

Police powers update September 2016 (*with postscript February 2017*)

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1 Background

A version of this paper was published in March 2015, following several amendments to the *Law Enforcement (Powers and Responsibilities) Act* (LEPRA) and to other relevant legislation. In that paper I outlined:

- (a) Amendments to the arrest power in section 99 (*Law Enforcement (Powers and Responsibilities) Amendment (Arrest Without Warrant) Act* 2013, commenced 16 December 2013).
- (b) Introduction of new powers to conduct breath testing, breath analysis, blood and urine samples on persons under arrest for “assault causing death” offences (*Crimes and Other Legislation Amendment (Assault and Intoxication) Act* 2014, commenced 31 January 2014).
- (c) Expansion of powers to direct and detain persons for the purpose of serving apprehended violence orders (*Crimes (Domestic and Personal Violence) Amendment Act* 2013, commenced 20 May 2014).
- (d) Amendments to Part 15 (including section 201), (*Law Enforcement (Powers and Responsibilities) Amendment Act* 2014, commenced 1 November 2014).
- (e) Amendments to Part 9 and a range of other provisions (*Law Enforcement (Powers and Responsibilities) Amendment Act* 2014; **since my last paper these have now commenced**).

The amendments referred to in paragraph (a) were discussed in more detail in my separate paper on *Arrest without warrant in New South Wales* (March 2015 update).

The amendments referred to in paragraph (d) were further discussed in *LEPRA section 201 – recent developments* (updated December 2014).

All papers can be found at www.criminalcpd.net.au.

2 Scope of this paper

The purpose of this paper is to discuss:

- (a) The amendments mentioned in paragraph (e) above (mainly in relation to Part 9 and search powers), which commenced on 1 September 2016;
- (b) The new LEPR Regulation 2016, which also commenced on 1 September 2016, and which replaces the old LEPR Regulation 2005;
- (c) Amendments to search and directions powers, which are part of a package of so-called “anti-protest” laws. **Postscript: these commenced on 1 November 2016.**

3 Amendments to Part 9 of LEPR

Part 9 of LEPR has been amended by Schedule 1 of the *Law Enforcement (Powers and Responsibilities) Amendment Act 2014*, with effect from 1 September 2016.

3.1 Lengthening of investigation period

Controversially, the investigation period in s115 has been extended from 4 hours to 6 hours.

However, the maximum total investigation period remains at 12 hours (ie a detention warrant may only extend the investigation period for up to 6 hours) (s118).

The amendment was made following a review of LEPR in 2013 by Andrew Tink and Paul Whelan. Despite the fact that "*Police we consulted advised us that in the great majority of cases 4 hours investigation time is sufficient*", Tink and Whelan supported the extension of the investigation period on the basis that applying for a detention warrant was a time-consuming process, and that the time spent applying for such a warrant often greatly exceeded the extension of time required.

The increase to the initial investigation period is a matter of serious concern, and appears to have little justification. It is likely that, before too long, suspects will routinely be detained for longer periods and 6 hours will become the default period.

However, remember that s115(1) provides:

The investigation period is a period that begins when the person is arrested and ends at a time that is reasonable having regard to all the circumstances, but does not exceed the maximum investigation period.

We may soon see more argument in court as to whether the investigation period was *reasonable in the circumstances*, with police officers being cross-examined as to the necessity for such a long period of detention.

3.2 Replacement of "deemed arrest" with "protected suspect"

The concept of "deemed arrest" that existed in the former Part 9 has been replaced by the concept of "protected suspect".

A "protected suspect" is someone who is free to leave (and thus not subject to the provisions regarding detention for the investigation period) but who is still entitled to the protections afforded by Part 9.

The definition has been inserted into s110(1) as follows:

Protected suspect means a person who is in the company of a police officer for the purpose of participating in an investigative procedure in connection with an offence if:

- (a) the person has been informed that he or she is entitled to leave at will, and
- (b) the police officer believes that there is sufficient evidence that the person has committed the offence.

In my view there is merit in doing away with the concept of "deemed arrest", as this has never been well understood by police.

However, there appears to be a serious flaw in the definition of "protected suspect". A vulnerable suspect who is not under arrest, *but who has not been explicitly told they are free to leave*, could potentially be deprived of protection under Part 9.

