in early 2012.
- Under the current legislation and the proposed Bill, police officers are required to make available to a relevant person, who wants to speak with a lawyer, a regional lawyer list, if available or a telephone directory for the region.

2. Clause 6 – Insertion of a new s 52A – Power to conduct a Pat-Down Search for ss 50-52. The QLS contends that the proposed

amendment represent a new intrusion into the civil liberties of law abiding citizens.

- The power of search contemplated by clause 6 is only available in circumstances where the detention of the person is reasonably necessary to:
  - Prevent a breach of the peace from happening or continuing;
  - Prevent the commission, continuation or repetition of an offence; or
  - To suppress a riot.
- In such circumstances, the search power would only arise if it was reasonably necessary to detain a person to prevent an offence, a breach of the peace or to suppress a riot.
- The QLS raises concerns that this power would allow a search of all passengers and luggage in a bus, train or aeroplane if the police detained and searched the vehicle because of the actions of one suspicious passenger.
- The QPS is of the view that it would not be reasonably necessary to detain all the other passengers on a bus, train or aeroplane to address the behaviour of an individual, and accordingly no power of search would extend to the remaining passengers in such circumstances.
- The QLS also raises concerns over the potential use of the proposed search power in circumstances where a crowd of demonstrators were detained to prevent a breach of the peace.
- It is worth noting that the conduct necessary to substantiate a breach of the peace would not generally arise in the course of normal protest activity. A breach of the peace requires something more than a disturbance and would generally require the presence of actual or threatened harm to a person or property.[1]
- In any event, the detention of each protester would need to be justified on the basis that it is reasonably necessary to prevent a breach of the peace from happening or continuing.

4. Clause 13 – Amendment of s.121 (Application of proceeds of sale) - The QLS has raised the concern that Clause 13 of the Bill, which amends section 121 of the Act, could lead to injustice when the legal owner and registered keeper of the vehicle are not the same person.

[1] *R v Howell* [1982] 1 QB 416 at 427.

In raising this matter, the QLS has identified that 'owner', for the purposes of this provision, is defined to include the registered keeper.

- For the purposes of Chapter 4 of the PPRA, the owner of a vehicle is defined as the following:
  - a person in whose name the vehicle is registered under the *Transport Operations (Road Use Management) Act 1995*; and
  - a holder of a security interest registered for the vehicle under the *Motor Vehicles and Boats Securities Act 1986*.
- The *Transport Operations (Road Use Management Act 1995*, which is referenced in the PPRA, describes an owner of the vehicle as the following:
  - Each person who is the owner, joint owner or part owner of the vehicle; or
  - A person who has the use or control of the vehicle under a credit agreement, hiring agreement, hire-purchase agreement, or leasing arrangement; or
  - The person in whose name the vehicle is registered under a transport Act or a corresponding law.
- Based on the above definitions, the definition of 'owner', for the purposes of this provision, is not concerned with the identity of the 'registered keeper' of the vehicle. It is evident that in most circumstances, the identity of the owner will be the individual in whose name the vehicle is registered.
- The Bill addresses those circumstances where the vehicle the subject of the impounding or forfeiture application is not owned by the individual who committed the offence(s) which led to the impoundment. In those circumstances, the owner of the vehicle may raise an application of hardship under s 102 or lack of knowledge under s107 of the PPRA. If these are not accepted, the registered owner is taken to be the owner of the vehicle.
- Accordingly, the QPS contends that the provision, as drafted, includes appropriate safeguards to avoid any potential injustice.

5. Clauses 20 to 26 – Use of Civilian Participants in Controlled Activities. The QLS has submitted that Clause 20 creates confusion by providing a distinction between aiding, abetting and conspiring but not extending the definition of 'ancillary conduct' to include

conduct that amounts to actually doing an act or making an omission that constitutes a controlled activity offence.

- The QPS has considered this submission by the QLS. The QPS supports that the clause be amended to take into consideration the effects of the supply dangerous drug provisions of the *Drugs Misuse Act 1986.*

8. Clauses 38 and 39 – Amendment of s.418 – Insertion of new ss.418A and 418B. The QLS welcomes the amendment to the heading of section 418 of the PPRA. However, the QLS has submitted that the provision could be further enhanced by providing the following:

a) the police officer must delay the questioning for a reasonable time to allow the person to telephone or speak to a person mentioned in subsection (1)(a); and

b) the police officer must delay the questioning for a reasonable time to allow the person to telephone or speak to a person mentioned in subsection (1)(b).

- The QPS is of the view that s. 418 already provides sufficient safeguards that reflect the proposed amendments of the QLS.
- For example, s. 418(2) provides that the police officer must delay the questioning for a reasonable time to allow the person to telephone or speak to a person mentioned in s. 418(1). The persons referred to in s. 418(1) include a friend or relative or lawyer.
- Accordingly, the QPS contends that an amendment to s. 418 to reflect this QLS proposal is not warranted as this particular safeguard is already in place.

9. Clause 45 – Amendment s. 435 (Right to be Electronically Recorded). The QLS contends that there should be a legislative obligation to record questioning conducted under the powers contained in clauses 42 and 44.

- These powers are aimed solely at establishing whether safeguards apply to a particular person and the asking of questions relating to a person's involvement in an offence is expressly precluded.
- Given the extremely narrow nature of the questioning permitted under these clauses, the QPS believes that there should be no legislative requirement to electronically record such questioning.

10. Clause 47 – Identification Procedures. The QLS is disappointed that the QPS continues to conduct almost every identification procedure by photoboard.

- While QPS policy recognises identification line ups as the best practice mechanism for suspect identification, it is necessary that investigators retain the discretion to utilise other identification procedures including photo board identification in circumstances where it is not practicable to undertake a line up. As much was acknowledged by Thomas J in *R v Murphy* [1995] QCA 568:

  'That is not to imply that a line-up will necessarily always be the best option. Factors such as the stage of the enquiry, urgency, public safety, the area, the degree of suspicion, the number of suspects, and many others may play a part.'

- It is worth noting that the case of *Carkeet* [2008] QCA 143 identified by the QLS in support of their contention that the use of photo board evidence has the capacity to result in injustice is a case in which the applicant pleaded guilty. The applicant's reasons for pleading guilty are reported in that judgement:

  'The applicant's explanation for his having pleaded guilty is that he was advised that it would not affect the sentence he would receive in any event for the other offence of which he was guilty.'

11. Clause 62 – Child DNA Sample Order The QLS has stated that the proposed new section 488L of the PPRA is unnecessary, as such conduct would be obstruction in any case for the purposes of the offence in section 790. The QLS notes that the exception is probably intended to make an obstructive child immune from prosecution under section 790 of the PPRA, however the drafting does not achieve that, as section 488L(1) is not an element of the offence. Accordingly, it is the view of the QLS that an obstructive child would still commit an offence under s. 790 of the PPRA.

- The QPS contends that the rationale behind the proposed insertion of s. 488L(2) of the PPRA is to ensure that a child who is the subject of a DNA sample order does not commit an offence under s. 790 of the PPRA by resisting or preventing the officer from undertaking his or her duties.

- The QPS is committed to resolving any ambiguities that are identified in this Bill. Accordingly, the QPS undertakes to liaise with the Office of Queensland Parliamentary Counsel with a view to removing any ambiguities in the interpretation of this provision.

The QLS has also raised the view that the safeguards provided in the proposed regime are vague and ineffective. For example, the proposed section 488I suggests that entry to premises could be forced, even causing damage, in order to find the child.

- The QPS believes that adequate safeguards already exist for when an officer uses force to enter a place under s. 488I. Section 635 of the PPRA will apply when an officer exercises this power.
- Section 635 of the PPRA provides that before the police officer uses force that may cause damage to a place to gain entry, the police officer must, if reasonably practicable:
  - Ask the occupier of the place to allow the police officer to enter the place; and
  - Give the occupier a reasonable opportunity to allow the entry.
- This safeguard is in addition to the procedures outlined in proposed s. 448J of the PPRA, which provides that before entering the place, the police officer must do, or make a reasonable attempt to do, the following things:
  - Identify himself or herself to a person present at the place who is an occupier of the place;
  - Give the person a copy of the DNA sample order so far as it relates to the entry and searching of the place;
  - Tell the person the officer is permitted under the order to enter and search the place to find the child;
  - Give the person an opportunity to allow the officer immediate entry to the place without using force; and
  - Tell the person the child is entitled to be accompanied by a support person.
- It is the view of the QPS that this section is clearly drafted to support minimal intrusion on the victim child. This section is aimed at getting approval to take a DNA sample from a child when the parents are unwilling to give that consent.
- The type of offences that the application to take a DNA sample are limited to, are in the category of sexual offences. The offender could be a member of the victim's family. It is clear from the legislation that there is no desire or intention to force a child to provide a DNA sample and that the child, in refusing to comply with the order, will not commit an offence.

The QLS has also stated that the safeguard in section 448J(3) of the Bill is likely to offer minimal practical value.

- The QPS believes that the circumstances where an officer may have a reasonable belief, that the immediate entry to a place is required to ensure the effective exercise of powers, will in practice be very limited.
- For example, the enforcement of a DNA sampling order differs from the use of similar powers throughout the PPRA as the 'disposal' of evidence is not necessarily an issue. As an example, the aim of the safeguard in the proposed s.448J(3) is to address those circumstances where an occupier of the house may attempt to escape with the subject child through an alternate exit which is not accessible by the police officers.

12. Clause 63 – Amendment of s.489 (Power to Analyse etc. (DNA samples). The QLS opposes this proposal, in the absence of any statutory safeguards to be enacted surrounding it.

- The QPS has previously responded to this issue by stating in a letter to the Committee:

  Why is the power to use of private laboratories require; what is the problem being addressed?

  - *The QPS asserts that Queensland Health (QH) will always be the preferred provider as the QPS is satisfied with the current QH service and the expertise of QH staff. The current turnaround times are 4-5 week analysis, and QPS and QH are working toward 2 weeks. These times currently lead the nation in terms of analytical performance in DNA testing. Therefore, there is no incentive for QPS to replace QH as the preferred and primary service provider.*
  - *However, the QH business continuity plan does not provide a 100 percent guarantee to meet the volume of analysis required by the QPS should QH not be able to provide the current analysis service. This was evident in 2008/09 when QH experienced technical difficulties which caused the robotics to be offline for approximately 15 months. While this was not the fault of QH, the QPS needs to ensure that the approximately 20,000 DNA samples taken each year will be analysed with the DNA profile placed on the National Criminal Investigation DNA Database (NCIDD) to allow DNA comparisons to be*

undertaken. When there is a significant delay in the analysis and uploading of DNA profiles, police investigation and the apprehension of offenders is stalled.

Do other jurisdictions outsource the analysis of DNA samples and if so, have any issues of actual or perceived bias arisen?

- New South Wales engages external laboratories to undertake crime scene analysis.
- Victoria, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory do not impose any legal restrictions on the engagement of external providers to undertake the analysis of DNA samples or crime scene samples.
- The QPS is not aware of any issues regarding bias in the analysis of DNA samples, actual or perceived.

Has there been any judicial comment, of which the Service is aware, in other jurisdictions that outsource DNA analysis, as to the quality of that analysis?

- The QPS can advise the Committee of information provided by the New South Wales Police Forensic Services Group.
- The Group outsourced about 18,000 samples for private analysis over a three year period. The non-government laboratory used met all of their quality requirements including turnaround times.
- There has not been any judicial criticism of the analysis work undertaken by the non-government laboratory.

How many Queensland laboratories have been identified as able to undertake the analysis?

- There are currently no other Queensland laboratories that have been identified as able to undertake the analysis of DNA samples.

What are the proposed safeguards to ensure continued high standards of DNA analysis?

- The process for taking a DNA sample is such that utilising a non-government provider will not cause a privacy breach. The samples will only be labelled with a unique barcode and the testing laboratory will not be provided any of the personal details of the

person providing the sample. The testing laboratory will not have access to NCIDD. They will simply provide the QPS with the DNA profile that was obtained for that particular barcode.

- Any service provider used must hold National Association of Testing Authorities, Australia (NATA) accreditation which is designed to safeguard standards. The QH Forensic Science Services is NATA accredited and any laboratory will of the same standard as any proposed laboratory that will be used to analyse DNA samples. Therefore, the NATA accredited non-government laboratory will meet the same requirements and include all of the measures in place at Queensland Health Forensic and Scientific Services. Laboratories simply will not attain NATA accreditation unless strict nationally approved standards are met.

14. Clause 78 – Amendment of s.538 Disease test order -The QLS is troubled by the proposal in (1A) according to police officers and public officials a right to an Order whilst denying it to other similarly injured citizens.

- Anecdotally, needle stick injuries involving police officers take place while a person is been searched. Because the offender is present, samples for a disease test order may be readily obtained.
- In contrast, needle stick injuries involving citizens occur in different circumstances e.g. a child playing at a playground receiving a needle stick injury. In those instances, it is impossible to obtain a disease test order as the offender's identity is unknown.
- However, if a person is assaulted, a police officer may use other provisions of Chapter 18 to obtain a disease test order.

15. Clause 79 – Amendment of s.540 (Applications for order for blood and urine testing of person). The QLS opposes the proposal to remove the Magistrate's discretion to require an application to be supported by evidence on oath, affirmation or statutory declaration.

- The purpose of this clause was to clarify that an application does not need to be witnessed by a Justice of the Peace or Commissioner for Declarations prior to the magistrate considering the application. This amendment will ensure that these applications are not delayed through difficulties in locating a Justice of the Peace or Commissioner of Declarations to witness signatures.
- Notwithstanding this minor amendment, a magistrate still retains the ability to refuse to consider the application unless the

information the magistrate requires is provided in the way the magistrate requires.

16. Clause 81-82 – Anonymous complaints about noise. The QLS raises concerns about the amendments allowing a complaint about noise to be made anonymously. They do so on the basis that such an amendment would make it impossible for a police officer to satisfy the precondition contained in s 578(1)(c).

- The position of the QPS is that the requirement to be reasonably satisfied that the noise complained of is clearly audible from the complainant's address could still be met notwithstanding the fact that a complaint is made anonymously.
- For example, an anonymous complainant could provide sufficient details of their location to enable a police officer to attend near their address without revealing their identity.

The QLS points out that the structure of the current scheme is designed to ensure that a person is annoyed by the noise and that noise complained of is excessive in the circumstances.

- There is no reason why that purpose would be frustrated by the inclusion of the capacity for an anonymous complaint to be made. The amended provision would still require a police officer to have sufficient information to attend near the complainant's premises and to make a determination that the noise is objectively excessive in the circumstances

17. Clause 86 – Amendment of s.609 (Entry of place to prevent offence, injury or domestic violence). This clause removes an occupier's entitlement to accompany a police officer conducting a search of the place where the officer reasonably suspects that allowing the occupier to accompany the police officer will result in injury. The QLS contends that practical circumstances dictate that a police officer would form the reasonable suspicion before the person arrives.

- The QPS has previously responded to the QLS concern – Deputy Commissioner Barnett has stated to the Committee:

> *Clause 86 supports police officer safety and the safety of victims of crime or domestic violence. When a police officer enters a property because there is an imminent risk of injury to a person, damaging property or domestic violence at a place, the police officer may search the place. The search of the place*

is limited to looking for anyone who may be at risk of being injured or subject to an act of domestic violence or for anything that may be or has been used to cause the injury or damage or domestic violence. The occupier of the place may accompany the police during the search. The proposed amendment removes the right of the occupier to accompany the police officer if a police officer reasonably suspects that including the occupier in the search will cause injury to any person. The police officer must warn the occupier of the impending exclusion from the search to allow the occupier to settle down and, therefore, accompany the police officer. If the police officer still suspects that the occupier accompanying the police officer during the search may cause an injury to any person, even after being warned, the occupier may be excluded from the search.

