

Chapter 11 – Federal Issues

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11.1 Introduction

This chapter covers Federal legislation which members may be required to administer. Officers should be aware of their powers and responsibilities in terms of that legislation and provide assistance to Federal authorities, where appropriate.

11.2 References to legislation

Frequent reference to legislation is made which impacts on the contents of this chapter. This chapter should be read in conjunction with those statutes, which can be accessed from the legislation page on the Service Intranet.

11.3 Prosecution of Commonwealth offences

POLICY

In respect of Commonwealth offences, the office of the Director of Public Prosecutions (Cwlth) (see SMCD) determines whether the Service is to prosecute defendants after their first appearance in Court. However, generally, if a defendant is charged by an officer for committing Commonwealth and State offences at the same time, a police prosecutor will continue the prosecution of the defendant.

Except in remote areas of the State, police prosecutors will not normally be required to deal with hearings or committals unless the defendant has been charged with State and Commonwealth offences arising from the one incident.

ORDER

Police prosecutors involved in the prosecution of Commonwealth offences are to promptly advise the nearest office of the Director of Public Prosecutions (Cwlth) that a prosecution of a Commonwealth offence has commenced.

In Brisbane, if a matter arising from a State investigation into a Commonwealth offence is not dealt with by way of a plea of guilty on the first appearance, the matter is to be adjourned to the Commonwealth call over and the brief is to be referred to the office of the Director of Public Prosecutions (Cwlth).

Officers may contact the offices of the Director of Public Prosecutions (Cwlth) to discuss any proposed Commonwealth charge.

11.4 Inconsistencies between State and Commonwealth legislation

PROCEDURE

Officers should ensure any State legislation used is not inconsistent with Commonwealth legislation. Inconsistency between State and Commonwealth legislation arises when it would be impossible to obey both laws, when the law of one government permits an activity while the law of the other government prohibits the activity or when the Commonwealth law is deemed to exhaustively and exclusively cover a particular area of activity.

Officers should consider whether Commonwealth legislation applies to an offence or area of activity which is also covered by State law. Commonwealth law takes precedence over State law in these cases.

In determining which legislation to use in regard to offences occurring in places acquired by the Commonwealth, officers should consider whether Commonwealth legislation covers the offence in question. If no Commonwealth legislation exists which covers an activity then appropriate State law may be applied by virtue of s. 4(1) of the *Commonwealth Places (Application of Laws) Act* (Cwlth).

Queensland has passed complementary legislation in the form of the *Commonwealth Places (Administration of Laws) Act*. By virtue of s. 4 of that Act, officers can perform their usual duties on Commonwealth places as if the place was a State place. The power of arrest for a State law applied to a Commonwealth place is the same as that which applies when the offence is dealt with as a State offence. An offence against State law, which is applied to a Commonwealth place, is treated as an offence against Commonwealth law and is heard by a court exercising Federal jurisdiction.

ORDER

When State legislation is being applied, officers are to make the following endorsement on the bench charge sheet or summons: 'Commonwealth Places (Application of Laws) Act 1970 (Cwlth) Section 4(1).'

11.5 Investigation of Commonwealth offences

Parts 1AA and 1C of the *Crimes Act* (Cwlth) (CA) outline the procedures to be complied with by officers when investigating Commonwealth offences. These Parts contain provisions, which allow and regulate such things as the issue of search warrants, the arrest of persons, searches of people and places with and without warrant, the identification of suspects and the taking of fingerprints, photographs and other identification material. By virtue of s. 5(2A) of the

Commonwealth Places (Application of Laws) Act (Cwlth) officers are not bound by the provisions of Parts 1AA and 1C of the CA, when investigating offences against State laws which have been applied to Commonwealth places.

The CA provides for and regulates the following powers and investigative practices:

- (i) issue and execution of search warrants (ss. 3E to 3JA, 3P, 3R to 3S, and 3ZS to 3ZU). Officers making an application for a search warrant to search a premises/person must ensure they use the correct forms under the CA;
- (ii) seizure and detention of evidence as a result of a search (ss. 3K to 3N, 3Q, 3ZQX to 3ZQZB and 3ZV to 3ZW);
- (iii) stopping and searching vehicles without warrant (ss. 3T, 3U and 3ZR);
- (iv) requiring persons to state their name and address (s. 3V);
- (v) arrest without warrant (ss. 3W to 3Y);
- (vi) arrest with warrant (s. 3ZA);
- (vii) use of force when making an arrest (ss. 3ZB and 3ZC);
- (viii) searching of arrested persons (ss. 3ZE to 3ZI and 3ZR);
- (ix) taking and eventual destruction of fingerprints, photographs and other identification material (ss. 3ZJ to 3ZL);
- (x) use of identification parades (ss. 3ZM and 3ZN);
- (xi) use of photographic identification of suspects (s. 3ZO);
- (xii) identification procedures where there is more than one suspect (s. 3ZP);
- (xiii) use of descriptions of suspects (s. 3ZQ); and
- (xiv) detention period and interviewing of persons (ss. 23A to 23DA and 23E to 23W); and

the following specific powers and investigative practices related to terrorism offences:

- (i) requiring persons to state their name and address (s. 3UC);
- (ii) stopping and searching without warrant (s. 3UD);
- (iii) seizure of terrorism and serious offence related items as a result of a search (s. 3UE);
- (iv) arrest without warrant (s. 3WA); and
- (v) detention period (ss. 23DB to 23DF).