The term “sufficient evidence that the person has committed the offence” also lacks clarity. Does this mean sufficient evidence to arrest the person, to commence criminal proceedings, or to make out a prima facie case?

3.3 Application of Part 9 when executing search warrants

Part 9 has also been amended so that it applies in the field during the execution of a search warrant.

The Tink and Whelan report noted that *“Police are currently required to freeze the search and take the person back to the police station to ensure Part 9 provisions are complied with. The person is then “invited” back to the premises to continue participating in the search.”*

A new s112A has been added:

112A Application of Part in connection with execution of search warrants

(1) This Part applies to a person in the company of a police officer for the purpose of an investigative procedure at premises that are being searched under a search warrant issued under this Act or under a provision specified in Schedule 2 if:

- (a) the person has been arrested and is in custody at those premises, or
- (b) the person is at the premises and is a protected suspect.

(2) For that purpose:

- (a) the functions of the custody manager under this Part are exercisable by a police officer who is at the premises but who is not connected with the investigation concerned and who does not participate in the execution of the search warrant, and
- (b) the police officer exercising the functions of the custody manager is not required to comply with any obligation under this Part relating to communication with a friend, relative, guardian or independent person if the police officer suspects on reasonable grounds that doing so may result in bodily injury to any other person, and
- (c) the custody record for the detained person or protected suspect may form part of a video recording of the execution of the search warrant, and
- (d) this Part applies with such other modifications as are prescribed by the regulations.

Over the years, it has been suggested that Part 9 should apply in the field more generally (eg where police wish to interview a suspect in circumstances where it is unnecessary or impracticable to take them to the police station). However, I understand that this has been rejected as unworkable, given the difficulty of appointing a custody manager and ensuring a suspect receives their Part 9 rights while out in the field.

4 New Regulations in relation to Part 9

A new Law Enforcement (Powers and Responsibilities) Regulation 2016 has replaced the old 2005 Regulation, with effect from 1 September 2016.

Part 3 relates to investigations and questioning, and is almost identical to Part 3 of the old Regulation. A comparative table of the old and new provisions is attached as an Appendix to this paper. I have set out the text of any provision that is new or substantially altered.

The only substantive changes are in the use of the new term “protected suspect”, and in providing that a detained person’s legal representative is entitled to a copy of the custody management records as well as to inspect them (the suspect is already entitled to a copy of their custody management records under s131(5) of the Act).

In my view this was a wasted opportunity to tidy up and improve the Regulations.

The written summary of Part 9 that is given to suspects is now prescribed by Schedule 1. Form 31 is the standard summary of Part 9 for detained persons, and Form 32 is a summary of Part 9 for protected suspects. There is no special form for vulnerable persons, and no form for support persons explaining their role.

Postscript: these Regulations are under review and are likely to be amended by mid-2017. Likely amendments include fixing some drafting problems that have carried over from the 2005 Regulations, redrafting the Part 9 forms in “plain English”, and improving the Code of Conduct for giving directions.

5 Amendments to search powers

Schedule 3 of the *Law Enforcement (Powers and Responsibilities) Amendment Act 2014* makes various amendments to search powers, with effect from 1 September 2016. The main ones are summarised below.

5.1 Renumbering

Divisions 2 and 3 of Part 4 have been swapped, and the relevant sections renumbered:

- Old ss23, 23A and 24 (powers to carry out search on arrest or in custody) are now ss27, 28 and 28A.
- Old ss25-28 (searches for knives and dangerous implements) are now ss23-26.

5.2 Requirement to open mouth

Section 21A has been amended to clarify that, when a person is required to open their mouth, this is for the purpose of enabling it to be searched.

A similar amendment have been made to the former s23A (which is now s28).

Section 3, the definition section, has been amended to clarify that “body cavities” do not include a person’s mouth.

5.3 Search of person after arrest or in custody

Section 24 has been renumbered as s28A, and a new subs(2) has been added, so that it now reads:

28A Power to carry out search of person in lawful custody after arrest

(1) A police officer may search a person who is in lawful custody after arrest and seize and detain anything found on that search.

(2) Any such search may be carried out at a police station or other place of detention or immediately before or during transportation of the person to or from a police station or other place of detention.