To appropriately determine if violence may occur at any place, it is necessary for a police officer to consider all circumstances including the previous conduct of parties and versions of witnesses rather than relying upon, in isolation as the QLS has submitted, their own personal observations.

- The QPS does not support the QLS suggestion that, in all instances, a warning should first be given to a person detained to moderate their language and behaviour. The purpose of this clause is to ensure the safety of police officers and others. The QLS suggestion would allow the personal safety of individuals to be compromised by a detainee who is prepared to give police officers all and any assurances that he or she will behave merely so they can gain access to the place to inflict injury on a person.

18. Clause 101 – Amendment of s.790 (offence to assault or obstruct police officer) The QLS contends that the offence to assault or obstruct police officers should be made into two separate sections rather than subsections. The QLS contends that because these two offences appear under the same section heading, the offences will be indistinguishable on documents such as bail undertakings and other official documents.

- This clause was amended to merely enhance statistical analysis of the commission of these offences. This clause was not designed to cause a differentiation on any other basis between an assault and an obstruct. It is noteworthy that it is common for an offence of assault and obstruct to be found within the one section. Examples

include s.340 of the Criminal Code, the *Nature Conservation Act 1992* and the *Forestry Act 1959*.

Crime and Misconduct Commission

1. ***Clarification of terminology and definitions – search, frisk and pat-down. The Crime and Misconduct Commission (CMC) has raised concerns that there are three terms to describe something that has a common definition: (1) search, (2) frisk, and (3) pat-down. The Bill will amend the definition of a 'search' to include 'a frisk search or pat-down search of a person'. The CMC would prefer a single term be used to avoid confusion. The CMC further raises concerns about ambiguity around the definition and terms may be used by officer to avoid the requirement to record the search in the enforcement register.***

   - The QPS contends that although a pat-down search is a search of a person, it is not as intrusive as other searches that police are authorised to conduct in other circumstances. As such, the QPS considers it critical to refer to the term 'a pat-down search' to indicate that this search involves only quickly running the hands over the person's outer garments.
   - By clearly defining a 'pat down search' in Schedule 6 'Dictionary', ambiguity is reduced. Further, the inclusion of 'pat-down search' within the definition of 'search' ensures that this type of search is unambiguously included as an enforcement act requiring recording in the register of enforcement acts.

2. ***Clause 8 – Pat-down search of minors. The CMC raises concerns about the possible damage that could be done to the relationship between police and young people if the use of the power to pat-down search minors was indiscriminate and that this power has potential net-widening effects. Finally, the CMC believes that there should be a requirement to report any search of a minor to a senior officer and that the search be recorded in the enforcement register.***

   - The QPS contends, as previously indicated in the Attachment to the letter to Legal Affairs, Police, Corrective Services and Emergency Services Committee, a pat-down search will not be a mandatory exercise. As a pre-requisite to a pat-down search, the police officer has to hold a reasonable suspicion of a liquor offence having been committed. Pat-down searches cannot be conducted indiscriminately. As outlined previously, a pat-down search is

required to be entered into the enforcement register in QPRIME and is auditable.

4. Clause 86 – Amendment of s.609 (Entry of place to prevent offence, injury or domestic violence). The CMC has suggested that exercising a power to exclude an occupier under s.609 could be included in the enforcement register.

- Deputy Commissioner Barnett indicated on 12 October 2011 before the Legal Affairs, Police, Corrective Services and Emergency Services Committee that:

  The QPS will also implement a policy requiring the recording in QPRIME of the circumstances where a person is excluded under the new provision of Clause 86.

7. Clause 28 - Surveillance Device Warrants. The CMC suggests that Clause 28 of the Bill should be amended either to be broadened to include other agencies or limited to exclude its application to other agencies such as the CMC or the Australian Crime Commission.

- Deputy Commissioner Barnett indicated on 12 October 2011 before the Legal Affairs, Police, Corrective Services and Emergency Services Committee that:

  The Crime and Misconduct Commission raised issues with clause 19 and 28 of the Bill. QPS agrees that the Bill could be amended so that the changes proposed only apply to the QPS as the CMC and the Australian Crime Commission also use the provisions of the PPRA for surveillance device warrants.

603 Power to seize potentially harmful things

(1) This section applies if a police officer—
   (a) finds a person in circumstances in which the police officer reasonably suspects the person is in possession of a potentially harmful thing the person has ingested or inhaled, is ingesting or inhaling, or is about to ingest or inhale; or
   (b) finds a person in possession of a potentially harmful thing in circumstances in which the police officer reasonably suspects the person has ingested or inhaled, is ingesting or inhaling, or is about to ingest or inhale, the thing.

Example for paragraph (a)—
A police officer finds a person with paint on the person's lips.

(2) The police officer may search the person and anything in the person's possession to find out whether the person is in possession of a potentially harmful thing.

(3) If the person is in possession of a potentially harmful thing, the police officer may ask the person to explain why the person is in possession of the thing.

(4) If the person does not give a reasonable explanation, the police officer may seize the potentially harmful thing.

(5) It is not a reasonable explanation for subsection (4) that the person is in possession of the potentially harmful thing to inhale it or ingest it.

(6) On the seizure of the potentially harmful thing, the thing is forfeited to the State.

(7) Section 622 does not apply to a thing seized under this section.

569 Frisk search of persons

A police officer may ask an entrant to a special event site to permit a frisk search to be made of his or her person.

Editor's note—

See also section 624 (General provision about searches of persons).

frisk search means—

(a) a search of a person conducted by quickly running the hands over the person's outer garments; and

(b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

624 General provision about searches of persons

(1) A police officer searching a person must—

(a) ensure, as far as reasonably practicable, the way the person is searched causes minimal embarrassment to the person; and

(b) take reasonable care to protect the dignity of the person; and

(c) unless an immediate and more thorough search of a person is necessary, restrict a search of the person in public to an examination of outer clothing; and

(d) if a more thorough search of a person is necessary but does not have to be conducted immediately, conduct a more thorough search of the person out of public view, for example, in a room of a shop or, if a police station is nearby, in the police station.

Example for subsection (1)(c)—

A more thorough search may be immediately necessary because a police officer reasonably suspects the person to be searched may have a bomb strapped to his or her body or has a concealed firearm or knife.

(2) Unless an immediate search is necessary, the person conducting the search must be either—

(a) a police officer of the same sex as the person to be searched; or

(b) if there is no police officer of the same sex available to search the person—someone acting at the direction of a police officer and of the same sex as the person to be searched; or

(c) a doctor acting at the direction of a police officer.

Example—

An immediate search by a person of the opposite sex may be necessary because the person searched may have a bomb strapped to his or her body or has a concealed firearm.

Chapter 2.9 (Covert Operations) Operational Procedures Manual

2.9 Covert Operations

Controlled activities

Section 221: 'Object of ch 10' of the Act defines what a controlled activity offence is and pursuant to s. 224 a police officer of at least the rank of inspector (a senior police officer) may, in accordance with any policy of the Police Service, authorise another police officer to engage in a stated controlled activity.

POLICY

Senior police officers authorising another police officer to engage in a stated controlled activity, must be of the rank of Detective Inspector or above.

PROCEDURE

When a police officer considers it reasonably necessary for a police officer to engage in a controlled activity, that officer is to submit an application form, QP 0753: 'Application for authorisation to engage in a controlled activity' available on QPS Forms Select, to a senior police officer who has line supervision over the applicant.

The application should include:

(i) the description of the controlled activity a police officer may be required to engage in, a suggested investigation or involvement plan, appropriate strategies, required resources and an appropriate risk assessment plan;
(ii) details of the controlled activity offence for which evidence may be required to be obtained;
(iii) what conventional policing methods have been undertaken or may be available, reasons why such methods may not be suitable to address the criminal activity;
(iv) where known, the identity of the person (target person) and known associates, in relation to whom the controlled activity is directed and a summary of the person's involvement and where available an initial profile including photographs;
(v) where known, whether or not the target person or their associates in relation to whom the controlled activity is directed, has previously been the subject of controlled activities or operations;
(vi) where known, whether or not the target person or their associates in relation to whom the controlled activity is directed, are known to the police officer who is to engage in the controlled activity;
(vii) other relevant details surrounding the matter in question including the origin of the information and intelligence assessment;
(viii) details of the police officer who is to engage in the controlled activity, the officer's policing experience, and whether the officer has received appropriate training;
(ix) that the police officer who is to engage in the controlled activity is aware that the performance of covert related duties is strictly voluntary;
(x) the number of instances that the police officer who is to engage in the controlled activity has conducted other controlled activities, outcomes of that activity and the police officers performance in performing that role;

(xi) whether the police officer who is to engage in the controlled activity is a former covert police operative and is undergoing a covert reintegration program;

(xii) the details of the police station or establishment to which the police officer who is to engage in the controlled activity is attached, relevant to the location of the proposed controlled activity;

(xiii) the details of the appointment of an appropriately trained controller to coordinate the activities of the police officer who is to engage in the controlled activity;

(xiv) the outline of an appropriate cover story suitable for use by the police officer who is to engage in the controlled activity;

(xv) whether there is a need for the use of physical or electronic surveillance, and if so what arrangements have been made;

(xvi) the details of the arrangements made to ensure that where practicable, all conversations between the police officer and the target person/s are recorded electronically; and

(xvii) copies of emails sent to and received from 'CrossOps.Request[SCOC]' (the State Intelligence Group) for clearance checks on the Cross Operations Index of all nominated persons of interest relevant to the controlled activity.

POLICY

In assessing the application, the senior police officer is to consider the risk of harm to police or others and the risk of financial loss. The senior police officer is also to consider whether the particular issue may be better dealt with by a controlled operation in which case the provisions of 'Controlled operations' of this section apply.

The senior police officer should not authorise the application until the applicant has supplied evidence in relation to clearance checks on all nominated persons of interest relevant to the controlled activity on the Cross Operations Index from State Intelligence Group. Any concerns in relation to clearance check feedback should be discussed with the Detective Chief Superintendent, State Crime Operations Command prior to authorisation.

If satisfied that the information provided in the application meets the requirements of the legislation and that in the particular circumstances it would be advantageous for a police officer to engage in conduct constituting a controlled activity to enable evidence of the commission of a controlled activity offence against a person to be obtained, the senior police officer may authorise a police officer to engage in a stated controlled activity.

Prior to issuing the authorisation, the authorising senior police officer is to, during business hours, liaise with the Detective Chief Superintendent, State Crime Operations Command to ensure that the proposed controlled activity does not interfere with approved or proposed controlled operations.

However, where an urgent circumstance exists that requires the authorisation of controlled activity outside of business hours, then the senior police officer

authorising such controlled activity is to liaise with the Detective Chief Superintendent, State Crime Operations Command on the next business day. A senior police officer is not to authorise a controlled activity if advised by the Detective Chief Superintendent, State Crime Operations Command that the proposed controlled activity, if approved, would present an unacceptable risk that an approved or proposed controlled operation would be prejudiced, compromised or place at risk the safety of any person.

A senior police officer authorising a controlled activity is to issue such authority in writing (QP 0754: 'Authorisation to engage in a controlled activity' available on QPS Forms Select) and state the controlled activities the police officer is authorised to engage in, and the period (of not more than 7 days) for which the authority is in force. The senior police officer is to ensure that the particulars contained in the authority are clearly communicated to the officer who is to undertake the activity.

A copy of the report requesting to conduct a controlled activity and a copy of any authorisation issued, are to be added as an attachment to the relevant QPRIME occurrence entry. See QPRIME User Guide.

A police officer authorised to engage in a controlled activity is to comply with the written authority of the senior police officer and any policies and procedures contained in this manual or elsewhere, which are applicable in the circumstances. The requirements of this section in relation to controlled activities do not apply to a police officer attached to the Crime and Misconduct Commission.

6.1 Introduction

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

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

The chapter is divided into four areas:

(i) general policy;

(ii) cross cultural issues;

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

(iv) mentally ill persons.

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

6.3 General Policy

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

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

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

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

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

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

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

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

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

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

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

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

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

6.3.1 Circumstances which constitute a special need

POLICY

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

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

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

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

(iii) mental illness;

(iv) intellectual disability;

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

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

(vii) chronic alcoholism;

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

(ix) drug dependence;

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

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

(xii) aboriginal people and Torres Strait Islanders;

(xiii) children; and

(xiv) persons with impaired capacity.

6.3.2 Establishing whether a special need exists

ORDER

When an officer wishes to interview a person, including taking a complaint or a witness statement, the officer is to first establish whether a special need exists. Officers are to evaluate the ability of the person to be interviewed to look after or manage their own interests and is to establish whether the person meets the following conditions. To be considered capable of looking after or managing their own interests a person should be:

(i) capable of understanding the questions posed;

(ii) capable of effectively communicating answers;

(iii) capable of understanding what is happening to him/her;

(iv) fully aware of the reasons why the questions are being asked;

(v) fully aware of the consequences which may result from questioning; and

(vi) capable of understanding his or her rights at law.

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

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

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

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

(iv) the impact that the results or consequences of the interview may have on the rights or liberty of any person. An interview that may substantially affect the rights or liberty of a person should be subject to greater efforts to address the person's special need than an interview that is likely to have only a minor impact. For example, greater efforts should be made to compensate for any special need when interviewing a person with a special need as the complainant in a serious assault case than when interviewing a person with a special need as a suspected minor traffic offender;

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

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

6.3.3 Interviewing persons with special needs

POLICY

When an officer intends to interview a person with a special need, the officer should take whatever action is necessary to compensate for that special need or to comply with the relevant legislative requirements. The action to be taken will vary with every case, but should be appropriate to the condition giving rise to the special need.

In the case of a child or a person with an intellectual impairment, s. 93A of the *Evidence Act* may apply. In such cases, officers should refer to s. 7.9.6: 'Recording of evidence of a child witness' of this Manual.

PROCEDURE

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

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

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

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

ORDER

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

PROCEDURE

Officers should:

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

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

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

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

6.3.4 Independent persons

POLICY

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

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

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

ORDER

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

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

POLICY

In addition to the required list of support persons and interpreters, officers in charge of stations or establishments should maintain a list of other independent persons who are competent and willing to assist members of special needs groups in their dealings with the Service. Officers in charge should consult with relevant service providers, agencies and support groups to establish the capacity and willingness of such service providers, agencies and groups to assist persons with special needs in their dealings with the Service in the particular geographical area.

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

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

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

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

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

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

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

PROCEDURE

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

(i) where possible allow the person with the special need to select an independent person. The person with the special need should be offered the list of support persons, interpreters and independent persons to select from, but may select any person whether or not that person is on the list. However, in cases where the person with the special need is being interviewed in regard to an incident that may have involved the commission of an offence, an independent person who is a witness or suspected offender, accomplice or accessory should not be permitted to be present during any interview (see also s. 6.3.7: 'Interpreters' of this chapter for details of persons who are considered unsuitable to act as interpreters);

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

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

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

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

(vi) allow the independent person to be present, and to provide assistance to the person with the special need during the interview. Where the independent person or the person with the special need requests private consultation during the interview, that request should be granted.

6.3.5 The role of the independent person

POLICY

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

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

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

The independent person is to be permitted initially to consult with the person being interviewed, and to provide support during the interview. This, however, should not be allowed to extend to constant interjections. See also s. 2.14.14: 'Support persons' of this Manual.