PROCEDURE

The powers and practices described in the CA may be applied to the investigation of any offence against Commonwealth law, except the *Defence Force Discipline Act* (Cwlth), despite the existence of similar powers under other Commonwealth legislation.

ORDER

Officers investigating Commonwealth offences or dealing with persons who are suspected of having committed offences against Commonwealth law, except the *Defence Force Discipline Act* (Cwlth), are to comply with the provisions of the CA. The provisions of the CA are to be read in conjunction with Chapter 2: 'Investigative Process' of this Manual. The provisions of the CA are to take precedence over the contents of this Manual where any inconsistency between the Act and Service policies, procedures or orders arises.

11.5.1 Investigation of offences

PROCEDURE

When investigating a mixture of State and Commonwealth offences, officers should, in addition to referring to Chapter 2: 'Investigative Process' of this Manual:

- (i) deal with State offences separately first, if possible; and
- (ii) clearly inform the suspect that the interview relates only to State offences at that stage.

11.5.2 Voluntary accompanied

PROCEDURE

If the officer, when first approaching the suspect, merely entertains a strong suspicion that the person has committed the offence, but does not have sufficient admissible evidence upon which to base reasonable grounds to believe that the person has committed the offence, the officer should inquire as to whether the suspect is prepared to voluntarily accompany the officer to a police station/establishment for interview purposes.

If the person accompanies the officer voluntarily, the following applies:

(i) officers should advise suspects that they are not obliged to accompany the officer to the station and that if they do accompany the officer, they may leave at any time unless advised by the officer that they are deemed to be a protected suspect pursuant to s. 23B(2): 'Definitions' of the *Crimes Act (Cwlth) (CA)*. (Note: A suspect will be deemed to be a protected suspect vide s. 23B(2)(a), (b), (c), (d) and (e) if the officer believes there is sufficient evidence to establish that the person has committed the offence (at which time the person should be cautioned) or the officer will not let the person leave or the officer has given the person reasonable grounds for believing that the person would not be allowed to leave if the person wished to do so. A person in custody as a protected suspect is not the same as a person under lawful arrest therefore the investigation periods in ss. 23C to 23DF of the CA do not apply to protected suspects);

(ii) when officers form an opinion that they have reasonable grounds to believe that the person has committed a Commonwealth offence, a caution must be administered, before further questioning, advising the suspect that they do not have to say or do anything but anything that the person does say or do may be used in evidence. The giving of the caution must be recorded (see s. 23U: 'Tape recording of information required to be given to person under arrest' of the CA); and

(iii) at that time, suspects must be informed:

- (a) that they may communicate with a friend or relative to inform that friend or relative of their whereabouts; and
- (b) that they may also communicate with a legal practitioner of their choice; and
- (c) of the other rights and protections granted by ss. 23F to 23T of the CA. All of these rights and protections come into effect at this time.

The giving of this information and the responses to it must be audio recorded (see s. 23U of the CA).

11.5.3 Arrest detention

PROCEDURE

If the officer, when first approaching the suspect, is satisfied that there are reasonable grounds to believe that:

- (i) a Commonwealth offence (other than a terrorism offence and an offence against s. 80.2C: 'Advocating terrorism' of the *Criminal Code Act (Cwlth)*) has been committed;
- (ii) the suspect has committed it; and
- (iii) proceedings by way of summons would not achieve one or more of the purposes outlined in s. 3W(1)(b): 'Power of arrest without warrant by constables' of the *Crimes Act (Cwlth) (CA)*,

the officer may arrest the suspect by virtue of s. 3W of the CA.

For an officers' power of arrest for a Commonwealth terrorism offence and an offence against s. 80.2C refer to s. 3WA(1)(b): 'Constables' power of arrest without warrant for a terrorism offence or offence of advocating terrorism' of the CA.

If a suspect is obliged to accompany the officer to the station/establishment for the purpose of investigation. As soon as the person is arrested, the investigation period (see ss. 23C: 'Period of arrest if arrested for non-terrorism offence' and 23DB: 'Period of investigation if arrested for a terrorism offence' of the CA for periods of investigation for non-terrorism and terrorism offences respectively) has commenced and the whole of Part IC: 'Investigation of Commonwealth offences' of the CA applies.

To determine whether proceedings by way of summons would be effective in achieving the purposes listed in s. 3W(1)(b) or 3WA(1)(b) of the CA officers should at least consider the following points:

- (i) the nature of the offence;
- (ii) the age, the age, marital status, dependants, employment history of the suspect;
- (iii) the antecedents of the suspect in relation to previous grants of bail and offender history generally;
- (iv) the likelihood that there will be a repetition or continuation of the offence or the commission of another offence;
- (v) the need to preserve the suspected person's safety or welfare;
- (vi) the likelihood that evidence may be concealed, destroyed or lost;
- (vii) the likelihood that witnesses may be harassed or interfered with; and
- (viii) the likelihood that evidence may be fabricated.