This amendment was recommended by the statutory review of LEPR, in response to concerns expressed in an inquest into the death of Jason Lee Plum, who died from a self-inflicted gunshot wound while in police custody. The Deputy State Coroner recommended that the police should adopt a policy of searching all persons taken into police custody before placing them in police vehicles, unless there are sound reasons not to do so.

Under s27 (formerly s23), police also have the power to search a person following arrest in certain circumstances. However, in view of the broad power provided by s28, s27 has little work to do.

5.4 Abolition of distinction between frisk and ordinary search

The amendment Act abolishes the distinction between a frisk search and an ordinary search set out in the old s30. A new s30 has been inserted as follows:

In conducting the search of a person, a police officer may:

- (a) quickly run his or her hands over the person's outer clothing, and
- (b) require the person to remove his or her coat or jacket or similar article of clothing and any gloves, shoes, socks and hat (but not, except in the case of a strip search, all of the person's clothes), and
- (c) examine anything in the possession of the person, and
- (d) pass an electronic metal detection device over or in close proximity to the person's outer clothing or anything removed from the person, and
- (e) do any other thing authorised by this Act for the purposes of the search.

5.5 Rules for conduct of searches generally

Section 32, which deals with preservation of privacy and indignity during searches, has been amended by amending subs(7) and inserting a new subs(7A). This gives added protection in relation to searches being carried out by a police officer or other person of the same sex as the suspect.

A new subs(8A) has been inserted, clarifying that the prohibition in subs(8) on searches being carried out while the person is being questioned does not prevent the asking of questions that only relate to issues of personal safety associated with the search.

The definition of "transgender person" has been removed from s32(11) and placed in s3.

5.6 Strip searches

Section 31, concerning strip searches, has been amended to read as follows:

A police officer may carry out a strip search of a person if:

- (a) in the case where the search is carried out at a police station or other place of detention - the police officer suspects on reasonable grounds that the strip search is necessary for the purposes of the search, or
- (b) in the case where the search is carried out in any other place - the police officer suspects on reasonable grounds that the strip search is

necessary for the purposes of the search and that the seriousness and urgency of the circumstances make the strip search necessary.

This is a change from the old position, which required police to hold a reasonable suspicion as to the necessity *and* the seriousness and urgency of the circumstances, no matter where the search is carried out.

This amendment was recommended by the NSW Ombudsman in its review of LEPR, and also by the statutory review, on the basis that “the primary reason for conducting strip searches in custody is for the safety of the person being searched as well as police”.

Section 33, which sets out rules for the conduct of strip searches, has been amended so that a child or a person with impaired intellectual functioning may be strip searched without a parent, guardian or support person if a police officer suspects on reasonable grounds that delaying the search is likely to result in evidence being concealed or destroyed, or an immediate search is necessary to protect the safety of a person. In this case police must make a record of the reasons for conducting the search in the absence of a support person (see subs(3A)).

5.7 Searches with consent

A new s34A has been added, relating to searches carried out with consent. It provides:

34A Searches carried out with consent

(1) A police officer may search a person with the person’s consent but only if the police officer has sought the person’s consent before carrying out the search.

(2) A police officer must, before carrying out any such consensual search, provide the person with:

(a) evidence that the police officer is a police officer (unless the police officer is in uniform), and

(b) the name of the police officer and his or her place of duty.

This is a commendable amendment, but arguably does not go far enough, as there is no positive obligation on the police to tell the person that they are not required to consent.

The introduction of such an obligation was not supported by the statutory review of LEPR. The review report cited the case of *DPP v Leonard* (2001) NSWSC 797 in which the court held that a person may validly consent to a search even if they are not aware of the right to refuse. The report went on to say “*NSWPF advised that a process of informed consent would add an additional layer of complexity to the decision making process the police have to undertake before conducting a search.*”

The review report supported the introduction of some safeguards in relation to consensual searches, however “*there will be no need to explain the reason for the exercise of the power as a search conducted with consent is not an exercise of power.*”

If the courts agree that a search by consent is not an exercise of power, Part 15 will not apply to searches carried out with consent, and the police will not be required to tell the person the reason for the search. However, I suggest that it is a “power”, given that s34A sits within Part 4 which is headed “Search and seizure powers without warrant” and imposes some preconditions on a police officer’s entitlement to search a person with consent.