6.3.6 Aboriginal and Torres Strait Islander people

POLICY

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

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

PROCEDURE

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

POLICY

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

ORDER

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

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

POLICY

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

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

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

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

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

ORDER

When an adult Aboriginal person or Torres Strait Islander is being investigated for an indictable offence, officers are required to comply with provisions of s. 420 of the *Police Powers and Responsibilities Act* and s. 36 of the Responsibilities Code.

In relation to the investigation of any offence when it is necessary to have an independent person present during questioning of an Aboriginal person or Torres Strait Islander, officers are to give preference to arranging for attendance of an independent person who is a legal practitioner or representative of the Queensland Aboriginal and Torres Strait Islander Legal Service. Where such a person is not available or is unable to be contacted, officers are to note this attempt in their notebook and on their station occurrence sheet.

POLICY

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

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

When an Aboriginal person or Torres Strait Islander is to be interviewed, the officer in charge of the investigation should ask the person whether they wish to have present an 'interview friend' or a 'prisoner's friend'. See s. 2.14.11: 'The Anunga Rules - Aboriginals and Torres Strait Islanders' of this Manual.

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

Consideration should be given to the needs of the investigation and delays which may effect the investigation.

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

Officers should refer to the Anunga Rules (see s. 2.14.11: 'The Anunga Rules - Aboriginals and Torres Strait Islanders' of this Manual) as a guideline to the interview of Aboriginal and Torres Strait Islanders.

When an officer intends to question an Aboriginal person or Torres Strait Islander, whether as a witness or a suspect, consideration should also be given to the relevant information and guidelines contained in Chapter 9: 'Indigenous Language and Communication' of the Supreme Court of Queensland - Equal Treatment Benchbook. In particular, Chapter 9 includes information concerning the languages Aboriginal and Torres Strait Islander persons speak, non-verbal communication, and cultural barriers to effective communication. The chapter also includes useful guidelines for effective communication with speakers of Aboriginal English.

6.3.7 Interpreters

The National Accreditation Authority for Translators and Interpreters (NAATI) accreditation is the only accepted qualification in Australia for the profession of translation and interpreting, including Australian Sign Language (AUSLAN) for the Deaf or people with hearing and/or speech impairments. Not all languages spoken or signed in Queensland are tested for NAATI accreditation.

The eight levels of NAATI accreditation for interpreters and/or translators in the order of qualifications of lowest (i) to highest (viii) are:

(i) Paraprofessional Translator

This represents a level of competence in translation for the purpose of producing a translated version of non-specialised information. Practitioners at this level are encouraged to proceed to the professional levels of accreditation.

(ii) Paraprofessional Interpreter

This represents a level of competence in interpreting for the purpose of general conversations. Paraprofessional Interpreters generally undertake the interpretation of non-specialist dialogues. Practitioners at this level are encouraged to proceed to the professional levels of accreditation.

(iii) Translator

This is the first professional level and represents the minimum level of competence for professional translating. Translators convey the full meaning of the information from the source language into the target language in the appropriate style and register. Translators at this level work across a wide range of subjects involving documents with specialised content. Translators may choose to specialise. They are qualified to translate into one language only or into both languages, depending upon their accreditation.

(iv) Interpreter

This is the first professional level and represents the minimum level of competence for professional interpreting. Interpreters convey the full meaning of the information from the source language into the target language in the appropriate style and register. Interpreters at this level are capable of interpreting across a wide range of subjects involving dialogues at specialist consultations. They are also capable of interpreting presentations by the consecutive mode. Their specialisations may include banking, law, health, and social and community services.

(v) Advanced Translator

This is the advanced professional level and represents the competence to handle complex, technical and sophisticated translation. Advanced Translators handle complex, technical and sophisticated material, compatible with recognised international standards. They may choose to specialise in certain areas. Advanced translators are accredited to translate either into one language only or into both languages, depending upon their accreditation.

(vi) Conference Interpreter

This is the advanced professional level and represents the competence to handle complex, technical and sophisticated interpreting. Conference Interpreters practise both consecutive and simultaneous interpreting in diverse situations, including at conferences, high-level negotiations, and court proceedings. Conference Interpreters operate at levels compatible with recognised international standards, and may choose to specialise in certain areas.

(vii) Advanced Translator (Senior)

This is the highest level of NAATI accreditation and reflects both competence and experience. Advanced Translators (Senior) are Advanced Translators with a level of excellence in their field, recognised through demonstrated extensive experience and leadership.

(viii) Conference Interpreter (Senior)

This is the highest level of NAATI accreditation and reflects both competence and experience. Conference Interpreters (Senior) are Conference Interpreters with a level of excellence in their field, recognised through demonstrated extensive experience and leadership

Selection and use of interpreters and translators for spoken and written languages

POLICY

Interpreters and translators accredited by NAATI at the level of 'interpreter' or 'translator' or higher, should be used when investigating criminal offences, complex legal matters and during court proceedings.

NAATI accredited paraprofessional interpreters and paraprofessional translators, or any interpreters and translators without NAATI accreditation qualifications (who may also be known as communicators), screened by the Translating and Interpreting Service (TIS) of the Department of Immigration and Multicultural Affairs, should be used when NAATI accredited interpreters and/or translators are not available when investigating criminal offences, complex legal matters and during court proceedings.

Selection and use of sign language interpreters

POLICY

NAATI accredited AUSLAN interpreters, or AUSLAN sign language interpreters with higher NAATI accreditation qualifications, should be used when investigating criminal offences, complex legal matters and during court proceedings involving the Deaf or people with hearing and/or speech impairments.

NAATI accredited AUSLAN paraprofessional sign language interpreters, or sign language interpreters without NAATI accreditation qualifications (communicators), screened by the Coordinator of Interpreting Services at the Deaf Services Queensland, should be used whenever NAATI accredited AUSLAN interpreters are not available or are not practicable to use when investigating criminal offences, complex legal matters and during court proceedings.

Arranging an interpreter or translator

PROCEDURE

Appropriate NAATI accredited and non accredited telephone and onsite interpreters and translators may be available and may be contacted either directly or through an interpreting or translating service provider including the Translating and Interpreting Service and the Queensland Translating and Interpreting Service (see Contact Directory).

NAATI accredited AUSLAN interpreters, paraprofessional AUSLAN interpreters, and sign language interpreters who have no NAATI accreditation qualifications (who may also be known as communicators) may be available at the Deaf Services Queensland for interpreting (see Contact Directory).

If officers are unable to obtain the services of an appropriate interpreter, referral to the NAATI internet site may assist in locating a suitable accredited interpreter (www.naati.com.au).

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

In accordance with Queensland Government policy, it is the responsibility of the Queensland Police Service to pay for the services of an accredited interpreter.

Details of current charging policy and rates are available from the respective translating or interpreting service or the particular translator or interpreter.

See Appendix 6.2 for the Translating and Interpreting Service 'Request for On-Site Interpreting' form, Appendix 6.3 for the Translating and Interpreting Service 'Request for Pre-Booked Telephone Interpreter' form, Appendix 6.4 for the Queensland Interpreting and Translating Services 'Request for Interpreter' form and Appendix 6.5 for the Deaf Services Queensland 'Interpreter Request Form'. These forms should be used when requesting such services.

Further information regarding translators and interpreters is available on the 'Interpreting Service' page on the Cultural Advisory Unit site on the QPS Intranet (Bulletin Board).

Communications and interviews using interpreters

POLICY

Where an officer considers that s. 433: 'Right to interpreter' of the *Police Powers and Responsibilities Act* may apply to a person in custody the officer may ask any question, other than questions related to that person's involvement in the offence, that may assist in determining if the person needs an interpreter. See s. 39: 'Right to interpreter' of the Responsibilities Code.

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

An officer who desires to interview a person unable to adequately understand or communicate in the English language because of cultural differences or physical disability should arrange for an accredited on-site or telephone interpreter to assist with that interview. Sections 436 and 437 of the *Police Powers and Responsibilities Act* require the recording of the questioning of persons in custody. The requirement to record the conversation between the

interpreter and the person in custody should be considered when deciding upon an interpreting option. Officers using a telephone interpreting service should ensure that suitable equipment is available to record the interpreter's part in the interview.

Persons to be questioned should be given the opportunity to select an interpreter of their choice. However, officers may refuse to engage interpreters who are not adequately qualified or competent for the task and/or who fails to provide evidence of their qualifications upon reasonable request. Where a person to be interviewed requests the attendance of an interpreter who in the opinion of the investigating officer is not sufficiently qualified for the task, that interpreter should be permitted to attend the interview as an observer provided no costs are incurred by the Queensland Police Service. Interpreters should be impartial and appropriate for the person requiring their services.

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

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

(ii) relatives of the person to be interviewed;

(iii) police officers;

(iv) complainants or witnesses; or

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

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

Officers should ensure that:

(i) the interpreter is identified to the person;

(ii) the interpreter and the person fully understand each other;

(iii) the interpreter is acceptable to the person; and

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

Questioning should take the following form:

(i) if practicable, electronically record the questioning in compliance of s. 436 of the *Police Powers and Responsibilities Act*;

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

(iii) listen to the answer;

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

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

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

ORDER

An officer who desires to interview a person unable to adequately understand or communicate in the English language because of cultural differences or physical disability must arrange for the presence of an interpreter to assist with that interview by virtue of s. 433 of the *Police Powers and Responsibilities Act*. Officers must delay the questioning or investigation until the interpreter is present.

The Queensland Interpreter Card

The Multicultural Affairs Queensland Interpreter Card is an initiative under the Queensland Government Language Services Policy. Included on the card is a message that the cardholder needs an interpreter. The relevant language is shown on the back of the card. There is no provision for the card to be used by the Deaf or hearing/speech impaired persons who require AUSLAN Interpreters.

POLICY

Cardholders who have a special need arising from an inability, or limited ability, to speak or understand the English language should be assisted in obtaining an interpreter.

TIS Language Card

The Translating and Interpreting Service (TIS) has produced a Language Card to assist in identifying the language of non-English speaking persons. It contains a phrase in English and twenty-two other major languages requesting persons to indicate if they speak any of these languages.

TIS has also produced a range of brochures and information cards which provide useful information about their interpreting and translating services, and the use of interpreters. The TIS Language Card is included as Appendix 6.1.

6.3.8 Police descriptions of persons

POLICY

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

6.3.9 Children

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

ORDER

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

6.3.10 Victims of crime

POLICY

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

6.3.11 Homeless persons

PROCEDURE

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

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

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

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

(iv) if the person is a child consider s. 5.4: 'Children - General Information' of this Manual; and

(v) ensure the homeless or destitute person is not recorded as a missing person on the Service computer system. If the person is recorded as a missing person, see s. 12.6.1: 'Responsibility of officers who locate a missing person' of this Manual.

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

6.3.12 Adult Guardian

The Adult Guardian is an independent statutory officer established under the *Guardianship and Administration Act* (the Act) to protect the rights and interests of adults with impaired capacity (a definition of 'impaired capacity' is provided in Schedule 4 of the Act).

The functions of the Adult Guardian are outlined in s. 174: 'Functions' of the Act and include:

(i) protecting adults who have impaired capacity for a matter from neglect, exploitation or abuse;

(ii) investigating complaints and allegations about actions by:

(a) an attorney; or

(b) a guardian or administrator; or

(c) another person acting or purporting to act under a power of attorney, advance health directive or order of the tribunal made under this Act;

(iii) acting as attorney:

(a) for a personal matter under an enduring power of attorney;

(b) under an advance health directive;

(c) for a health matter if authorised as a statutory health attorney; or

(d) if appointed by the court or the tribunal;

(iv) acting as guardian if appointed by the tribunal; and

(v) seeking assistance (including assistance from a government department, or other institution, welfare organisation or provider of a service or facility) for, or making representations for, an adult with impaired capacity for a matter.

To carry out the Adult Guardian's functions, the Adult Guardian has a variety of investigative powers and the authority to represent or advocate for a person with impaired capacity. The Adult Guardian is also authorised to consent to health care matters on behalf of a person with impaired capacity.

The Adult Guardian may delegate certain adult guardian's powers under ss. 177: 'Delegation' and 181: 'Delegate for investigation' of the Act to an appropriately qualified member of the Adult Guardian's staff or appropriately qualified person, as applicable.

Under s. 181 (3) of the Act, a delegate exercising powers under Chapter 8, Part 2 of the Act must, if asked, produce evidence of the delegation.

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

POLICY

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

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

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

Releases of information to the Adult Guardian are to be dealt with in accordance with s. 1.10.22: 'Release of information to the Adult Guardian' of this Manual.

6.3.13 Release of victim details to Queensland Health Victim Support Service

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

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

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

QPS District Mental Health Intervention Coordinators are authorised to release victim details to the Victim Support Service in accordance with the policy contained within this section. Mental Health Intervention Coordinators have been delegated the Commissioner's power to release information under s. 10.2: 'Authorisation of disclosure' of the *Police Service Administration Act* (see Delegation No. D 15.12: 'Approve disclosure of information' of the Handbook of Delegations and Authorities).

POLICY

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

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

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

(i) name;

(ii) residential address;

(iii) telephone number;

(iv) relationship to offender (if known);

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

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

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

6.4 Cross cultural issues

POLICY

To achieve the goals of the Service, strategies emphasising joint community and police activities have been adopted.

Officers should always consider cultural needs which exist within the community.

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

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

The following are examples of police interaction with diverse community members:

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

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

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

Members requiring further advice may contact the Cultural Advisory Unit, Office of the Commissioner (see Contact Directory).

6.4.1 Education and training

POLICY

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

ORDER

The Manager, Human Resources Development Branch, is responsible for the development and provision of training to members in Indigenous and multicultural community issues which affect policing in Queensland.

The Manager, Human Resources Development Branch, is to ensure that all:

(i) Queensland Police Service Academy teaching staff;

(ii) regional education and training coordinators;

(iii) district/establishment education and training officers;

(iv) members involved in the development and writing of learning materials; and

(v) operational officers;

are made aware of policing, education and training issues involving cross cultural issues.

PROCEDURE

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

6.4.2 Community consultative committees

POLICY

Officers will actively seek to improve community involvement in addressing policing issues involving Indigenous and multicultural community groups. To this end, community consultative committees should be formed where appropriate for:

(i) Aborigines and Torres Strait Islanders; and

(ii) Multicultural groups.

ORDER

The Officer in Charge, Crime Prevention, Policing Advancement Branch, is responsible for the establishment and service of community consultative committees statewide and liaison with regions regarding the formation and support of locally based groups.

The Officer in Charge, Crime Prevention, Policing Advancement Branch, is responsible for the provision of executive support for the community consultative committees through the Cultural Advisory Unit, Office of the Commissioner.

6.4.3 Functions of the Community Consultative Committees

POLICY

The committees are intended to be independent advisory bodies with the ability to communicate findings and recommendations to the Service and other appropriate bodies.

PROCEDURE

The functions of Community Consultative Committees should include:

(i) identifying issues affecting both the Service and relevant groups throughout Queensland;

(ii) considering appropriate methods for addressing these issues;

(iii) identifying ways to improve communication and understanding between police and the relevant groups; and

(iv) establishing a mechanism for Statewide consultation.

ORDER

The Officer in Charge, Crime Prevention, Policing Advancement Branch is to:

(i) promptly inform the Executive Manager, Human Resource Development Branch, Queensland Police Service Academy (Oxley Campus), of education and training issues which are identified by Community Consultative Committees; and

(ii) refer issues of policy to the Office of the Commissioner for consideration and ratification.