11.5.4 Post arrest detention

PROCEDURE

When investigating offences against Commonwealth legislation, except the *Defence Force Discipline Act (Cwlth)*, officers should, in order for admissions or confessions to be admissible, determine if the person to be interviewed:

- (i) is under 18 years of age;
- (ii) is of Aboriginal or Torres Strait Islander extraction;
- (iii) requires the services of an interpreter; or
- (iv) is a foreign national.

At the time when the suspect is placed under arrest, the officer should:

- (i) caution the person in the following terms before asking any questions –

‘I intend to ask you (further) questions in relation to this matter but before I do I must warn you that you do not have to say or do anything but anything you do say or do may be used in evidence’

The caution not only includes answering questions but also ‘doing anything’. For example, taking part in an interview or any other activity. The suspect is not obliged to co-operate in any way whatsoever;

- (ii) record the giving of the caution (see s. 23U: ‘Tape recording of information required to be given to person under arrest’ of the *Crimes Act* (Cwlth) (CA)); and

- (iii) comply with the following provisions of the CA:

(a) s. 23K: ‘Persons under 18’ if the person is under 18 years of age;

(b) s. 23H(1), (2), (2A) and (2B): ‘Aboriginal persons and Torres Strait Islanders’ if the person is of Aboriginal or Torres Strait Island extraction and s. 23H(7) or (8) does not apply;

(c) s. 23P: ‘Right of non-Australian nationals to communicate with consular office’ if the person is a foreign national;

(d) s. 23N: ‘Right to interpreter’ by providing an interpreter if there are reasonable grounds to believe that the person has inadequate knowledge of the English language or a physical disability that hinders fluent communication; and

(e) s. 23G: ‘Right to communicate with friend, relative and legal practitioner’ by advising the person of their right to communicate with a relative or friend and legal practitioner of their choice.

The giving of all the above information and responses thereto must also be recorded (see s. 23U).

Subject to the exceptions provided in s. 23L: ‘Exceptions’ of the CA, the above caution and other information should always be given and recorded because, in addition to complying with s. 23U, it provides the best possible objective evidence as to the onus the prosecution must discharge in s. 23U(2). It protects both the suspect and, equally importantly, police from allegations of unfairness, etc.

Section 23M: ‘Providing information relating to persons who are under arrest or protected suspects’ imposes a duty on police to inform a relative, friend or legal representative (unless within the exclusions of s. 23L) of the whereabouts of the person under arrest if such information is sought, but only with the consent of the person under arrest.

The right to silence has been maintained in statutory form (see s. 23S: ‘Right to remain silent etc. not affected’ of the CA).

The officer has a time limit imposed by s. 23C: ‘Period of investigation if arrested for a non-terrorism offence’ of the CA for the arrest of the suspect for the purpose of investigating of a non-terrorism offence. Section 23C(4) of the CA states that the time must be reasonable (onus on the prosecution) but cannot extend beyond:

- (i) two hours for Aboriginal or Torres Strait Islander persons, or persons under 18 years of age; or
- (ii) four hours in all other cases,

unless extended by s. 23DA: ‘Magistrate may extend investigation period’ of the CA.

Section 23DB: ‘Period of investigation if arrested for a terrorism offence’ of the CA is to be complied with in relation to an arrest for a terrorism offence as defined in s. 3: ‘Interpretation’.

11.5.5 Re-arrested within 48 hours

PROCEDURE

Section 23C(6): ‘Period of investigation if arrested for a non-terrorism offence’ of the *Crimes Act* (Cwlth) (CA) states that if the person has been arrested more than once within any period of 48 hours, the investigation period for each arrest other than the first is reduced by the amount of the earlier investigation period or periods that occurred within that 48 hours (see s. 23C(6) of the CA). The provisions of this section apply only to non-terrorism offences.

Section 23DB(11): ‘Period of investigation if arrested for a terrorism offence’ of the CA is to be complied with if a person has been arrested more than once within any period of 48 hour period and has subsequently been arrested for a terrorism offence.

11.5.6 Dead time

PROCEDURE

Officers should keep accurate records of when the investigation period commences and ceases and all periods of 'dead time' to ensure that the relevant investigation period is not exceeded.

For instances of 'dead time', that is, time not taken into account when calculating the time limits, officers should refer to the *Crimes Act* (Cwlth):

- (i) s. 23C(7): 'Period of investigation if arrested for a non-terrorism offence'; and
- (ii) s. 23DB(9): 'Period of investigation if arrested for a terrorism offence'.

11.5.7 Extension of time

PROCEDURE

Section 23D: 'Application may be made for extension of investigation period' of the *Crimes Act* (Cwlth) (CA) authorises the making of an application to extend the relevant investigation period for a period, in relation to a non-terrorism offence not exceeding eight hours. Section 23DA(2): 'Magistrate may extend investigation period' of the CA prescribes the matters to be proved to the satisfaction of a Magistrate before they may grant the application and extend the period.