It is worth noting that a police officer’s failure to provide their name and place of duty in this situation *cannot* be excused by s204A, as the obligation is imposed by s34A(2) and not by Part 15.

6 Other amendments to LEPRA

Schedule 3 of the *Law Enforcement (Powers and Responsibilities) Amendment Act 2014* made various other amendments to LEPRA. Again, these commenced on 1 September 2016. In my view the most significant amendments are as follows:

6.1 Distinction between requests and requirements

Schedule 3 [4] to [13], [18] amends numerous sections of LEPRA to replace the word “request” with “require” or “requirement” in a range of situations (eg power to demand name and address).

The word “request” is now used only where compliance is voluntary and failure to comply is not an offence.

6.2 Powers of entry in domestic violence situations

Schedule 3 [31] to [36] amends Part 6, concerning entry to premises in domestic violence situations.

Section 82 has been amended by adding subs (3A) to (3C), which provide that a police officer who has entered a dwelling in accordance with subs(1) may remain there until such time as a warrant is issued under s33, and may exercise certain powers including directing people to leave, removing anyone who fails to comply with such a direction, preventing people from entering, and preventing people from removing or interfering with evidence.

These powers may be exercised only if the police officer suspects on reasonable grounds that a domestic violence offence is being (or may have been recently) committed in the dwelling, *and the exercise of the power is necessary to preserve evidence*.

Police may exercise these powers even though an occupier expressly refuses authority for police to remain in the dwelling.

Section 83 has been amended to clarify that a warrant may be sought and issued not only if a police officer has been denied entry to a dwelling, but also if they are refused authority to remain in a dwelling.

Section 84 has been amended so it is an offence to obstruct or hinder a person exercising a power under Part 6, as well as a person executing a warrant.

6.3 Crime scene powers

Schedule 3 [37] to [45] make amendments to sections 91 to 95, and insert a new section 94A.

A new s91(4) clarifies that a subsequent crime scene may be established on the same premises in a 24-hour period, for the purpose of investigating an offence unrelated to the one in respect of which the initial crime scene was established.

The previous s92(1) allowed the powers listed in s95(1)(a) to (f) to be exercised without applying for a crime scene warrant if the police officer suspected on reasonable grounds that it was necessary to preserve evidence. The amendment has expanded the range of powers that may be exercised without applying for a warrant; this now includes all the powers listed in s95(1)(a) to (l).

The 3-hour limit on exercising crime scene powers without a warrant (provided by s92(3)) has been extended to 4 hours (or 6 hours in the case of a crime scene established in a rural area prescribed by the Regulations).

A new s92(5A) has been inserted to provide that a police officer at a crime scene may open a thing that is locked only if possible to do so without causing any damage to the thing or the lock. [Note that this only applies to powers exercised under s92(1) without a warrant. Presumably a crime scene warrant could authorise breaking/damaging of locks.]

A new s94(2A) has been inserted to clarify that, if a crime scene is established on more than one set of premises, a crime scene warrant may apply to each of those premises.

A new s94A has been added, applying to crime scene warrants issued in relation to premises that are not a public place. It provides that the occupier may apply to an authorised officer (a Magistrate, Registrar, or Justice) for a review of the grounds on which the warrant was issued. Any such review does not stay the operation of the warrant. The officer conducting the review may revoke the warrant (by order in writing) or refuse to revoke it.

Section 95(3), which provided “Nothing in this part prevents a police officer who is lawfully on premises from exercising a crime scene power or doing any other thing, if the occupier of the premises consents”, has been amended to add “Any such consent must, as far as reasonably practicable, be in writing”.

A new s95(4) has been added to provide that the occupier may consent only if he or she is first informed by a police officer of:

- (a) the crime scene powers proposed to be exercised on the premises,
- (b) the reason to exercising those powers, and
- (c) the right of the occupier to refuse consent.

6.4 In-car video

Schedule 3 [46] to [47] repeals s108E, which provides that recording by way of in-car video (ICV) must cease if the suspect is arrested. It seems that no-one (including Howie J in *Carlton v R* [2010] NSWCCA 81) could see a sound policy reason for s108E.