6.4.4 Membership of Consultative Committees

POLICY

There may be cross membership of Multicultural Community Consultative Committee and Aboriginal and Torres Strait Islanders Community Consultative Committees. Membership of Community Consultative Committees should be rotational. They should include persons from diverse backgrounds and may include:

(i) police;

(ii) representatives of relevant communities;

(iii) business persons; and

(iv) representatives of welfare and health services.

6.4.5 Community Consultative Committee Liaison Officers

ORDER

Regional Assistant Commissioners are to appoint an officer within their region as the Regional Community Consultative Committees Liaison Officer.

PROCEDURE

Officers may be appointed as full time or part time liaison officers at the discretion of regional assistant commissioners depending upon local needs.

Prospective liaison officers should be considered for appointment according to criteria which should include:

(i) knowledge of issues relating to the relevant group;

(ii) well developed communication skills;

(iii) ability to convene and conduct meetings;

(iv) ability to liaise with persons from varied backgrounds external to the Service; and

(v) ability to liaise with persons at all levels within the Service.

Selection of Consultative Committee Liaison Officers should involve the relevant local community and, if possible, be by way of panel interview.

6.4.6 Regional Liaison Officers to form reference groups

ORDER

Regional Community Consultative Committee Liaison Officers are to identify persons who may be included in reference groups to assist Community Consultative Committees in decision making.

PROCEDURE

Membership of reference groups should be drawn from a range of areas within the general community and should include:

(i) members of relevant local councils and/or communities;

(ii) local business people;

(iii) local educationalists;

(iv) police;

(v) local welfare and health agencies; and

(vi) the local Family Services and Aboriginal and Islander Affairs Regional Officer.

Membership should be rotational

ORDER

Community Consultative Committee Liaison Officers are to communicate information from reference groups in their region to the officer in charge of the region and to the Officer in Charge, Crime Prevention, Policing Advancement Branch.

6.4.7 Community involvement - responsibilities of officer in charge

POLICY

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

ORDER

Officers in charge of stations or establishments at Aboriginal and/or Torres Strait Islander communities are responsible for the identification of training issues for Community Police under their control.

Officers in charge of stations or establishments at Aboriginal and/or Torres Strait Islander communities are to be conversant with legislation governing the administration of Aboriginal and Torres Strait Islander communities in Queensland.

Officers in charge of stations and establishments at Aboriginal and/or Torres Strait Islander communities are to ensure officers under their control are informed of and are adequately trained in legislation governing the administration of Aboriginal and Torres Strait Islander communities in Queensland.

PROCEDURE

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

(i) liaise with Regional and District/Establishment Education and Training Coordinators; and

(ii) liaise with local community councils and be conversant with local legislation.

6.4.8 Cross Cultural Liaison Officers

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

The principal responsibilities of cross cultural liaison officers include:

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

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

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

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

PROCEDURE

Officers requiring assistance or advice can obtain the contact numbers for cross cultural liaison officers from the Bulletin Board on the QPS computer system.

6.5 Specific physical, intellectual or health needs

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

6.5.1 Cautioning adults who commit offences

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

For Service policy in respect of cautioning adults for traffic offences see s. 8.10: 'Verbal cautions' of the Traffic Manual.

POLICY

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

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

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

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

(i) the offence must:

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

(b) be trivial in nature;

(ii) the offender must:

(a) admit the offence;

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

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

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

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

Should a victim wish to have an offender prosecuted rather than cautioned, those views are to be taken into consideration, but this does not mean automatic prosecution. A caution may be deferred and the matter given further consideration.

PROCEDURE

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

Decision to caution to be made by commissioned officer

ORDER

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

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

(i) facts known to them;

(ii) offender's antecedents; and

(iii) merits of the case.

Officers are not to bargain with offenders or complainants.

Cautioning process

POLICY

Cautioning:

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

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

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

PROCEDURE

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

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

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

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

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

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

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

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

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

(ix) cover the following points in the caution:

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

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

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

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

Electronic recording of cautions

POLICY

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

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

Electronic recordings of cautions are to recorded in QPRIME via an Interview Report linked to the offender (see 'Interview' of the QPRIME User Guide) and distributed in accordance with the Commissioner's Circular 17/2007: 'Introduction of Digital Electronic Recording of Interviews and Evidence'.

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

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

6.5.2 Intellectual disability

POLICY

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

6.5.3 Guide Dogs

PROCEDURE

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

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

6.5.4 Alcohol and/or drug dependency

POLICY

An officer dealing with a person who appears to be intoxicated should be aware that the person may be exhibiting the symptoms of what could be a genuine medical complaint. A number of conditions may produce signs similar to intoxication, particularly when occurring in conjunction with alcohol ingestion. See Appendix 16.12: 'Drug and alcohol intoxication, overdose and withdrawal' of this Manual

ORDER

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

POLICY

Generally officers should not interview a person in relation to their complicity in an offence when that person is:

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

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

to such an extent that a special need exists.

There will be exceptions to this policy which may include:

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

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

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

6.5.5 Potentially harmful things - volatile substance misuse

A potentially harmful thing is defined in Schedule 6 of the *Police Powers and Responsibilities Act* (the Act). It means a thing a person may lawfully possess that is or contains a substance that may be harmful to a person if ingested or inhaled; and includes methylated spirits; and does not include a thing intended by its manufacturer to be inhaled or ingested by the person using it.

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

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

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

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

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

(iv) nitrates - amyl nitrate, butyl nitrate.

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

Effects of volatile substance misuse

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

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

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

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

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

Responding to incidents involving potentially harmful things

POLICY

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

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

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

(a) is unconscious;

(b) has an altered level of consciousness; or

(c) has had any reported unconsciousness;

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

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

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

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

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

(vii) provide referral information.

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

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

(ii) a child under the age of twelve years, and is at risk of harm and the parents of the child cannot be contacted, officers should consider taking the child to a safe place pursuant to s. 21 of the *Child Protection Act* (see s. 7.8.2: 'Moving a child to a safe place' of this Manual);

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

Seizing potentially harmful things

POLICY

A police officer finding a person:

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

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

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

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

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

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

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

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

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

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

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

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

Detaining persons affected by potentially harmful things

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

Examples of a place of safety include:

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

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

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

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

POLICY

Places of safety available at different times and in different declared localities may vary, however because persons affected by potentially harmful things need to be assessed by members of the QAS if they are unconscious, have an altered level of consciousness or have had any reported unconsciousness, in many instances a QAS vehicle will be the most suitable place of safety.

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

(i) its capacity and hours of operation;

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

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

Within a declared locality:

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

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

a police officer:

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

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

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

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

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

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

Officers who detain a person under s. 604 of the Act are to:

(i) comply with the provisions of s. 4.15.5: 'Property of persons detained or arrested' of this Manual;

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

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

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

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

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

Completing a QPRIME custody and search report

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

ORDER

Officers are to record the following reports against a person under the occurrence 'Volatile Substance Misuse [1582]':

(i) for a search or seizure of the person under s. 603, a 'Person Stop/Search report' (see QPRIME User Guide : Physical Search : Person Stop, Search); or

(ii) for a detention of the person under s. 604, a 'Custody Report' (see 'Volatile Substance Misuse' and 'Custody : Custody Scenarios-Quick Links to Reports' of the QPRIME User Guide).

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

Information concerning potentially harmful things

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

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

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

6.6.20 Mental health intervention coordination and training

Definitions

For the purposes of this section:

Mental disorder

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

Mental health incident

means an incident that:

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

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

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

(a) ascertain the need for treatment;

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

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

Mental illness

as defined in s.12 of the *Mental Health Act*.

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

Mental health intervention first response officer training

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

POLICY

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

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

Mental health intervention coordinators

Queensland Police Service (QPS) MHI coordinators are to be appointed in identified health service districts on a regional and district level.

Regional MHI Coordinators

ORDER

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

POLICY

The functions and duties of the Regional MHI Coordinator include:

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

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

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

(iv) overviewing the development and existence of regional and district standing operating procedures (SOPs) and protocols;

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

(vi) coordinating the functions and activities of District MHI Coordinators;

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

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

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

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

District MHI Coordinators

ORDER

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

POLICY

The functions and duties of the District MHI Coordinator include:

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

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

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

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

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

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

(vii) liaising with the Regional MHI Coordinator in relation to strategies to deal with mental health;

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

(ix) chairing district mental health intervention meetings;

(x) overviewing the development and standardisation of district standing operating procedures and protocols relating to mental health incidents;

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

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

Attributes of MHI Coordinators

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

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

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

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

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

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

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

Information sharing

For the performance of their role, mental health intervention coordinators have been delegated the Commissioner's power in relation to the disclosure of information to QH and/or the QAS as required in the relevant Memorandum of Understanding (MOU) and Information Sharing Guidelines between those agencies (See Delegation No. D 15.12).

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

Prevention planning

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

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

POLICY

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

QPS MHI Coordinators are to, as far as practicable, ensure any release of information held by the Service complies with the relevant provisions of s. 1.10.14: 'Requests for information from other government departments, agencies or instrumentalities' of this Manual.

Intervention in incidents

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

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

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

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

(ii) nature of mental illness;

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

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

(v) propensity for violence or self harm;

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

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

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

(ix) previous suicide attempts/tendencies;

(x) de-escalation strategies;

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

(xii) next of kin details; and

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

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

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

Such assistance may be limited to:

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

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

(iii) suggestions of possible communication strategies; and

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

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

POLICY

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

The request should be made:

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

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

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

Request for information from QH

POLICY

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

(i) the nature of the incident;

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

(iii) the current location of the person;

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

(v) the current behaviour of the person;

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

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

(viii) the presence or availability of family members;

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

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

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

ORDER

A member of the Service who requests advice or information from a mental health service is to provide their:

(i) full name;

(ii) rank/designation and employee number;

(iii) station and contact details; and

(iv) reasons for the request.

Notification of request to be provided to District MHI Coordinator

POLICY

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

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

Roles of the Queensland Ambulance Service and the Queensland Police Service

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

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

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

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

POLICY

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

(i) obtain the assistance of the QAS to:

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

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

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

(iii) provide sufficient information to QAS personnel to enable them to prevent or lessen a threat to the safety and health of any person involved in the mental health incident (e.g. providing the name, address, date of birth or any known mental health history of the person; see also s. 1.10.14: 'Requests for information from other government departments, agencies or instrumentalities' of this Manual).

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

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

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

Accessibility of memorandum of understanding, agreements and guidelines

MOUs, arrangements and guidelines relating to mental health intervention entered into by the QPS with other agencies are located on the Operations Support Command Education and Training webpage under the link 'Mental Health Intervention Project'.

6.6.21 Acute psychotic episodes

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

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

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

6.6.22 Attempted suicide by mentally ill persons

For policy and procedure regarding action to be taken by officers attending an attempted suicide see s. 13.26: 'Investigation of attempted suicides' of this Manual.

5.3 Definitions

5.3.1 'Caution'

For the purposes of this chapter, the term 'caution' means a caution which has been officially administered to a child under the provisions of Part 2, Division 2 of the *Youth Justice Act*. The term does not apply to any informal process where a child is spoken to by an officer where the officer is exercising discretion in relation to the child's particular behaviour or actions.

5.3.2 'Chief Executive'

Where the term 'Chief Executive' is used in this chapter, the term means the 'Chief Executive, Department of Communities'.

5.3.3 'Identifying particulars'

Where the term 'identifying particulars' is used in this chapter, the term relates to the meaning in the *Police Powers and Responsibilities Act*, Schedule 6 except in the case of identifying particulars taken under the provisions of s. 255 of the *Youth Justice Act*. For the purposes of s. 255 the term 'identifying particulars' means fingerprints and palm prints (see s. 255(6)).

5.3.4 'Independent person'

For the purposes of this chapter, the term 'independent person refers' to a person who will:

(i) be a person whom the child does not perceive to be a person in authority;

(ii) not be employed by the Service;

(iii) not be a member of the immediate family of a member of the Service where a conflict of interest may exist because of the relationship;

(iv) have a concern for the child's welfare; and

(v) have an understanding and appreciation of any cultural issues pertaining to the child.

5.3.5 'Serious offence'

Where the term 'serious offence' is used in this chapter, the term relates to the definition of 'serious offence' as defined by s. 8 of the *Youth Justice Act*.

5.4 Children - General Information

5.4.1 Service policy

POLICY

The Service subscribes to the Charter of Youth Justice Principles set out in Schedule 1 of the *Youth Justice Act*.

The Child Protection and Investigation Unit was established as a specialist unit to deal with matters involving children. Officers appointed to a Child Protection and Investigation Unit are selected and trained for this role. Wherever possible, when children come to the adverse

notice of police, such matters should be investigated by an officer of the Child Protection and Investigation Unit.

5.4.2 Alternatives for dealing with child offenders

ORDER

Before starting a proceeding against a child for an offence (other than a serious offence), officers are to first consider whether in all the circumstances it would be more appropriate to:

(i) take no formal action against a child and adopt the least intrusive method of dealing with the offence by talking with the child. Given the age and antecedents of the child or the circumstances of the offence it may be more appropriate to warn the child about the particular conduct rather than take formal action. This action may be sufficient to divert the child from the court system;

(ii) administer a caution;

(iii) refer the offence to a youth justice conference;

(iv) for a minor drugs offence, offer the child the opportunity to attend a drug diversion assessment program under the *Police Powers and Responsibilities Act*, s. 379 (see s. 11(1): 'Police officer to consider alternatives to proceeding against child' of the *Youth Justice Act* and s. 2.38.9: 'Duty of prescribed police officer receiving custody of person arrested for minor drugs offence' of this Manual); or

(v) for an offence of being drunk in a public place, take and release the person at a place of safety under the *Police Powers and Responsibilities Act*, s. 378 (see s. 16.6.3: 'Drunkenness' of this Manual).

However, officers are not prevented from taking the above action in (i) to (iii) for a serious offence.

When considering an appropriate course of action, officers are to have regard to:

(i) the circumstances of the alleged offence;

(ii) the child's criminal history, any previous cautions administered to the child for an offence and, if the child has been in any other way dealt with for an offence under any Act, the other dealings (see s. 11(2) of the *Youth Justice Act*); and

(iii) the provisions of Guideline 5(i): 'Child offenders' and (v): 'Sexual offences by children' of the Director of Public Prosecutions (State) Guidelines contained in Appendix 3.1 of this Manual.

Officers are to delay starting a proceeding in order to consider the matters if necessary (see s. 11(3) of the *Youth Justice Act*).

If an officer considers it would be more appropriate to:

(i) take no action against a child;

(ii) administer a caution;

(iii) refer the offence to a youth justice conference;

(iv) for a minor drugs offence, offer the child the opportunity to attend a drug diversion assessment program under the *Police Powers and Responsibilities Act*, s. 379; or

(v) for an offence of being drunk in a public place, take and release the person at a place of safety under the *Police Powers and Responsibilities Act*, s. 378;

the officer is not to start a proceeding against the child for an offence but is to take the more appropriate action or arrange for the action to be taken (see s. 11(4) and 11(5) of the *Youth Justice Act*).

Except in the circumstances outlined s. 5.7.1: 'Taking children into custody' of this chapter, officers starting a proceeding against a child for an offence, other than a serious offence, are to start the proceeding by:

(i) complaint and summons under the *Justices Act*; or

(ii) notice to appear under the *Police Powers and Responsibilities Act* (see s. 12 of the *Youth Justice Act*).

POLICY

The decision to take no action can only be properly made after the offence has been investigated. The term 'take no action' does not mean officers may ignore an incident which requires police attention.