Section 23D(2) of the CA states that an application may be made by telephone or in writing. The use of telex, fax or other electronic means is permitted by s. 23DA(5)(b) of the CA.

Any officer who obtains an extension by electronic means should complete the appropriate form and produce it at any subsequent Court hearing noting the provisions of s. 23E: 'Evidentiary provisions if application made by electronic means' of the CA.

An extension will only be granted for a serious offence. A serious offence is defined in s. 23B(1): 'Definitions' of the CA as a Commonwealth offence that is punishable by imprisonment for a period exceeding 12 months.

Irrespective of whether the period of detention is two hours or four hours or an extension is granted, the officer must satisfy the Court that the detention period was reasonable (see s. 23C(8): 'Period of investigation if arrested for a non-terrorism offence' of the CA).

Applications for extension of an investigation period for a terrorism offence must be approved by an 'authorising officer', defined in s. 23B(1) of the CA as a superintendent, assistant commissioner or the Commissioner (see ss. 23DC to 23DF of the CA).

11.5.8 How to be released

PROCEDURE

Sections 23C(3): 'Period of investigation if arrested for a non-terrorism offence' and 23DB(4): 'Period of investigation if arrested for a terrorism offence' of the *Crimes Act* (Cwlth) (CA) states that if a person is not within the investigation period they must be brought before a judicial officer within that period or, if it is not practicable to do so within that period, as soon as practicable after the end of that period.

If the officer has exercised the power of arrest under ss. 3W: 'Power of arrest without warrant by constables' or 3WA: 'Constables' power of arrest without warrant for a terrorism offence or offence of advocating terrorism' of the CA then the officer may formally charge the person.

If the person has voluntarily accompanied police and has been deemed to be a protected suspect by virtue of s. 23B(2): 'Definitions' of the CA and a prima facie case has been established, then:

- (i) if proceedings by way of summons would be effective, the officer should release the person unconditionally pursuant to ss. 3W(2) or 3WA(2) of the CA and later cause a summons to be issued for service upon the person concerned; or
- (ii) if it is reasonably believed that proceedings by way of summons would not achieve one or more of the purposes listed in ss. 3W(1)(b) or 3WA(1)(b) of the CA, the officer may formally arrest under ss. 3W or 3WA of the CA, charge the person and bring the person before a judicial officer within the investigation period, if possible, or as soon as practicable thereafter.

If there is insufficient evidence to justify a prosecution of a person who has been deemed to be a protected suspect by virtue of s. 23B(2) then the person should be allowed to leave the company of the interviewing officer unconditionally.

If the person has voluntarily accompanied the officer and never been deemed to be a protected suspect and there is insufficient evidence to justify a prosecution, the person should be allowed to leave the company of the interviewing officer unconditionally.

11.5.9 Audio/video recording of admissions and confessions

The audio/video recording requirements specified in ss. 23U: 'Tape recording of information required to be given to person under arrest' and 23V: 'Tape recording of confessions and admissions' of the *Crimes Act* (Cwlth) apply to State police officers when investigating Commonwealth offences.

ORDER

Officers investigating Commonwealth offences are to do so in the same manner as they would State offences and comply with the Digital Electronic Recording of Interviews and Evidence Manual.

11.5.10 Criminal responsibility

The Criminal Code contained within the *Criminal Code Act* (Cwlth) codifies the general principles of criminal responsibility applicable to Commonwealth legislation and Commonwealth offences.

POLICY

Officers are to familiarise themselves with the following provisions of Chapter 2: 'General principles of criminal responsibilities' of the *Criminal Code Act* (Cwlth):

- (i) part 2.2: 'The elements of an offence';
- (ii) part 2.3: 'Circumstances in which there is no criminal responsibility';
- (iii) part 2.4: 'Extensions of criminal responsibility';
- (iv) part 2.5: 'Corporate criminal responsibility';
- (v) part 2.6: 'Proof of criminal responsibility'; and
- (vi) part 2.7: 'Geographical jurisdiction'.

11.5.11 Interview friends

Provisions of Part 1C, sections 23A to 23W: 'Investigation of Commonwealth offences' of the *Crimes Act* (Cwlth) (CA) require the presence of an interview friend during the questioning of persons when investigating Commonwealth offences. A number of sections define what the term interview friend means, which includes a person whose name is included in the relevant list maintained under s. 23J(1): 'Lists of interview friends and interpreters' of the CA.

Pursuant to s. 23J, of the CA, a list has been established of suitable persons to act as interview friends, or as interpreters for Aboriginal and Torres Strait Islander persons being interviewed by police in relation to Commonwealth offences for the purpose of this section. The 'Lists of interview friends and interpreters' under section 23J of the CA is located on the Operational Support web page on the Service Intranet.

ORDER

Officers are to select an appropriate person from this list whenever Part 1C of the CA requires the presence of an interview friend or interpreter during questioning.

11.6 Crimes Act and Criminal Code Act

The *Crimes Act* (Cwlth) and the *Criminal Code Act* (Cwlth) are Acts relating to offences against the Commonwealth, and are the Acts which officers generally enforce.