Section 108F, which provides that the recording of a conversation using ICV pursuant to Part 8A does not constitute the use of a listening device for the purposes of the *Surveillance Devices Act 2007*, has been amended to ensure this also extends to conversations between police officers recorded by ICV.

6.5 Destruction of identification material

Schedule 3 [49] inserts a new s137C:

137C Commissioner may order destruction of identification particulars

(1) The Commissioner may, in such cases as the Commissioner considers it to be appropriate, order the destruction of any photograph, finger-prints or palm-prints of a person that have been taken under this Division in relation to an offence.

(2) This section does not affect any requirement under this Division relating to the destruction of a person’s photograph, finger-prints or palm-prints.

This is an important amendment which remedies an injustice. In relation to adult offenders at least, the Commissioner could order destruction of identification particulars only in cases where the offence was not proven. It is also worth noting that the old s137A, which provided for fingerprints and palm prints to be destroyed if an offence is not proven, did not extend to photographs. The new s137C gives the Commissioner a discretion to order destruction of photographs as well.

6.6 Miscellaneous powers relating to police and traffic

Schedule 3 [51] to [54] transfers Part 12 of LEPRA (ss185 to 192) to the *Road Transport Act 2013* as Chapter 5 Part 5.5 (ss148A to 148K). Some minor consequential amendments have also been made to these sections.

6.7 Provision for code of practice relating to issue of directions

There are already codes of practice covering the exercise of a range of police powers (eg, the Code of Practice for CRIME, which deals with arrest, detention, questioning, powers of entry, searches and other investigative procedures).

Schedule 3 [55] of the *Law Enforcement (Powers and Responsibilities) Amendment Act 2014* inserts a new s200A into LEPRA, stating that the Regulations may provide for a code of practice relating to the exercise of police powers to give directions under Part 14, and the rights of persons to whom such directions are given.

This was recommended by the Ombudsman in its *Policing Public Safety* report as far as back as 1999, and again by Tink and Whelan in their 2013 review.

The Ombudsman (as quoted by Tink and Whelan) recommended that a code of practice should:

- emphasise that the 'reasonable directions' power is not limited to directions to 'move on';
- set out those factors (such as age, racial appearance, manner of dress and antecedents) that cannot form the basis of a direction in the absence of other factors;
- provide guidance to police regarding the situations in which a person's presence alone may warrant police intervention.

Schedule 3 of the new LEPRA Regulation sets out a "Code of practice for directions under Part 14 of Act". However, this falls far short of what was recommended and does not cover the matters suggested by the Ombudsman. Instead it mainly just summarises the relevant provisions from Parts 14 and 15 of LEPRA.

6.8 Amendments to Regulations

Schedule 4 of the *Law Enforcement (Powers and Responsibilities) Amendment Act 2014* made amendments to the Law Enforcement (Powers and Responsibilities) Regulation 2005 in relation to warrants (including covert search warrants and crime scene warrants).

However, now that the 2005 Regulation has been repealed, the amendments have been carried over into the 2016 Regulation.

6.9 Consequential amendment of other legislation

Schedule 5 of the *Law Enforcement (Powers and Responsibilities) Amendment Act 2014* made consequential amendments to a number of other Acts, which will not be detailed in this paper.

7 Other aspects of new LEPR Regulation

I have already mentioned Part 3 (Investigations and Questioning), Schedule 1 (Forms) and Schedule 3 (the Code of Practice for Directions under Part 14) of the Law Enforcement (Powers and Responsibilities) Regulation 2016.

I do not propose to discuss the rest of the new Regulation. It is very similar to the 2005 Regulation and deals with:

- Warrants and notices to produce (Part 2 – similar to Part 2 of old Regulation)
- Investigations and Questioning (Part 3 – similar to Part 3 of old Regulation)
- Seizure, detention and return of vehicles in the context of emergency public disorder powers (Part 4 – similar to Part 3A of old Regulation)
- Miscellaneous provisions on matters such as searches, crime scenes, drug detection dogs, directions, and records in relation to detention of intoxicated persons (Part 5 – similar to Part 4 of old Regulation).
- A range of forms, most of them in relation to warrants of various kinds (Schedule 1 - similar to Schedule 1 of old Regulation)
- Guidelines for custody managers and other police officers (Schedule 2 - similar to Schedule 2 of old Regulation)
- Code of Practice for Directions under Part 14 of LEPRA (Schedule 3)

8 “Anti-protest” amendments to search and directions powers

8.1 Background

In early 2016, the NSW Government introduced a range of measures referred to by some as “anti-protest” laws. These were enacted in the *Inclosed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Act 2016*.