5.5 Cautioning

5.5.1 Purpose of cautioning child offenders

POLICY

Children should be cautioned for first or subsequent offences, dependant upon the circumstances and seriousness of each particular offence with the view to diverting them from anti-social behaviour and the court's criminal justice system. Such caution is to be administered with utmost fairness and is to address the circumstances of each case in a constructive and purposeful manner.

5.5.2 Cautioning principles

PROCEDURE

The cautioning of child offenders is designed to promote in children the following:

(i) responsibility for actions;

(ii) awareness of consequence of actions;

(iii) respect and regard for other individuals and property;

(iv) awareness of dangers within society (exploitation);

(v) awareness of rights, responsibilities and obligations under the law;

(vi) a willingness to communicate with others for purposes of problem solving; and

(vii) sensitivity for feelings of others.

5.5.3 Criteria for deciding to administer a caution

ORDER

Before a caution can be administered:

(i) the child must admit to having committed the actual offence;

(ii) the child must consent to being cautioned;

(iii) a prima facie case must be established against the child in relation to each offence;

(iv) the offence committed should not constitute a serious offence unless:

(a) the matter is one for which an adult could be dealt with summarily; or

(b) permission is obtained from a commissioned officer or delegate to caution a child for that offence; or

(c) in cases of rape or attempted rape, authority to caution is obtained from the Regional Crime Coordinator, in consultation with the relevant Operations Coordinator.

In granting an authority to caution a child offender, the Regional Crime Coordinator, in consultation with the relevant Operations Coordinator must have consideration of the following factors:

(i) the 'sufficiency of evidence' and 'public interest test' as outlined in s. 3.4.3 of this Manual;

(ii) the desires of the victim and victim's family regarding formal court proceedings against the child offender;

(iii) the circumstances of the offence;

(iv) the age and developmental state of both the offender and the victim;

(v) the relationship of the offender to the victim;

(vi) the use of any weapons in the commission of the offence as an aggravating factor;

(vii) use of threats or violence in the commission of the offence;

(viii) participation of any co-offender(s) in the commission of the offence; and

(ix) the child's previous history.

A caution is not to be authorised under part (iv)(b) for an offence of unlawful killing or attempted unlawful killing.

The name of the authorising commissioned officer or delegate is to appear on the relevant QPRIME occurrence report.

The ability of a child to pay restitution or compensation is not to be considered as a criterion for determining whether a caution is appropriate.

An officer is to only caution a child offender if, at the time of the commission of the offence, the child was above the age of criminal responsibility.

PROCEDURE

A commissioned officer requested to authorise a caution for a serious offence other than unlawful killing or rape or an attempt to commit either of those offences, may delegate the responsibility to make that decision to an officer nominated by the officer in charge of the region or command within which the commissioned officer is located.

An officer, in deciding whether the administration of a caution to a child is appropriate should take into account the following:

(i) whether the circumstances of the offence are such that the interests of justice would not be served unless court proceedings are initiated;

(ii) the child's previous history;

(a) if the history of the child indicates to the investigating officer that a caution may divert the child from the criminal justice system or further offending, the caution should be administered; or

(b) if the history of the child indicates to the investigating officer that a caution may not divert the child from the criminal justice system or further offending, the officer should commence court proceedings; and

(iii) the attitude and behaviour of the child.

5.5.4 Children under the age of criminal responsibility

POLICY

Where a child who is under the age of criminal responsibility commits an act or makes an omission which but for the child's immature age would be an offence, that child may be officially counselled.

ORDER

Official counselling is to be conducted only by an officer authorised to administer cautions.

A Notice of Caution is not to be issued in respect of a child who is officially counselled.

A QPRIME occurrence report is to be completed in the normal manner if a child is counselled.

PROCEDURE

Official counselling has no legal standing. It is an administrative process by which children may be diverted from future involvement with the criminal justice system.

Officers may not compel children or their parents or guardians to attend official counselling by police.

An officer who decides to officially counsel a child should adopt substantially the same process as that used for cautions, making such allowances as are necessary to:

(i) emphasise the guidance aspect of counselling;

(ii) accommodate the levels of understanding of a younger child; and

(iii) reflect the fact that counselling is not an alternative to commencing a proceeding nor an equivalent to a caution.

A child who has been counselled should be linked as an involved person in the relevant QPRIME occurrence in accordance with the QPRIME User Guide. Officers should ensure the child is classified with the following classifications, 'Young Person Counselled', 'Child<10' or 'Child <17' and 'Behavioural Counselling'.

5.5.5 Conditions for the administration of a caution to a child

POLICY

The Child Protection and Investigation Unit is the primary group involved with the needs of children as offenders and victims. Wherever possible, cautioning or counselling of a child should be administered by or in the presence of an officer of the Child Protection and Investigation Unit.

Officers who seek to be authorised to caution children should demonstrate that they have the ability, experience, temperament and knowledge of legislative requirements to administer cautions to children. Certain officers as outlined hereunder will be authorised by virtue of a position they hold to administer cautions. Those officers should have the ability, experience, temperament and knowledge of legislative requirements to administer cautions to children. It is the responsibility of the officer in charge of the region or command to ensure officers authorised to administer cautions maintain appropriate skills for cautioning children.

5.5.6 Officers authorised to administer cautions to children

ORDER

Officers who are permanently appointed to the following positions are, by virtue of their appointment to the relevant position, authorised by the Commissioner in terms of s. 16(3) of the *Youth Justice Act* to administer a caution to a child:

(i) the officer in charge of a Child Protection and Investigation Unit;

(ii) the officer in charge of a Criminal Investigation Branch;

(iii) the officer in charge of a station; and

(iv) in matters relating to their primary area of responsibilities, the officer in charge of a:

(a) Traffic Branch; or

(b) Water Police establishment.

Unless appointed to a similar position, the authority to administer cautions granted to officers appointed to positions under this order is automatically revoked when the officer vacates the position. Officers authorised under this order to administer a caution to a child are to, if not previously authorised, undergo training approved by the Chief Superintendent, Human Resource Development Branch, within twelve months of appointment to the position. The training will be focused on skills associated with administering a caution to a child.

Officers, other than those authorised under this order, wishing to become authorised are to make application to the Commissioner or to the Commissioner's delegate to become authorised to administer cautions to children.

The authority of an officer to caution a child is to remain in effect until revoked.

Limitation of cautioning authority

POLICY

To ensure accountability and consistency in the administration of cautions the following levels of cautioning authority are established.

'**Level 1 Authorisation**' permits an officer to administer a caution for any offence, subject to the provisions of s. 5.5.3: 'Criteria for deciding to administer a caution' of this chapter in respect to serious offences; and

'**Level 2 Authorisation**' permits an officer to caution a child:

(i) for a simple or regulatory offence; and

(ii) for an indictable offence, with the prior approval of:

(a) the officer in charge of the Child Protection and Investigation Unit responsible for the area within which the officer is stationed; or

(b) where there is no established Child Protection and Investigation Unit, the officer in charge of the Criminal Investigation Branch responsible for the area within which the officer is stationed; or

(c) where there is no relevant Child Protection and Investigation Unit or Criminal Investigation Branch, the officer's officer in charge.

The following officers have '**Level 1 Authorisation**':

(i) where a Child Protection and Investigation Unit is established:

(a) the officer in charge of that Unit; and

(b) other officers attached to that Unit who, because of their position, training or experience, have been issued an 'Authority to Administer Caution' specifically giving the officer 'Level 1 Authorisation'; or

(ii) in districts where no Child Protection and Investigation Unit is established:

(a) the officer in charge of a Criminal Investigation Branch; and

(b) the officer in charge of a station.

All other officers authorised to administer cautions have '**Level 2 Authorisation**'.

5.5.7 Officers delegated responsibility to authorise police officers to administer cautions to children

POLICY

The Commissioner has delegated to the following officers the power to authorise police officers to administer a caution to a child (authorised officers) (see Delegation D 10.1):

(i) the State Coordinator, Child Protection and Investigation Unit (CPIU), Police Headquarters, Brisbane;

(ii) officers in charge of established CPIU;

(iii) Regional Crime Coordinators; and

(iv) Regional CPIU Coordinators;

Only authorised officers may caution children.

Officers who have a need to become authorised officers are to make application in writing to their officer in charge for consideration and forwarding to an appropriate delegated officer.

Officers delegated the power to authorise officers to administer a caution to a child are to ensure that before authorising that officer to administer a caution under s. 16(3) of the *Youth Justice Act*, the applicant:

(i) has successfully completed a course, approved by the Chief Superintendent, Human Resource Development Branch, which, as part of the course includes training and practice in the administration of cautions to children;

(ii) has satisfactorily demonstrated to the officer in charge of a dedicated CPIU that such officer has sufficient training and/or experience to administer cautions to children; and

(iii) has not previously been authorised and that authorisation revoked. Inquiries in this regard should be made by checking records of authorities and revocations.

The delegated officer is to ensure that the applicant is advised in writing of the issue or refusal of such authority.

The Commissioner or a Commissioner's delegate may revoke an authorised officer's powers if the authorised officer:

(i) requests that such authority be revoked; or

(ii) due to a change in circumstances, does not maintain sufficient training and/or experience.

When the authorised officer is the officer in charge of a station or establishment (not a CPIU), the authority to caution, is automatically revoked when that officer vacates the position of officer in charge. That officer is to ensure that the Deputy State Coordinator CPIU is advised in writing that the relevant position has been vacated. If the officer in charge moves to a new position that requires the authority to caution, the officer is re-apply for that authority in the new position.

Delegated officers may revoke authorities issued.

When it comes to the attention of the State Coordinator, CPIU that an authorised officer does not have sufficient training and/or experience to administer cautions to children, such authority may be revoked by the State Coordinator, CPIU. However prior to such revocation, a request should be made of the authorised officer's regional assistant commissioner for a report as to the suitability of the authorised officer to continue as such.

When an authorised officer's authority is revoked, the delegated officer revoking such authorisation is to advise the authorised officer in writing. Such advice is to include the reasons for the revocation.

A register of authorities and revocations of authorities to administer cautions to children is maintained by the Deputy State Coordinator of CPIU, located at the Child Safety and Sexual Crime Group, State Crime Operations Command.

PROCEDURE

Where an authorisation or revocation has been approved, the delegated officer issuing such authorisation or revocation is to ensure that the Deputy State Coordinator of CPIU is advised of the following:

(i) the name, location and position held by the officer authorised or revoked;

(ii) evidence of the officer's sufficient training and/or experience to administer cautions; or

(iii) reasons why the authority to caution has been revoked.

For inclusion on the register of authorities and revocations of authority to administer cautions.

For further roles of the QPS Child Safety Director, see s. 7.4: 'Child Safety Coordination' of this Manual.

5.5.9 'Authority to Caution'

ORDER

An officer who authorises another officer to administer a caution to a child, or revokes such authorisation, is to, within fourteen days of such authorisation or revocation issue a written:

(i) *'Authority to Administer Caution'* in the approved form and forward the authority to the officer so authorised (see Appendix 5.3); or

(ii) revocation of the authority to caution and forward same to the officer concerned.

A copy of the 'Authority to Administer Caution' or revocation will be placed on the officer's personal file. This authority is to be retained by the officer and may be produced, if required, in proceedings.

A copy of the 'Authority to Administer Caution' or revocation is to be forwarded to the State Liaison Officer, Child Protection and Investigation Unit, Queensland Police Headquarters.

PROCEDURE

The 'Authority to Administer Caution' should contain the following information:

(i) the name and registered number of the officer authorised to caution;

(ii) the name, rank, position and registered number of the officer granting the authority to caution; and

(iii) the level of cautioning authority to be given to the officer (see s. 5.5.6: 'Officers authorised to administer cautions to children' of this chapter); and

(iv) the date on which the authority to caution was granted.

5.5.10 Cautions administered by respected persons of Aboriginal or Torres Strait Islander Communities

POLICY

Under the provisions of s. 17 of the *Youth Justice Act*, if a caution is to be administered to a child who is a member of an Aboriginal or Torres Strait Islander community it is a requirement that an officer who is authorised to administer cautions considers whether there is a respected person of the community who is available and willing to administer the caution and, if such a person is available and willing to administer the caution, requests the person to administer the caution.

Officers should be aware that in some areas there may be more than one Aboriginal and Torres Strait Islander Community in any local area.

For the purposes of the *Youth Justice Act*, the Service recognises that:

(i) an Aborigine is a person of Aboriginal descent who identifies as being an Aborigine and is accepted as being an Aborigine in the community in which they live;

(ii) a Torres Strait Islander is a person of Torres Strait Islander descent who identifies as being a Torres Strait Islander and is accepted as being a Torres Strait Islander in the community in which they live;

(iii) the term 'community' includes the Deeds of Grant in Trust areas, Mornington Island and Aurukun. In the spirit of the legislation, the Service promotes an extension of the principle to other communities where agreement can be reached between the officer in charge of police and the local community. The term community could extend to and include family groups and clan groups.

A statement by a child that he or she is a member of an Aboriginal or Torres Strait Islander community should be considered as fact until the contrary is shown. Aboriginal or Torres Strait Islander community organisations can be contacted to assist with inquiries to determine if a child is accepted as an Aboriginal or Torres Strait Islander within an Aboriginal or Torres Strait Islander community.

ORDER

If a caution is to be administered to a child who is a member of an Aboriginal or Torres Strait Islander community, the authorised officer is to:

(i) consider whether there is a respected person of the community who is available and willing to administer the caution; and

(ii) if a respected person of the community is available and willing to administer the caution, request the person to administer the caution (see s. 17(1) of the *Youth Justice Act*).

An officer who requests a respected person to administer a caution to a child who is a member of an Aboriginal or Torres Strait Islander community is to ensure that the respected person is a member of the same community as the child.

The Chief Superintendent, Human Resource Development Branch, is responsible for developing and maintaining a training program for Aboriginal and Torres Strait Islander respected persons on the competencies to administer a caution to a child under the *Youth Justice Act*.

District Education and Training Officers or the officers in charge of Child Protection and Investigation Units throughout the State are responsible for delivering the training package on the cautioning of children to Aboriginal and Torres Strait Islander respected persons who may be called upon to administer a caution to a child from their community. The training is to be delivered to those respected persons who indicate their desire to participate.

PROCEDURE

The officer in charge of a station or establishment, or Child Protection and Investigation Unit where a Unit has been established, should enter into discussion with members of the local Aboriginal or Torres Strait Islander community or communities with a view to developing a mutually agreed protocol for the administration of cautions to children who are members of Aboriginal and Torres Strait Islander communities. The development of the protocol should include the following considerations:

(i) an agreement as to who is an respected person of the community for the purposes of administering cautions;

(ii) the decision to request any particular respected person to administer a caution or be present during the administration of a caution remains at the discretion of the authorised officer in each particular instance;

(iii) the community is to be given the option of nominating those persons whom it considers would be suitable to administer cautions to children from within that community; and

(iv) when an Aboriginal or Torres Strait Islander respected person is to administer a caution to a child, the authorised officer should, prior to the caution taking place, explain the cautioning

process to the respected person. The officer should be satisfied that the respected person understands and is willing to comply with the cautioning process.

Aboriginal and Torres Strait Islander respected persons are not required to undergo training before being able to administer cautions, however, they should be encouraged to do so.

When no respected person is willing or available to administer a caution to a child, the authorised officer may postpone the caution process to a more suitable time.

If no respected person is available and willing to administer the caution, and in the opinion of the investigating officer postponing the caution would not be in the best interests of the child or would render the caution ineffective, the caution should be administered by the authorised officer as soon as practicable.

5.5.11 Agreement between the Service and Aboriginal and Torres Strait Islander respected persons

POLICY

The officer in charge of a station or establishment should liaise with the local Aboriginal or Torres Strait Islander communities to formalise a protocol for involving respected persons in the process of administering cautions.