In 2002, the Commonwealth Attorney General's Department has published a document titled: 'The Commonwealth Criminal Code – a Guide for Practitioners'. Reference to this document will assist officers to understand and apply the provisions of the Criminal Code.

11.6.1 Australia Post

PROCEDURE

An offence with respect to Australia Post or postal services can proceed under the provisions of the *Crimes Act* (Cwlth), *Criminal Code Act* (Cwlth) depending on the circumstances.

11.6.2 Telecommunications carriers (Telstra Corporation)

Telstra Corporation Ltd, formerly the Australian and Overseas Telecommunications Corporation is a public company limited by shares within the meaning of the *Corporations Act* (Cwlth) and registered with the Australian Securities and Investments Commission as the Telstra Corporation.

There are a number of telecommunication carriers within the Australian telecommunications industry, details of which can be obtained from the Australian Communications and Media Authority (ACMA) (see SMCD). Inquiries in the first instance may be made through the ACA web site, www.acma.gov.au.

An offence in respect of the Telstra Corporation Ltd (or any other carrier), can proceed under the provisions of the relevant Commonwealth or State legislation, dependent upon the circumstances, i.e., some sections of the *Crimes Act* (Cwlth) relating to telecommunications carriers still apply.

Officers investigating offences committed against the Telstra Corporation Ltd may obtain information and investigation assistance from Telstra Law Enforcement Liaison Section, via the Call Charge Record Unit of the State Intelligence Group, Crime and Intelligence Command (see 'Staff Contact' on the Service Intranet).

See s. 7.4.2: 'Telecommunication information' of the MSM when seeking information from telecommunication carriers.

11.6.3 Deleted

11.6.4 Narcotics sent through Australia Post

A person who sends or distributes a narcotic substance defined as a border controlled drug and border controlled plant (see s. 14: 'Border controlled drugs' and s. 15: 'Border controlled plants' of the Criminal Code Regulations (Cwlth)) through Australia Post commits an offence under s. 85W: 'Causing controlled drugs or controlled plants to be carried by post' of the *Crimes Act* (Cwlth).

Where an article containing a narcotic substance has been:

- (i) distributed through the domestic mail system, the investigation remains the responsibility of the Queensland Police Service; or
- (ii) imported into Australia by international mail, the investigation becomes the responsibility of the Australian Federal Police.

Officers who are investigating an article suspected to contain a narcotic substance forwarded through Australia Post should contact the Chemical Diversion Desk, Drug and Serious Crime Group for advice.

11.7 Crimes (Internationally Protected Persons) Act

The *Crimes (Internationally Protected Persons) Act* (Cwlth) and the *Criminal Code Act* (Cwlth) are Acts relating to the prevention and punishment of crimes against internationally protected persons, including diplomatic agents.

For arrest of foreign nationals, see Chapter 16: 'Custody' of this Manual.

11.7.1 Action to be taken in respect of internationally protected persons

ORDER

Officers who investigate incidents involving internationally protected persons are to, within seven days of the matter coming to their notice, report in writing through their respective officer in charge to the Commissioner outlining:

- (i) full particulars of the internationally protected person;
- (ii) full particulars of the offence committed against the internationally protected person; and
- (iii) action taken.

11.7.2 Prohibition of possession and use of firearms in diplomatic and consular premises

Possession, carriage and use of firearms on diplomatic and consular premises for the purpose of protection is prohibited.

Individuals may obtain permission from the Department of Foreign Affairs and Trade to retain weapons solely for sporting purposes, and, in those cases, the relevant State or Territory licensing authority will be informed.

The Department of Foreign Affairs and Trade requests prompt advice of any instance of a contravention of this policy, which comes to the notice of officers.

This policy does not override the established rules of diplomatic and consular immunity and facts should be obtained discreetly by non-intrusive observation or courteous questioning.

Where Australian citizens are appointed as honorary consular officers or engaged locally as staff, the policy will apply in respect of their official capacities only. They will not be permitted to carry firearms while on duty or to have firearms in immune premises or vehicles.

PROCEDURE

Members observing apparent contraventions of the policy should promptly advise the Manager, Administration and Business Relations, Commonwealth Department of Foreign Affairs and Trade, Brisbane.

11.8 Diplomatic Privileges and Immunities Act

The *Diplomatic Privileges and Immunities Act* (Cwlth) is an Act relating to diplomatic privileges, immunities and other purposes.

For arrest of foreign nationals, see Chapter 16: 'Custody' of this Manual.

11.8.1 Diplomatic immunity entitlement

The head of a diplomatic mission of the Commonwealth and of a foreign country or the members of the diplomatic staff of the mission having diplomatic rank are entitled to a number of immunities, privileges and exemptions by virtue of diplomatic status.

These persons are exempt from the criminal jurisdiction of Federal and State legislation and cannot be arrested or summoned or brought before any Court, and all process against them is to be treated as null and void, unless their immunity is officially waived.

However, in the case of civil and administrative jurisdiction, diplomatic immunity is enjoyed with certain exceptions.