The NSW Environmental Defenders’ Office has provided a fact sheet summarising the amendments. Go to the “Access to Justice” page on the EDO’s website at http://www.edonsw.org.au/about_environmental_law, and select “Download PDF” under the heading “Update on Protest Laws”.

Schedules 1 and 2 of the Act commenced on 1 June 2016 and include:

- A new offence of “aggravated unlawful entry on inclosed lands” (*Inclosed Lands Protection Act 1901*, s4B)
- An expanded offence of “interfering with a mine” (*Crimes Act 1900*, s201)

Schedule 3 of the Act, **which commenced on 1 November 2016**, expands police search, seizure and direction-giving powers.

8.2 Amendments to search and seizure powers in LEPRA – commenced 1 November 2016

A new Division 7 has been added to Part 4, giving police additional search and seizure powers in relation to “*things used to interfere with a business or undertaking*”.

Section 45A provides that this applies to “*anything that is intended to be used to lock on or secure a person to any plant, equipment or structure for the purpose of interfering with the conduct of a business or undertaking and that is likely to be used in a manner that will give rise to a serious risk to the safety of any person*”.

Section 45B empowers the police to stop, search and detain a person (or a vehicle, vessel or aircraft) upon a reasonable suspicion that a person is in possession of such an item. There is a related power to seize and detain any such item.

Section 45C provides that “a thing seized under this Division is forfeited to the Crown” (*I suggest that the word “lawfully” must be read into this, before “seized”*).

Subsection 45C(4) provides that Part 17 of LEPRA does not apply to a thing seized under this Division, and a court does not have jurisdiction under that part to order the delivery of the thing to the person from whom the thing was lawfully seized or who appears to be lawfully entitled to the thing.

8.3 Amendments to directions power in LEPRA – commenced 1 November 2016

Section 200 used to prohibit police from giving a direction under Part 14 in relation to an industrial dispute, an apparently genuine demonstration or protest, a procession or an organised assembly.

Following the amendment, there is still a prohibition on giving directions in relation to industrial disputes (s200(1)).

However, in relation to demonstrations, protests, processions or organised assemblies, a police officer is now empowered to give a direction in two situations:

Section 200(3): If the police officer “*believes on reasonable grounds that the direction is necessary to deal with a serious risk to the safety of the person to whom the direction is given or to any other person*”.

Section 200(4): In relation to a protest, demonstration, procession or assembly that is obstructing traffic if:

- (a) it is not an authorised public assembly under Part 4 of the *Summary Offences Act* (or it is not being conducted substantially in accordance with any authorisation); *and*
- (b) the police officer in charge at the scene has authorised the giving of directions; *and*
- (c) the direction is limited to the persons who are obstructing traffic.

8.4 Review of amendments

A provision has also been added to the end of LEPRA Schedule 5, to the effect that the amendments are to be reviewed by the relevant Minister as soon as possible after 3 years from the commencement of the amendment Act.

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30 September 2016 (postscripts added 24 February 2017)

Appendix
Comparative table: LEPR Regulation 2005 and 2016
Part 3 - Investigations and questioning