The preferred option is to commit the agreement to writing in a format that is easily understood by the respected person and other members of the community and that such agreement be assented to by the officer in charge and each respected person for each time where a respected person is to administer a caution to a child. Initially this may require the services of an interpreter to ensure that the agreement is fully understood by both parties.

PROCEDURE

When an officer formalises an agreement between the Service and a respected person of the Aboriginal or Torres Strait Islander community, the following issues should be addressed in the agreement:

(i) an authorised officer must request a respected person to administer the caution;

(ii) the caution which is to be administered by the respected person must be in a format which complies with the *Youth Justice Act*;

(iii) a respected person must not administer a formal caution under the *Youth Justice Act* to a child unless in the presence of an authorised officer; and

(iv) the agreement should be signed by the officer in charge and each respected person who is to participate in the cautioning process.

5.5.12 Investigation of offences with a view to administering a caution or proceeding against an offender

PROCEDURE

When investigating an offence for which a child is or is suspected of being responsible, the officer considering administering a caution should:

(i) obtain all relevant facts concerning the alleged offence;

(ii) obtain all relevant information about the child which may include the child's behaviour;

(iii) having regard to the provisions of s. 3.4.5: 'Director of Public Prosecutions (State) guidelines' of this manual, determine an appropriate charge to prefer in respect of the offence if a caution is not administered. This charge should also be used to define the correct offence for which a caution is given e.g. if the facts of a matter indicate that a charge under s. 25: 'Use of vehicles' of the *Summary Offences Act* would be the appropriate charge if the child were prosecuted for the offence then this offence should be recorded as the offence for which a caution is given if a caution is ultimately given; and

(iv) establish whether the child meets criteria for cautioning.

5.5.13 Preparation for administering a caution

PROCEDURE

Prior to cautioning a child, the investigating officer should:

(i) ascertain the whereabouts of the parents of the child, and if practicable contact the parents prior to the caution being administered to inform them of the circumstances;

(ii) if not authorised under the *Youth Justice Act* to caution a child, ensure that an authorised officer administers the caution or is present during the administration of the caution;

(iii) arrange the interview for a mutually acceptable time to the officers involved, the child and the parent or independent person;

(iv) attempt to arrange for the interview to take place at police premises unless special circumstances otherwise exist;

(v) ensure where possible that no more than two officers are involved in each cautioning process or interview;

(vi) ensure, where practical, that a person chosen by the child or the parent of the child or some other independent person is going to be present; and

(vii) if the parent is not available or is unable to be contacted, ensure that action is taken to advise such parent as soon as possible.

5.5.14 Persons to be present for the administration of a caution

Section 16(2) of the *Youth Justice Act* requires that, if practicable, the following persons be present during the administration of a caution:

(i) an adult chosen by the child;

(ii) a parent of the child; or

(iii) a person chosen by the parent of the child.

POLICY

Where circumstances arise that a child or a parent of the child chooses a member to be the person present during the administration of a caution, the authorised officer should ensure that an 'independent person' is present in addition to the member nominated. The need to have an independent person present may lapse if, for example, the member chosen by the child is a parent of the child.

In circumstances where a person nominated to be present during the administration of a caution may be delayed, it may be appropriate for the authorised officer to postpone the caution to a more suitable time.

If it is unlikely that a nominated person will be present in the immediate future and that any delay will reduce the effectiveness of the caution process the investigating officer may either:

(i) arrange for an independent person to be present at the caution; or

(ii) proceed with the caution.

ORDER

In circumstances where a person nominated to be present is, or is suspected of being, a co-offender of the child the investigating officer is to advise the person requesting the presence of the co-offender of the inappropriateness of such an action. The child or parent of the child is to then be given the opportunity to choose a more appropriate person to be present during the administration of the caution.

5.5.15 Electronic recording of cautions

POLICY

Cautions for indictable offences are to be electronically recorded, wherever possible.

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

Electronic recordings of cautions are to recorded in QPRIME via an Interview Report linked to the offender (see 'Interview' of the QPRIME User Guide) and distributed in accordance with the Commissioner's Circular 17/2007: 'Introduction of Digital Electronic Recording of Interviews and Evidence'.

The investigating officer should only give a copy of the recording to the child who was interviewed.

Where other persons who are present at the interview require a copy of any recording, the investigating officer should ensure a request for a copy of the recording is made in accordance with the QPRIME User Guide.

5.5.16 Cautioning of child co-offender

PROCEDURE

Where a child offender is to be cautioned and a co-offender is to be placed before a court, the officer investigating the offence should:

(i) conduct an electronically recorded interview with the child offender to be cautioned;

(ii) prior to concluding the interview, arrange for a caution to be administered at a suitable time after the interview has concluded;

(iii) obtain a handwritten statement from the child, if the child consents. If the child does not consent, there is no requirement to obtain a statement;

(iv) conclude electronic recording;

(v) provide the child with a copy of the audio recording of the interview;

(vi) continue investigations in relation to co-offenders and take appropriate action; and

(vii) record details of the interview on QPRIME in accordance with the QPRIME User Guide.

5.5.17 Cautioning process

PROCEDURE

When an officer has arranged for a child to be cautioned, the officer should:

(i) introduce all persons present to the child;

(ii) ensure that all present understand the purpose, nature and effect of the caution (see s. 18 of the *Youth Justice Act*);

(iii) speak with the parents or the independent person alone, to obtain their views, comments or information relevant to the child and the incident;

(iv) seek the parent's or independent person's permission to speak with the child alone where considered appropriate by the investigating officer;

(v) if the parents agree, speak with the child 'alone' and obtain relevant information regarding the commission of the offence and family background. In this instance it is advised that the conversation take place out of the hearing but within view of the parent or other person. It is important that an officer not be in a room alone with a child where the potential for allegations exists;

(vi) if the parents do not agree to the child being spoken to alone, then the child should only be spoken to in the presence of the parents or other independent person who is present;

(vii) speak with the parents and child together and have any disclosures, admissions or previous offending related to the parents. Attempt to reconcile any differences or discrepancies between child and parents which may decrease the effectiveness of the caution;

(viii) clearly outline the offence or behaviour to the child;

(ix) make direct reference to the statute and section providing any offence, clearly indicating the prescribed penalty (at the discretion of the investigating officer the child may read this aloud if able to do so);

(x) point out to the child the consequences of possible court appearance (prison, effect on family, friends, school, reputation, future employment and career prospects, re-offending and worsening effects on the child);

(xi) establish an agreement between parents and child on future behaviour, if appropriate or necessary;

(xii) ascertain whether it is appropriate for the child to apologise to the victim as part of the caution process (see s. 5.5.19: 'Apology to victim' of this chapter);

(xiii) make satisfactory mutual arrangements regarding return of property from child to victim where possible;

(xiv) word the caution of a child offender to suit the circumstances and demeanour of the child;

(xv) cover the following points in the caution:

(a) the caution is an official police action (e.g. just as an arrest is an official police action);

(b) the caution will be recorded on police files but will not be included in the child's criminal history;

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

(d) after the caution, any detected offences may result in the child appearing in court;

(xvi) where appropriate, refer the child to another agency for follow-up of a particular problem. Encourage the child to discuss the offending behaviour with that agency (see s. 18 of the *Youth Justice Act*); and

(xvii) complete a Form 3: 'Notice of Caution' and, if appropriate, the required number of Form 3A: 'Notice of Caution Further Offences' in QPRIME in accordance with the QPRIME User Guide and serve.

5.5.18 Matters to be taken into consideration when administering a caution

PROCEDURE

When administering a caution, an officer should consider the following:

(i) convey an attitude of patience, concern and understanding to the child;

(ii) endeavour to earn the child's trust and encourage open discussion;

(ii) minimise questioning or prompting except where necessary;

(iv) be restrained, concise and factual;

(v) encourage due respect for proper parental authority. Any comments or criticism which may reflect on parents or guardians should be discreet and out of the child's hearing;

(vi) fully explore truancy and runaway behaviour to account for the child's activities and whereabouts;

(vii) be careful not to reveal sources of confidential or background information and be discreet in using same;

(viii) seek out reason for offending. Often offending behaviour may be the result of other problems;

(ix) avoid condemning the child as a person, but condemn the actions of the child;

(x) encourage self-esteem by commending good points and potential;

(xi) do not make any threat, promise or prediction as to what will happen on future occasions, but indicate alternatives; and

(xii) ensure that caution is finished on a positive note.

PROCEDURE

During an interview a child may disclose previous offences which have been committed by the child. If the child discloses offences which:

(i) have been previously dealt with, then the caution should proceed;

(ii) have not been previously dealt with, those offences may be:

(a) included as part of that formal caution process if the child's admissions establish a prima facie case, and the matter is one for which a caution is appropriate; or

(b) investigated as separate offences in which case the provisions of the *Police Powers and Responsibilities Act*, to the extent that they apply to children, and the associated provisions of the Responsibilities Code apply to the investigation and the starting of any proceeding.

5.5.19 Apology to victim

Section 19 of the *Youth Justice Act* provides that the caution procedure may involve an apology to the victim.

PROCEDURE

In circumstances where a caution is to be administered to a child and an authorised officer decides that an apology may be appropriate in the circumstances, the officer should:

(i) ask if the child is willing to apologise;

(ii) establish whether the victim is willing to participate in the apology;

(iii) if the child is willing to apologise to the victim and the victim is willing to participate, arrange a suitable time for the apology;

(iv) provide an area at a police establishment for the apology to take place;

(v) ensure that the apology is supervised either personally or by another authorised officer;

(vi) introduce all persons present to each other;

(vii) allow the victim to commence by explaining to the child the effect of the offence on the victim;

(viii) allow the child to apologise to the victim;

(ix) encourage further discussion to take place between the parties;

(x) ensure that the meeting proceeds and concludes in a constructive format; and

(xi) ensure the safety of the child and victim during the process.

When an apology from the child is not forthcoming, the caution process should continue.

5.5.20 Restitution or compensation after caution

ORDER

Except as outlined immediately after this order, members are not to accept money on behalf of victims for the purpose of restitution or compensation. Where the victim desires no contact with the offending child, arrangements are to be made by the investigating officer with the child or the child's parents for the restitution to be posted to the complainant at an agreed address.

PROCEDURE

A member may, in some instances arrange for the money to be paid into the Service collections account. The offender will be given a receipt and a cheque can be drawn in favour of the victim. The cheque can then be given to the victim in the most convenient manner.

The member may arrange for the restitution to be posted to the victim at a particular post office, rather than a personal address if desired by the victim or deemed appropriate by the investigating officer.

5.5.21 Return of property after caution - Relinquishing Order

PROCEDURE

Where property, the subject of an investigation or a complaint can be returned to the rightful owner as a result of a caution being administered, the investigating officer may obtain a relinquishing order for property from the child. If such an order is obtained, it should be

witnessed by a parent or independent adult person. The relinquishing order should be scanned as an attachment to the relevant QPRIME occurrence and then filed with the station copy of the QPRIME occurrence report and the caution notice.

ORDER

The property is to be returned to the rightful owner within twenty-eight days of the caution being administered unless it is required in other proceedings.

Where property is in possession of the investigating officer or other police, and the rightful owner is not known, the property is to be dealt with as unclaimed. In such a case, it is necessary to obtain a relinquishing order from the child.

Where property is in possession of the investigating officer or other police, and a dispute exists in respect of ownership of the property, the investigating officer is to make an application under s. 694 of the *Police Powers and Responsibilities Act*.

5.5.22 Referral to agencies

ORDER

Each officer in charge of a station or establishment is required to keep a referral list of appropriate agencies for information of parents of children with behavioural problems.

PROCEDURE

The officer in charge of a station or establishment should establish and maintain an updated and readily available list of referral agencies for officers required to caution or counsel children. These lists should include the following:

(i) medical/psychiatric (paediatricians, psychiatrists, psychologists, therapists, child guidance officers);

(ii) social workers (Department of Communities, Child Care officers, Community social workers);

(iii) education (Special or remedial teachers or school guidance officers, principals or teachers);

(iv) youth clubs (Police Youth Clubs, Church or sporting bodies, youth groups, Scouts or Guides);

(v) culturally appropriate support agencies; and

(vi) employment agencies.

Refer to Service policy and orders in relation to confidentiality later in this chapter. See also s. 19 of the *Youth Justice Act*.

5.5.23 Notice of Caution (Forms 3 and 3A) to be issued to child after caution

ORDER

At the conclusion of the caution the authorised officer is to ensure that a Notice of Caution is completed in the prescribed format.

Copies of the Notice of Caution are to be distributed as follows:

(i) one copy is to be provided to the child; and

(ii) a second copy is to remain on the station file.

In the case of traffic matters that would normally appear on a breach report the Notice of Caution is to be endorsed with the words 'Breach Report' in the section provided for Occurrence Number on that form.

ORDER

A Notice of Caution (Form 3) is to be completed for each offender. The notice (Form 3) has provision for one offence. Additional offences will need to be entered on a Notice of Caution - Further Offences (Form 3A).

PROCEDURE

The notice of caution may be typed or handwritten.

Once the child has been provided with the original of the notice of caution, the child is to be given the opportunity to endorse the remaining copy certifying that:

(i) the child consented to the caution;

(ii) the child admitted committing the offence or offences contained in the notice; and

(iii) the child received a copy of the notice of caution.

The person described by s. 16(2) of the *Youth Justice Act* (the Act) who was present for the caution should be invited to witness the child's signature. In the absence of such a person, the authorised officer should witness the signature.

If the child declines to sign the remaining copy, the person nominated by s. 16(2) of the Act should be invited to endorse the rear of the remaining copy with a signature, and the time, date and place of the issue of the Notice of Caution.

If the child or the person nominated by s. 16(2) of the Act declines to endorse the remaining copy of the Notice of Caution, the authorised officer is to make a note of the refusal on the rear of the remaining form that the child refused to sign. There is no obligation on the child to sign the Notice of Caution.

5.5.24 Forms to be completed

ORDER

For the purposes of statistical recording, the investigating officer is to ensure that the following information is completed in the relevant QPRIME occurrence:

(i) before the caution:

(a) create the relevant charge against the person and subject occurrence;

Where the child is above the age of criminal responsibility the words 'Officially Cautioned' are to be included in the offence section. Where the child is under the age of criminal responsibility the words 'Officially Counselled' are to be included in the offence section;

(b) create a diversion record from the Disposition area of the QPRIME Offence/Charge Window in accordance with the QPRIME User Guide; and

(c) create the Notice of Caution (Form 3) within QPRIME; and

(ii) after the caution, update the relevant QPRIME occurrence with the outcome of the caution.

5.5.25 Confidentiality

ORDER

The strict legislative requirements of the *Youth Justice Act* do not permit the disclosure of confidential information (see s. 284 of the *Youth Justice Act*), including information about the cautioning of children other than as outlined in Part 9.

Confidential information is only to be disclosed:

(i) for an authorised purpose under s. 289 of the *Youth Justice Act*;

(ii) to the child or with the child's consent under s. 290 of the *Youth Justice Act*;

(iii) to the Commissioner for Children and Young People and Child Guardian in accordance with s. 291 of the *Youth Justice Act*;

(iv) to ensure someone's safety in accordance with the written authority of the Chief Executive, Department of Communities under s. 292 of the *Youth Justice Act*;

(v) to a law enforcement entity in another jurisdiction in accordance with s. 294 of the *Youth Justice Act*; or

(vi) in regard to cautions and youth justice conferences and agreements, to those persons nominated in s. 295 of the *Youth Justice Act*.