Diplomatic personnel are expected to respect the laws of the land, and for any violation of statutory provisions, redress should be sought through diplomatic, not legal sources.

The immunities extend to members of the family who form part of the household of the diplomatic personnel who are not Australian Nationals, and to members of the administrative and technical staff of the mission together with members of their families forming part of their respective households, provided these persons are not Australian citizens or permanently resident in Australia.

Domestic staff, who are employed by the diplomatic mission but who are not citizens of or permanently resident in Australia, enjoy immunity in respect of acts performed in the course of their duties.

However, diplomatic personnel and the staff of a diplomatic mission, who are Australian citizens or who are ordinarily resident in Australia, are entitled to immunity from jurisdiction and inviolability, in respect of official acts performed by them in the exercise of their duty.

11.8.2 Consular immunity entitlement

Consular officers and employees are entitled to certain privileges and immunities in respect of official acts performed in the exercise of consular functions, that is to say:

- (i) Immunity from jurisdiction, the head of a consular post, any person entrusted in that capacity with the exercise of consular functions, including an honorary consular officer, and any person employed in the administrative or technical service of a consulate-general, consular, vice-consulate or consular agency; and
- (ii) Inviolability privilege, the head of a consular post and any person entrusted in that capacity with the exercise of consular functions.

The privilege or immunity does not extend to the wife, family or other employees of a consul, nor to acts performed by the consul or other persons listed herein, outside their official duties.

Refer to s. 14.4: 'Diplomatic immunity and consular immunity for traffic offences' of the Traffic Manual for traffic offences committed by diplomats and consular officers.

11.8.3 Privileges and immunities of foreign representatives

Only diplomatic and consular officials who have been officially accredited by the Department of Foreign Affairs and Trade (DFAT) are entitled to privileges and immunities. All persons entitled to any form of immunity are issued with a colour coded identification card. The reverse of the card summarises the level of privileges and immunities the bearer is entitled to.

Where officers have any doubt as to the status of a foreign representative or the immunities and privileges which may be afforded to that person, they should firstly contact the State Intelligence Group, Crime and Intelligence Command, during their hours of operation and outside of those hours, contact the DFAT (see SMCD) for advice as to what action may be taken in respect of that representative.

Officers have the right to prevent foreign representatives from committing offences.

ORDER

Officers are not to apply any legislative provisions to persons who have reasonably identified themselves as foreign representatives except in accordance with the privileges and immunities summarised on the appropriate colour coded identification card issued by the DFAT.

Officers who investigate incidents involving foreign representatives are to, within seven days of the matter coming to their notice, report in writing to the Commissioner outlining:

- (i) full particulars of the foreign representative;

- (ii) full particulars of the incident involving the foreign representative; and
- (iii) suggested action.

11.9 Crimes (Currency) Act

The *Crimes (Currency) Act (Cwlth)* provides for offences connected with the counterfeiting of money, certain kinds of securities and other activities injurious to Australian currency. Whilst currency related matters are coordinated from a central location by the Australian Federal Police (AFP) Currency Team and the Reserve Bank of Australia, any officer is authorised under the *Crimes (Currency) Act (Cwlth)* to seize and prosecute currency related matters, including foreign currencies.

11.9.1 Investigations regarding counterfeit money

POLICY

An officer who receives a complaint relating to a counterfeiting money offence should ensure:

- (i) the provisions of s. 1.11.2: 'QPRIME – Policelink entered occurrences' of this Manual are followed;
- (ii) the following information is recorded in the QPRIME occurrence:
 - (a) full circumstances surrounding the complaint;
 - (b) details of the counterfeit currency; and
 - (c) any information available in relation to the origin and production of the counterfeit money; and
- (iii) an investigation is commenced (see Chapter 2: 'Investigative Process' of this Manual) and all available evidence seized, e.g CCTV; and
- (iv) the exhibit is lodged in a property point (counterfeit currency should not be lodged as legitimate currency),

until the investigation is finalised.

PROCEDURE

The AFP Currency Team requires officers seizing counterfeit money:

- (i) not to directly handle currency due to the risk of chemical residues from back yard production processes that maybe present;
- (ii) that all formal requests to be conducted by email; and
- (iii) that any relevant intelligence regarding the seizure is forwarded to the AFP Currency Team.

If a person has been charged with a counterfeiting currency offence, the investigating officer should forward the suspect counterfeit money to the AFP Counterfeit Currency Liaison Officer (see AFP counterfeit currency website) and have the exhibit examined by one of their experts. If it is determined the currency is counterfeit, a representative from the Reserve Bank will prepare an expert statement for inclusion in the brief of evidence. Both the exhibit and statement will then be returned to the investigating officer.

A statement will not be provided by the AFP Counter Currency Liaison Officer until the investigating officer provides:

- (i) the defendant's name;
- (ii) date of birth;
- (iii) police reference number (MNI/CNI);
- (iv) court date; and
- (v) date the statement is required by.

Upon finalisation of court proceedings, the exhibit is to be forwarded to the AFP Counterfeit Currency Liaison Officer for disposal along with a correctly completed Suspect 'Counterfeit Banknote Submission form' clearly marked 'non-evidentiary and for destruction'.