Old Law Enforcement (Powers and Responsibilities) Regulation 2005 Part 3 Investigations and questioning	New Law Enforcement (Powers and Responsibilities) Regulation 2016 Part 3 Investigations and questioning
Division 1 Custody managers	Division 1 Custody managers
12 Designation of police stations and other places to be used for detaining persons	15 Designation of police stations and other places to be used for detaining persons
13 Appointment of custody managers for designated police stations and designated places of detention	16 Appointment of custody managers for designated police stations and designated places of detention
14 Order of preference in relation to places of detention	17 Order of preference in relation to places of detention
15 Order of preference in relation to custody managers	18 Order of preference in relation to custody managers
16 Custody managers for New South Wales Crime Commission or Australian Crime Commission investigations	19 Custody managers for New South Wales Crime Commission or Australian Crime Commission investigations
	<p>20 Form of summary of Part 9 of Act</p> <p>This is a new provision.</p> <p><i>For the purposes of section 122(1)(b) of the Act:</i></p> <p style="padding-left: 40px;"><i>(a) Form 31 is the form of the summary of Part 9 of the Act in the case of a detained person, and</i></p> <p style="padding-left: 40px;"><i>(b) Form 32 is the form of the summary of Part 9 of the Act in the case of a protected suspect.</i></p>
17 Custody managers not prevented from exercising other functions	21 Custody managers not prevented from exercising other functions
18 Guidelines for custody managers and other police officers	22 Guidelines for custody managers and other police officers
Division 2 Custody records	Division 2 Custody records
19 Meaning of “custody record”	19 Meaning of “custody record”
20 Separate record for each detained person	24 Separate record for each detained person
21 Additional matters to be recorded in custody record	25 Additional matters to be recorded in custody record
22 Inspection of custody record	<p>26 Inspection of custody record</p> <p>Subcl(3) now provides:</p> <p><i>After the detained person has been released from police custody, the detained person’s legal representative or any other person authorised</i></p>

	<i>by the detained person must be given a copy of the custody record if they give reasonable notice of their request to do so.</i>
Division 3 Vulnerable persons	Division 3 Vulnerable persons
23 Interpretation	27 Interpretation
24 Vulnerable persons	28 Vulnerable persons
25 Custody manager to assist vulnerable person	<p>29 Custody manager to assist vulnerable person</p> <p>This has been redrafted as follows:</p> <p><i>(1) The custody manager for a detained person or protected suspect who is a vulnerable person must, as far as practicable, assist the person in exercising the person's rights under Part 9 of the Act, including any right to make a telephone call to a legal practitioner, support person or other person.</i></p> <p><i>(2) In particular, the custody manager must ensure that the caution and summary required by section 122 (1) of the Act is given to the person.</i></p> <p>Note. <i>Section 122 (1) of the Act provides that a custody manager for a person who is a detained person or protected suspect must, as soon as practicable after the person comes into custody or becomes a protected suspect, caution the person that the person does not have to say or do anything but that anything the person does say or do may be used in evidence. It also requires the manager to give the person a summary of the provisions of Part 9 of the Act.</i></p>
26 Support person	30 Support person
27 Support person may be present during investigative procedure	<p>31 Support person may be present during investigative procedure</p> <p>This is similar to the old Regulation, except there have been some additions to subcl(4) which now reads:</p> <p><i>(4) If the detained person or protected suspect wishes to have a support person present, the custody manager must, as soon as practicable:</i></p> <ul style="list-style-type: none"> <i>(a) give the detained person or protected suspect reasonable facilities to enable the person to arrange for a support person to be present, and</i> <i>(b) allow the detained person or protected suspect to do so in circumstances in which, so far as practicable, the communication will not be overheard, and</i> <i>(c) if the person has asked a friend,</i>

	<p><i>relative, guardian or independent person communicated with to attend at the place where the person is being detained—allow the person to consult with the friend, relative, guardian or independent person in accordance with section 123 (4) of the Act.</i></p> <p>Note. Section 123 (4) of the Act requires a custody manager to allow the person to consult with the friend, relative, guardian or independent person in private and must provide reasonable facilities for that consultation.</p>
28 Relationship between entitlement to support persons and entitlement to consult	32 Relationship between entitlement to support persons and entitlement to consult
29 Child cannot waive entitlement to support person	33 Child cannot waive entitlement to support person
30 Role of support persons during interview	34 Role of support persons during interview
31 Exclusion of support person from investigative procedure	35 Exclusion of support person from investigative procedure
32 Person responsible for welfare of certain detained persons to be contacted	36 Person responsible for welfare of certain detained persons or protected suspects to be contacted
33 Legal assistance for Aboriginal persons or Torres Strait Islanders	37 Legal assistance for Aboriginal persons or Torres Strait Islanders
34 Cautions	38 Cautions
35 Times to be disregarded in calculating investigation period	39 Times to be disregarded in calculating investigation period
36 Additional information to be included in detention warrant application	40 Additional information to be included in detention warrant application