5.7 Commencing proceedings against a child

5.7.1 Taking children into custody

The provisions relating to the arrest of children are contained in the *Police Powers and Responsibilities Act* and also in the *Youth Justice Act*. The *Youth Justice Act* is a Schedule 1 Act for the purposes of the *Police Powers and Responsibilities Act* except to the extent that s. 365(2) and Chapter 15 of the *Police Powers and Responsibilities Act* apply to children. This means the provisions of the *Youth Justice Act* take precedence over those of the *Police Powers and Responsibilities Act* wherever an inconsistency arises except in regard to the power to arrest a child and the powers and responsibilities relating to investigations and questioning for indictable offences.

Generally, a child may be arrested without warrant:

(i) for questioning about an indictable offence or for investigating an indictable offence under the provisions of s. 365(2) of the *Police Powers and Responsibilities Act*; or,

(ii) subject to s. 13 of the *Youth Justice Act*, to commence a proceeding against a child under the provisions of s. 365(3) of the *Police Powers and Responsibilities Act*.

POLICY

Officers are to arrest a child, without warrant, only if:

(i) the officer reasonably suspects that the child has committed or is committing an indictable offence and arrests the child for the purpose of questioning the child about the offence in accordance with Chapter 15: 'Powers and responsibilities relating to investigations and questioning for indictable offences' of the *Police Powers and Responsibilities Act* or investigating the offence (see s. 365(2) of the *Police Powers and Responsibilities Act* and s. 13(3) of the *Youth Justice Act*). At the conclusion of any questioning or investigation any further action is to be taken in accordance with ss. 11, 12 and 13(1) of the *Youth Justice Act* (see s. 5.4.2: 'Alternatives for dealing with child offenders' and s. 5.7.3: 'Issuing of a notice to appear to a child for offences' of this chapter); or

(ii) the officer reasonably suspects the child is committing or has committed an offence (see s. 365(3) of the *Police Powers and Responsibilities Act*) and the officer:

(a) reasonably suspects that the offence the child has committed or is committing is a serious offence (see s. 11 of the *Youth Justice Act*); or

(b) believes on reasonable grounds that the arrest is necessary to:

• prevent a continuation or a repetition of the offence or the commission of another offence;

• obtain or preserve, or prevent concealment, loss or destruction of, evidence relating to the offence;

• prevent the fabrication of evidence; or

• ensure the child's appearance before a court (see s. 13(1)(a) of the *Youth Justice Act*);

(c) believes on reasonable grounds that the child is an adult. Officers who arrest a child under the reasonable belief that the child is an adult are to outline in the QP9 the circumstances that lead to that belief (see s. 13(1)(b) of the *Youth Justice Act*); or

(d) believes on reasonable grounds that the child is contravening s. 278: 'Escape' of the *Youth Justice Act* or is unlawfully at large (see s. 13(1)(c) of the *Youth Justice Act*); or

(iii) the officer is using the officer's power of arrest under a warrant issued under the *Bail Act* (see s. 13(4) of the *Youth Justice Act*).

The *Youth Justice Act* provides that, upon the order of a Children's Court magistrate, identifying particulars (i.e. fingerprints and palm prints) of a child charged with an indictable offence or an 'arrest offence' against certain Acts (see s. 25(1) of the *Youth Justice Act*) may be taken without arresting the child. It is therefore not Service policy to consider the taking of identification particulars, e.g. fingerprints, photographs, as a criterion for deciding to arrest a child.

Officers who arrest a child are to comply with the provisions of Chapter 15, Part 3: 'Safeguards ensuring rights of and fairness to persons questioned for indictable offences' and Chapter 20: 'Other standard safeguards' of the *Police Powers and Responsibilities Act* to the extent that those provisions:

(i) are applicable to a child; and

(ii) apply to the type of offence for which the child was arrested; or

(iii) impose applicable responsibilities upon officers which are additional to those imposed by the *Youth Justice Act*.

Officers who arrest a child under the provisions of ss. 365(2) or 365(3) of the *Police Powers and Responsibilities Act* are to discontinue the arrest and release the child at the earliest reasonable opportunity if:

(i) the child is no longer reasonably suspected of committing the offence for which the person was arrested, unless the provisions of s. 376(2) of the *Police Powers and Responsibilities Act* apply;

(ii) the officer considers there is not enough evidence to bring the child before a court on a charge of the offence (see s. 376(3) of the *Police Powers and Responsibilities Act*); or

(iii) the reason for arresting the child no longer exists or is unlikely to happen again if the child is released, e.g. the questioning of the child has concluded (see s. 380(2) of the *Police Powers and Responsibilities Act*); and

(iv) after considering the circumstances of the alleged offence and the child's previous history known to the officer, it is more appropriate to deal with the offence by:

(a) taking no action;

(b) administering a caution under the provisions of the *Youth Justice Act*;

(c) referring the offence to a youth justice conference;

(d) for a minor drugs offence, offer the child the opportunity to attend a drug diversion assessment program under the *Police Powers and Responsibilities Act*, s. 379 (see s. 11(1): 'Police officer to consider alternatives to proceeding against child' of the *Youth Justice Act* and s. 2.38.9: 'Duty of prescribed police officer receiving custody of person arrested for minor drugs offence' of this Manual);

(e) for an offence of being drunk in a public place, take and release the person at a place of safety under the *Police Powers and Responsibilities Act*, s. 378 (see s. 16.6.3: 'Drunkenness' of this Manual); or

(f) commencing proceedings by way of complaint and summons under the *Justices Act* or notice to appear under the *Police Powers and Responsibilities Act* (see s. 380(3) of the *Police Powers and Responsibilities Act*).

The requirement for an officer to discontinue an arrest of a child because the reason for arresting the child no longer exists or is unlikely to happen again if the child is released or it would be more appropriate to deal with the child in another way (see s. 380(3) of the *Police Powers and Responsibilities Act*) does not apply if:

(i) the nature or seriousness of the offence for which the child is a suspect makes it inappropriate to release the child; or

(ii) the officer reasonably believes the child is an adult (see s. 380 of the *Police Powers and Responsibilities Act*).

Officers who do not discontinue the arrest of a child are to outline in the QP9 why the arrest was not discontinued.

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

5.7.2 Parent and chief executive must be advised of police action

Definition

For the purpose of this section, the term 'parent' includes:

(i) a parent or guardian of a child; or

(ii) a person who has lawful custody of a child other than because of the child's detention for an offence or pending a proceeding for an offence; or

(iii) a person who has the day-to-day care and control of a child.

as defined in Schedule 4: 'Dictionary' of the *Youth Justice Act*. The definition will include the 'homestay provider' in the case of international homestay school students (see s. 5.9: 'International homestay students' of this chapter).

ORDER

Pursuant to s. 392: 'Parent and chief executive to be advised of arrest or service of notice to appear' of the *Police Powers and Responsibilities Act*, an officer who arrests a child or serves

a notice to appear on a child is to promptly provide advice of the arrest and whereabouts of the child or advice of the service of the notice to appear to:

(i) a parent of the child, unless a parent can not be found after reasonable inquiry; and

(ii) the chief executive or a person who holds an office within the department nominated by the chief executive for the purpose.

In all circumstances, the investigating officer is to document and if possible record on the back of the relevant QP9 what endeavours were made to locate a parent and any other reason why a parent was not advised as required.

In these circumstances the term 'parent' includes someone who is apparently the parent of the child.

The Chief Executive will always be able to be contacted through an area office of Child Safety Services, Department of Communities.

5.7.3 Issuing of a notice to appear to a child for offences

POLICY

Pursuant to s. 12 of the *Youth Justice Act*, officers starting a proceeding against a child for an offence, other than a serious offence, are to start the proceeding by way of notice to appear or complaint and summons, unless otherwise provided under the *Youth Justice Act*. See s. 5.7.1: 'Taking children into custody' of this chapter and s. 3.5.4: 'Proceedings by way of complaint and summons' of this Manual for relevant information about commencing a proceeding against a child by arrest or complaint and summons.

A notice may also be issued after an officer has arrested a child by the officer who is in charge of the relevant police station or watchhouse in accordance with s. 50 of the *Youth Justice Act*.

ORDER

An officer issuing a notice to appear to a child is to specify a time for the child to appear before a court that is as soon as practicable after the service of the notice to appear and is fixed generally by the relevant clerk of the court for hearing matters under the *Youth Justice Act*. See s. 384(3) of the *Police Powers and Responsibilities Act*.

Notice to appear issued to a child is to:

(i) state the substance of the offence alleged to have been committed;

(ii) state the name of the child alleged to have committed the offence;

(iii) require the child to appear before a court of summary jurisdiction in relation to the offence at a stated time and place;

(iv) clearly state that, at the time of the alleged offence, the person was a child; and

(v) be signed by the police officer serving the notice to appear.

PROCEDURE

Subject to the preceding order the time specified in the notice to appear for the child to appear before a court should be the next Childrens Court date set down by the Clerk of the Court (e.g. if Childrens Court is 2pm every Wednesday, notices to appear may direct the child to appear at 2pm on the following Wednesday).

Some examples of entries which may be made on a notice to appear include:

(i) at 4pm on 11 June 2000, you committed two stealing offences on the Gold Coast;

(ii) between 18 June and 22 June 2000, you committed two offences of unlawful use of a motor vehicle and three offences of stealing at Brisbane; and

(iii) on 1 July 2000, you committed a public nuisance offence at Toowoomba and on 1 July 2000 you wilfully damaged a police car at Toowoomba.

POLICY

Officers (including an officer in charge of a police establishment or a watch-house manager) issuing a notice to appear are to:

(i) select an appropriate court having jurisdiction over the matter and ascertain a mention date suitable to the court.

(ii) confer, if time permits with the relevant police prosecution corps which is to present the matter and confirm that the mention date is suitable;

(iii) fully and accurately complete the details required to be inserted in a notice to appear (QP 0699);

(iv) serve the notice to appear on the child and complete the 'Service' portion on the bottom section of the notice;

(v) ensure that the notice to appear is filed with the Clerk of the Court at the place where the child is to appear as soon as reasonably practicable after service of the notice and before the time the child is required to appear before the court under the notice; and

(vi) prior to the completion of the shift when a notice to appear is issued and served ensure that the quadruplicate (blue) copy is given to the officer in charge and that the shift supervisor or district duty officer is advised of the service of the notice to appear and the relevant mention date.

Additionally an officer in charge of a police station or a watchhouse who issues a notice under s. 50 of the *Youth Justice Act* is to:

(i) create the Form 14: 'Release Notice' in QPRIME;

(ii) update the relevant custody report in QPRIME with details of the child's release; and

(iii) assign a notification task to the arresting officer advising of the issue and service of the notice.

Officers commencing proceedings against a person by way of notice to appear are to:

(i) ensure that a court brief in relation to the matter is completed and have it inspected as prescribed in s. 3.7.5: 'Checking of court briefs' of this Manual; and

(ii) prepare an appropriate bench charge sheet(s), unless previously completed as a result of the arrest, and attach three copies of the bench charge sheet(s) to the relevant court brief.

Officers in charge are to monitor and ensure that court briefs relating to proceedings commenced by way of notice to appear are completed to allow sufficient time for checking as required by s. 3.7.5: 'Checking of court briefs' of this Manual.

Police prosecutors are to ensure that copies of the relevant charge sheet(s) are given to the defendant, if present, and the court on the first occasion when the matter is before a court.

Pursuant to s. 20(4) of the *Police Powers and Responsibilities Act*, a police officer may enter and stay for a reasonable time on a place to serve a document. However, pursuant to s. 20(5) of the *Police Powers and Responsibilities Act*, if the place contains a dwelling a police officer may only enter that part of the place which is not a dwelling without the consent of the occupier.

A police officer may stay on a place to serve a document, including a notice to appear, for a reasonable time under s. 20: 'What is a reasonable time to stay on a place' of the *Police Powers and Responsibilities Act*.

Service of a notice to appear

ORDER

An officer serving a notice to appear on a child is to:

(i) personally serve the notice on the child;

(ii) serve the notice as discreetly as practicable;

(iii) not serve the notice at or in the vicinity of the child's place of employment or school, unless there is no other place where service may be reasonably effected See s. 383 of the *Police Powers and Responsibilities Act*; and

(iv) if the notice to appear was not system generated (i.e. field issued), update the QPRIME charge sequencing report with details of the notice to appear in accordance with the QPRIME User Guide.

POLICY

An officer who serves a notice to appear on a child is to:

(i) hand the original (white) copy of the notice to appear to the child;

(ii) explain the offence for which the notice to appear has been issued; and

(iii) advise the time, date and court at which the child is to appear.

Where a child refuses to accept a copy of the notice to appear, officers are to:

(i) ensure the time, date and court at which the child should appear are given to the child where this is possible and the copy left in a conspicuous place where the child named therein is likely to see it; or

(ii) if the child's actions raise a reasonable suspicion that that child will not appear before the nominated court, the police officer concerned may consider arresting the child under s. 365(3) of the *Police Powers and Responsibilities Act.*

The following sections of the *Police Powers and Responsibilities Act* apply to officers who service a notice to appear:

(i) s. 19: 'General power to enter to make inquiries, investigations or serve documents';

(ii) s. 612: 'Assistance in exercising powers'; and

(iii) s. 637: 'Supplying police officer's details'.

5.7.4 Statements required for Childrens Court

PROCEDURE

When a child is placed before a court for a serious offence as defined in s. 8 of the *Youth Justice Act*, the investigating officer is responsible for preparing a statement endorsed under the provisions of the *Oaths Act* for tendering under the provisions of s. 110A of the *Justices Act*. A proceeding for a serious offence is always conducted as committal proceedings.

If a child is legally represented in relation to an indictable offence, other than a serious offence, there is no requirement for the investigating officer to prepare a statement where the child is intending to plead guilty.

In all other cases, there is no requirement for the investigating officer to prepare a statement unless:

(i) the child fails to appear;

(ii) the matter is set for hearing, when a full brief of evidence is required; or

(iii) the matter is set for committal, when a full brief of evidence is required.

5.7.5 Proceedings against a child by complaint and summons

PROCEDURE

When an officer decides to commence a proceeding against a child by way of complaint and summons, the officer should ensure that the child is served with the summons at least three clear days prior to the initial appearance date.

ORDER

Instantia summons are only to be used if the complaint is served on the parent and the Chief Executive.

5.7.6 Service of the complaint and summons

ORDER

An officer proceeding against a child by way of complaint and summons is to:

(i) create the complaint and summons in QPRIME in accordance with the QPRIME User Guide;

(ii) swear the complaint and summons before a Justice of the Peace, other than a Commissioner for Declarations;

(iii) as soon as practicable, register the original of the complaint and summons with the Clerk of the Court at which the child is to appear. The summons may be registered after the actual service of the summons;

(iv) if the complaint and summons is unable to be served immediately, update QPRIME to indicate the status of the complaint and summons in accordance with the QPRIME User Guide;

(v) serve or cause to be served a copy of the complaint and summons on the child. Section 56 of the *Justices Act* provides for method of service;

(vi) serve or cause to be served a copy of the complaint and summons on the parent and the Chief Executive (although the Act only requires that a copy of the complaint be served on the parent and Chief Executive, completion or copying of two additional complaint and summons forms will meet the requirements of the Act);

(vi) return an endorsed copy of the complaint and summons to the Clerk of the Court where the child is required to appear;

(vii) update QPRIME to record the details of service in accordance with the QPRIME User Guide; and

(viii) attach a copy of the complaint and summons to the QP9 for the information of the prosecutor together with details of service on the child, parent and the Chief Executive.