Disposal of counterfeit money

PROCEDURE

Officers investigating a counterfeiting offence are not to forward the suspect counterfeit currency to the AFP whilst the investigation is ongoing and the offender has not been identified.

If after the investigation has been completed and the suspect:

- (i) cannot be identified;
- (ii) all avenues have been exhausted; and

(iii) the exhibit is no longer of evidential value,

the exhibit is to be forwarded via registered mail to the AFP Counterfeit Currency Liaison Officer with a correctly completed 'Suspect Counterfeit Banknote Submission form' (see AFP counterfeit currency website). If it is determined by the Reserve Bank that the suspect currency is counterfeit, the Reserve Bank will hold the exhibit for a maximum of 90 days before having it destroyed (see s. 29: 'Forfeiture and seizure' of the *Crimes (Currency) Act* (Cwlth)).

11.9.2 Defacing currency for scientific examination

ORDER

If an officer in charge of an investigation requires an exhibit taking the form of money to be defaced or destroyed during scientific examination, that officer is to obtain permission in writing direct from the Officer in Charge, Currency Team, Australian Federal Police (see SMCD).

PROCEDURE

Permission in writing may be obtained through facsimile transmission or service email.

11.9.3 Photographing or photocopying bank notes

ORDER

When officers photograph or photocopy Australian bank notes for evidentiary purposes, they are to ensure that the:

- (i) photographic or photocopy reproduction is at least one third larger or smaller than the genuine note;
- (ii) photographic or photocopy reproduction is not reproduced in colour; and
- (iii) clause and the signature that specifies the note is legal tender is partially covered or erased.

The responsible officer is to ensure that any photographic or photocopy reproduction which is to be used for evidentiary purposes is recorded against the relevant property entry in the QPRIME occurrence.

The responsible officer is to ensure, upon finalisation of proceedings and at the conclusion of any appeal period that:

- (i) all photographic or photocopy reproductions in relation to the case are destroyed; and
- (ii) a notation is made against the relevant property entry in the QPRIME occurrence at the respective property point recording the date any photographic or photocopy reproduction was destroyed.

The destruction of photographic reproductions does not include original photographic negatives.

11.9.4 Counterfeit currency across multiple jurisdictions

Where it is identified there are a number of offences being committed across multiple jurisdictions, or an investigation should be escalated into a multi-agency investigation, the investigating officer should advise the AFP Counterfeit Currency Liaison Officer as soon as practicable.

11.10 Copyright Act

The law of copyright in Australia is wholly determined by the *Copyright Act* (Cwlth). This statute, which is binding on Federal, State and Territory governments defines what material is protected by copyright, who owns the rights and what rights belong to copyright owners. The Commonwealth Attorney General's Office is responsible for administration of copyright law.

Copyright is infringed by any person who, without permission, uses or authorises the use of all or a substantial part of copyright material in one of the ways that is the exclusive right of the copyright owner unless copyright has expired or a special exception applies. Copyright can also be infringed in certain circumstances by importing an article containing copyright material for commercial purposes, and by commercially dealing with infringing copies or unauthorised imports.

Copyright owners can take court action for infringements. Subject to this Act, the relief that a court may grant in an action for an infringement of copyright includes an injunction and either damages or an account of profits (that is, infringers may have to surrender any money they have made from dealing with the infringed works).

The Australasian Film and Video Security Office (AFVSO) and the Business Software Association of Australia (BSAA) will also take civil action against offenders. However, more serious breaches will generally be referred to police for investigation. There may be occasions where police detect more serious breaches committed by persons who are engaged in other criminal activity. The *Copyright Act* (Cwlth) also provides for criminal proceedings.

The most common complaints received by police usually relate to the copying of video and audio tapes (commonly termed 'piracy') and the copying of artistic works such as that appearing upon designer T-shirts and other apparel. Incidents relating to the piracy, possession and distribution of unlicensed computer software are also being reported more frequently.

11.10.1 Investigations of breaches of film and video copyright

Section 11.5: 'Investigation of Commonwealth offences' of this Manual deals with the investigation of Commonwealth offences.

POLICY

A member to whom a complaint or report of a breach of the *Copyright Act* (Cwlth) is made, should:

- (i) comply with the provisions of s. 1.11: 'QPRIME – Policelink entered occurrence' of this Manual; and
- (ii) ensure the following information is recorded in the QPRIME occurrence:
 - (a) full circumstances surrounding the complaint/breach;
 - (b) details of persons making the complaint/report of breach;
 - (c) details of persons found in possession of the copyright article;
 - (d) identification details of the copyright article and value where known;
 - (e) any information available in relation to the origin and production of the copyright article; and
 - (f) full details and contact telephone number of the member taking the complaint/report of breach.