5.7.7 Service of complaint on a parent

POLICY

Service of the complaint (which will usually be a copy of the complaint and summons form) for either a simple offence or an indictable offence can be affected on a parent by:

(i) personal service;

(ii) posting a copy of the complaint and summons form by registered mail to the parent at the usual place of business or residence of the parent last known to the officer.

Service of the complaint and summons should be affected where possible at least three days prior to the time the child is required to appear in answer to the summons.

PROCEDURE

Where the complaint (and summons) is served on the parent, the officer serving a copy of the complaint and summons on the parent should:

(i) endorse a copy of the complaint and summons as to service and retain the endorsed copy with the investigation file;

(ii) update QPRIME with details of the time, date and place of service;

(iii) note in the facts of the QP9 court brief that the parent was served with a copy of the complaint and summons; and

(iv) if it was sent by registered mail, retain the registered mail receipt with the investigation file so that it may later be tendered as proof of the service should proof be required.

Where an officer is unable to serve the parent of a child with a copy of the complaint in a reasonable time prior to the date of appearance, the summons should be returned to the Clerk of the Court where the child is to appear for an extension of time. This should occur when there is a reasonable expectation that a parent will be able to be located.

Where an officer has commenced proceedings by way of complaint and summons and is unable to serve the parent of a child with a copy of the complaint and reasonably believes that it is unlikely that a parent will be located for service of the complaint, the officer should outline in the QP9 what enquiries were conducted to locate the parent. Officers should note that the term parent in these circumstances includes someone who is apparently the parent of the child. If a police officer contacts a person reasonably believed to be the parent by telephone, officers may disclose the content of the summons. Such contact should also be outlined in the QP9 if the parent is not otherwise served with the summons.

5.7.8 Court may order parent to attend

Section 70 of the *Youth Justice Act* allows a court before which a child appears charged with an offence, to order a parent of the child to attend the proceeding.

POLICY

Where appropriate the prosecutor may make application to the court for such an order.

Officers should assist in giving notice to the parent to attend the court when required to do so by the court's proper officer (i.e. the clerk of the court etc.).

5.7.9 Service of the complaint on the Chief Executive

POLICY

Service of the complaint (which will usually be a copy of the complaint and summons form) for either a simple offence or an indictable offence can be affected on the Chief Executive by:

(i) personal service;

(ii) delivering a copy of the complaint and summons to an officer from Youth Justice, Department of Communities; (Note: this would be the usual method of service); or

(iii) posting a copy of the complaint and summons form by registered mail to the Chief Executive at the usual place of business of the Chief Executive.

Service of the complaint and summons should be affected within a reasonable time prior to the child being required to appear in answer to the summons.

ORDER

Where the complaint and summons is served on the Chief Executive either personally or by substituted service, the officer serving a copy of the complaint and summons is to:

(i) endorse a copy of the complaint and summons as to service and retain the endorsed copy with the investigation file;

(ii) update QPRIME with details of the time, date and place of service;

(iii) note in the facts of the QP9 court brief that the parent was served with a copy of the complaint and summons; and

(iv) if it was sent by registered mail, retain the registered mail receipt with the investigation file so that it may later be tendered as proof of the service should proof be required.

5.8 Fingerprinting of children

The *Youth Justice Act* allows for the taking of identifying particulars of children upon the order of a court.

The Act provides two circumstances under which a court may order a child's identifying particulars be taken:

(i) where the child is charged without being arrested, e.g. by a notice to appear; or

(ii) where a court has made a finding of guilt against the child.

The provisions of the *Youth Justice Act* are in addition to the power under s. 467 of the *Police Powers and Responsibilities Act* to take or photograph all or any of the identifying particulars in person, including a child, who is in custody for an identifying particulars offence that has not been decided (see s. 16.17: 'Prisoner Identification' of this Manual).

5.8.1 Taking identifying particulars of a child not arrested

POLICY

Section 25 of the *Youth Justice Act* allows identifying particulars to be obtained from a child who has been charged without being arrested. However, the authority only applies to indictable offences or arrest offences against the Acts mentioned in the section.

This authority will normally apply where a child is proceeded against by complaint and summons, or by a notice to appear. However, it may also apply where the child is charged from the bench, or when arraigned as a result of an ex officio indictment by the Director of Public Prosecutions (State).

In these circumstances an officer may apply to a Childrens Court magistrate for an order to take the child's identifying particulars.

The application to take identifying particulars may relate to the offence for which the child is charged or to another offence arising out of the same, or same set, of circumstances, for which the child is not yet charged.

5.8.2 The application process

PROCEDURE

Officers intending to obtain fingerprint evidence under s. 25 of the *Youth Justice Act* should prepare an application consisting of:

(i) a 'Notice of Application to a Childrens Court for Identifying Particulars' (Form 1); and

(ii) a supporting affidavit (see Appendix 5.4).

The application and supporting affidavit should normally be lodged at the court at the same time as the Complaint and Summons or notice to appear, as the case may be, so that the child's appearance and the application for identifying particulars will coincide.

ORDER

Applicant officers are to ensure that the 'Notice of Application to a Childrens Court for Identifying Particulars' and the accompanying affidavit are distributed as follows:

(i) original to the clerk of the court where the application is to be heard, and

(ii) copies to:

(a) the police prosecutor;

(b) the child;

(c) a parent of the child, unless a parent can not be found after reasonable enquiry (the parent includes someone who is apparently a parent of the child); and

(d) the Chief Executive, Department of Communities.

All notices are to be lodged or served, as the case may be, allowing sufficient time for the court and respondent parties or agencies to make any necessary arrangements.

5.8.3 Notice of the application

ORDER

The *Youth Justice Act* requires that notice of the application is to be given to:

(i) the child;

(ii) a parent of the child, unless a parent can not be found after reasonable enquiry (the parent includes someone who is apparently a parent of the child); and

(iii) the Chief Executive, Department of Communities.

Notices to the child and to the parent of the child are to be served personally.

Notices to the Chief Executive, Department of Communities, should be addressed to the nearest regional Youth Justice Service Centre (see Contact Directory) or after hours, the Child Safety After Hours Service Centre (see Contact Directory).

PROCEDURE

Where an officer cannot locate the parent of the child after reasonable inquiry, applicant officers should outline in affidavit form what reasonable inquiries were made to locate the parent of the child.

To satisfy the court that notice of the application has been provided as required in the *Youth Justice Act*, applicant officers should include evidence of the notice given in the affidavit accompanying the application or in a further affidavit (see Appendix 5.5).

POLICY

The officer in charge of a police prosecutions corps may consider approaching the local clerk of the court to determine whether a declaration or endorsement, either sworn or unsworn is acceptable as an alternative to an affidavit, for satisfying the court that notice has been given to the relevant parties of such applications.

Which ever method is used, the court should be informed of the time, date, place and to whom the notice was provided, and the name, rank, registered number and station of the officer providing the notice.

5.8.4 Preparing a supporting affidavit

PROCEDURE

Officers making application for an order to take identifying particulars of a child under the provisions of s. 25 of the *Youth Justice Act* should ensure that their affidavit contains sufficient evidence for the court to satisfy itself on the balance of probabilities that:

(i) someone has committed the offence for which the child is charged or committed an offence arising out of the same, or same set of, circumstances;

(ii) there is evidence of identifying particulars of the offender that are of the same type as the identifying particulars the applicant seeks to have taken from the child;

(iii) the child is reasonably suspected of being the offender; and

(iv) the order is necessary for the proper conduct of the investigation of the offence.

The applicant officer should state in the body of the affidavit:

(i) a brief outline of the offence including time, date, place, complainant's details, police attendance, etc.;

(ii) what evidence there is of identifying particulars of the offender that are of the same type as those sought to be taken from the child. For example, that a scenes of crime officer has told the applicant that a latent fingerprint/palm print was located in connection with the offence and the defendant child's fingerprints/palm prints are sought;

(iii) why the defendant child is reasonably suspected of being the offender, (normally because a fingerprint expert has told the applicant that the latent impression located has been identified as belonging to the defendant child);

(iv) how the order is necessary for the proper conduct of the investigation; and

(v) a brief outline of any police action to date concerning the investigation.

Evidence supporting the application will normally consist of an affidavit. However, it may also be in the form of oral evidence. Officers should be aware that where oral evidence is given in support of the application, they may be subject to cross examination.

POLICY

The officer in charge of a police prosecutions corps may consider approaching the local clerk of the court to determine whether a statement endorsed under the *Oaths Act 1867* is acceptable as an alternative to an affidavit. If a court is satisfied with such statements in respect of applications under s. 25 of the *Youth Justice Act*, relevant officers should be advised of this fact.

5.8.5 Identifying particulars taken for an investigative purpose

POLICY

Officers should not take identifying particulars from a child under the provisions of s. 25 of the *Youth Justice Act* unless a support person chosen by the child is also present.

While s. 26 of the Act provides that identifying particulars taken in the absence of such persons may be admissible as evidence if the prosecution satisfies the court that there was proper and sufficient reason for taking the identifying particulars in the absence of any such person, circumstances of this nature should be rare and officers should do all that is necessary to protect the integrity of the investigation.

Where an officer decides to exclude a person from being present at the taking of identifying particulars on the grounds prescribed in s. 26(3) or s. 26(4) of the Act, the officer should ensure that another support person is present when the identifying particulars are taken.

ORDER

The fingerprint form used in these cases is to be clearly marked 'Prints taken pursuant to Court Order - Section 25 - Youth Justice Act'.

Such fingerprint forms are to be kept separate from all other fingerprints held at the Fingerprint Bureau.

The applicant officer is to notify the Fingerprint Bureau of the outcome of the case. Where there has been no sentence order, the fingerprints are to be destroyed. Where there has been a sentence order, those fingerprints are to be dealt with in the same manner as all other fingerprints held at the Fingerprint Bureau.

However, where there has been a sentence order, the applicant officer is to wait until the expiration of any appeal period before advising the Fingerprint Bureau of the result. Where an appeal is lodged, the applicant officer is to await the outcome of the appeal and then advise the Fingerprint Bureau accordingly.

5.8.6 Destruction of identifying particulars taken for an investigative purpose

ORDER

Officers who obtain orders under s. 25 of the *Youth Justice Act* (the Act) are to ensure that identifying particulars taken pursuant to such orders are destroyed within seven days:

(i) of the end of the proceeding if no sentence order was made, whether the proceeding was started before or within twenty-eight days after the order to take identifying particulars was made; or

(ii) after a twenty-eight day deadline to commence proceedings has passed, and no proceeding has been commenced, since the order to take identifying particulars was made.

Circumstances where a proceeding may end without a sentence order being made include:

(i) the charge relating to the investigation for which the order being made was dismissed or discontinued;

(ii) the child being found guilty by a court and successfully referred to a youth justice conference as a way of dealing with the offence; or

(iii) the child pleading guilty to an offence, but the court dismissing the charge and administering a caution or directing a caution be administered.

Where an investigation does not lead to a sentence order being made, and the officer who applied to have the identifying particulars taken is unable to do so, the officer in charge of the station or establishment to which the applicant officer is attached is to ensure the destruction of the identifying particulars.

Police prosecutors are to ensure that:

(i) whenever a proceeding, at which they appear, ends without a sentence order being made; and

(ii) identifying particulars have been taken under s. 25 of the Act in relation to that proceeding;

the arresting officer or the officer in charge of the arresting officer's station or establishment is notified as soon as practicable to arrange for the destruction of any identifying particulars taken under the provisions of s. 25 of the Act.

PROCEDURE

The Office of the Director of Public Prosecutions (State) will advise the officer in charge of the arresting officer's station or establishment whenever a prosecution in the superior courts is discontinued or ends without a sentence order being made.

Officers in charge of stations or establishments who receive such advice on behalf of one of their officers should ensure that the arresting officer is notified as soon as possible.

If an arresting officer is absent from duty and will not return to duty for more than 24 hours from the time the officer in charge is notified, the officer in charge should make arrangements to have the identifying particulars destroyed.

Arresting officers receiving advice that a proceeding has ended without a sentence order being made should arrange the destruction of any identifying particulars taken in accordance with s. 25 of the Act as soon as practicable.

Officers arranging the destruction of identifying particulars in accordance with s. 27 of the Act should initiate a QPS IDP/DNA Destruction Request Task Workflow in QPRIME in accordance with the QPRIME User Guide. However, before initiating this workflow officers should ensure that:

(i) the general report/supplementary report contains information about the reason for the destruction of the particulars including the date from which the 7 days allowed for destruction began; and

(ii) any relevant court result is captured in QPRIME.

Failure to ensure this information is contained in the relevant QPRIME occurrence may result in the OIC of the Org Unit being assigned a FYI task notifying of the rejected request.

The Officer in Charge, Fingerprint Bureau should ensure that requests for destruction of identifying particulars are analysed and, where appropriate, identifying particulars are destroyed promptly upon receipt of requests made in accordance with this section and the QPRIME User Guide.

5.8.7 Taking of identifying particulars upon a finding of guilt by a court

Section 255 of the *Youth Justice Act* allows a court that makes a sentence order against a child after a finding of guilt, to also order that the child's identifying particulars be taken.

The purpose of the section is to ensure the accuracy of criminal records, and for the maintenance of a fingerprint database enabling the identification of offenders in the future.

Applications are restricted to circumstances where the finding of guilt is made with respect to an indictable offence or an arrest offence, against any of the Acts referred to in the section.

Requirements in respect of persons to be present when identifying particulars are taken and the destruction and handling of identifying particulars taken for investigative purposes do not apply in cases where a court orders identifying particulars to be taken after making a finding of guilt.

Under s. 255(6), 'identifying particulars' for the purposes of this section means fingerprints and palm prints.

PROCEDURE

Prosecutors should make verbal application to a court which finds a child guilty of an offence prescribed in s. 255(1) for an order to have the child's identifying particulars taken.

5.8.8 Access to detention centres to take identifying particulars

PROCEDURE

The Department of Communities will permit members of the Service access to Youth Detention Centres for the purpose of taking the identifying particulars of a child detained in the centre where such authority has been granted by a court.

Officers who have been granted permission by a court to take the identifying particulars of a child who has been admitted to, or sentenced to a Youth Detention Centre should contact the centre manager of the Youth Detention Centre to make the necessary arrangements for the officer's attendance at that centre.

Attachment 2 to the letter to Legal Affairs, Police, Community Safety and Emergency Services Committee

Police Powers and Responsibilities and Other Legislation Amendment Bill 2011

Response to Submission by The Commission for Children and Young People and Child Guardian

1. ***Proposed safeguards applicable to a pat-down search of a minor for liquor.***

- The proposed pat–down searches of minors for liquor will be subject to the current safeguards applicable to searches of persons without the removal of clothing. That is, the requirements of Chapter 20, Part 3, Division 1 'General provisions about searches of persons and vehicles' will be applicable to a pat-down search.
- Requiring a police officer to wait for an independent adult prior to conducting a pat-down search, or search of bags in the possession of the minor, would unnecessarily increase the time period the minor is required to be in the company of the police officer. The principle of detaining a person for only as long as reasonably necessary is a current safeguard to which police officers are required to adhere.
- In relation to other discussion points raised within the submission, the Queensland Police Service (QPS) refers to previous correspondence to the Committee and statements made by Deputy Commissioner (Specialist Operations) Barnett during the public hearings.

2. ***Definition of 'child DNA sampling offence'***

- The definition of child DNA sampling offence has specifically been limited to include only those offences that may cause the birth of another child.
- It is not intended at this time to extend the provision to capture other sexual offences which encompass the definition of rape under the Criminal Code.