An officer in charge of a station or establishment who receives a QPRIME occurrence for attention, concerning a breach of the *Copyright Act* (Cwlth) in accordance with s. 1.11.4: 'Assigning Policelink entered occurrences' of this Manual, should:

- (i) check the details of the QPRIME occurrence with the member who took the complaint or report of breach of the *Copyright Act* (Cwlth) and ensure all available information is included in the report;
- (ii) refer the complaint to the nearest regional office of the Australian Federal Police (AFP) by emailing a copy of the QPRIME occurrence (see SMCD);
- (iii) in cases where evidentiary material is available, advise the appropriate AFP regional office and arrange for the forwarding of that material; and
- (iv) ensure that the complainant is contacted and advised of any action taken to resolve the complaint.

11.11 Defence Act

The *Defence Act* (Cwlth) relates to the protection of the Commonwealth and the States by the Australian Defence Force (ADF) which consists of the Royal Australian Navy, Australian Army, Royal Australian Air Force.

Contact may be made directly with the appropriate establishment regarding investigations. Where requests for information are made by members of the ADF in relation to another ADF member refer to s. 5.6.29: 'Release of information to the Australian Defence Force' of the MSM.

11.11.1 Contact persons and numbers of military establishments

ORDER

The OIC of divisions containing military establishments are to maintain a list of contact persons and telephone numbers for each military establishment and ensure that the list is accessible by staff under their control. The first point of contact should be the relevant Joint Military Police Unit (national contact number: 13 11 67). Section 5.6.29: 'Release of information to the Australian Defence Force' of the MSM details what information can be released to members of the Australian Defence Force.

11.11.2 Location of members of the Australian Defence Force

ORDER

When an officer requires access to a member of the Australian Defence Force (ADF) who resides upon a military establishment, contact is to be made with:

- (i) the OIC of the relevant Joint Military Police Unit (JMPU) for the military establishment; or
- (ii) the senior ADF officer at the establishment if the JMPU cannot be contacted.

Contact with the relevant JMPU or senior ADF officers may be made verbally.

If written particulars of the reasons for requiring access are requested, the OIC of the inquiry may forward written advice direct.

11.12 Commonwealth Electoral Act

The *Commonwealth Electoral Act* (Cwlth) is an Act to consolidate and amend the law relating to parliamentary elections and for other purposes.

11.12.1 Polling booths

POLICY

On the occasion of a Commonwealth election, officers should attend at polling booths as required to ensure the free flow of voters and to keep the peace.

ORDER

The officer in charge of a station or establishment during a Commonwealth election is to ensure that there are sufficient numbers of police to preserve the peace and the efficient flow of traffic at the election centre.

Officers are not to act as poll clerks in connection with Commonwealth elections.

11.12.2 Security of ballot boxes

ORDER

An officer is to assist the Commonwealth Assistant Returning Officer in the moving and related security of the ballot boxes when requested by that Returning Officer to do so.

11.13 Family Law Act

The *Family Law Act* (Cwlth) (FLA) is an Act relating to marriage, divorce, matrimonial cases and, in relation thereto and otherwise, parental rights, custody and guardianship of infants and certain other matters.

POLICY

Primary responsibility for service and execution of process under the FLA resides with the Australian Federal Police. Officers will cooperate with the Federal Police in service and execution of process under the FLA.

11.13.1 Serving of process

POLICY

An officer is not to serve a process under the *Family Law Act* (Cwlth) where an Australian Federal Police office is located within a 40 kilometre radius.

POLICY

When officers are used as bailiffs in process serving, standard service fees should be applied for to the Under Secretary, Department of Justice.

11.13.2 Domestic complaints which involve breaches of an order or injunctions of the Family Law Court

Family Law Court orders

A Family Law Court may make Parenting orders under Part VII: 'Children' of the *Family Law Act* (Cwlth) (FLA). These orders may deal with one or more of the following:

- (i) the person or persons with whom the child is to live;
- (ii) contact between the child and another person or persons;
- (iii) responsibility for the maintenance of the child; or
- (iv) any other aspect of parental responsibility for the child.

POLICY

Officers establishing the existence of, or receiving complaints relating to non-compliance with Family Law Court orders, should act only in accordance with the specific directions to police officers contained in the relevant order.

Where a Family Law Court order does not contain any specific direction to police officers, the first response officer should advise the complainant to seek legal advice, with a view to obtaining a suitable order for the enforcement of the Family Law Court order. Officers should also consider taking appropriate action under any relevant Queensland law, e.g. prosecution for child stealing or deprivation of liberty.

Where a parent refuses or declines to deliver a child to another parent in accordance with a residence or contact order, police have no authority to deliver the child to the parent in whose favour the residence or contact order was made without a recovery order issued by the Family Law Court.

Executing Family Law Court Recovery Orders

Section 67Q: 'Meaning of recovery order' of the FLA defines a Recovery Order and describes the powers that may be exercised by an officer authorised under this section.

POLICY

Officers requested by the Australian Federal Police (AFP) to execute a Recovery Order are to:

- (i) view and take possession of the order;
- (ii) take note of the conditions and requirements endorsed on the order;
- (iii) liaise with the office of the AFP from where the Recovery Order was directed; and
- (iv) prior to serving documents on relevant parties, including the occupier, obtain authorisation from the AFP.

Officers executing a Recovery Order are to:

- (i) as far as possible and convenient, familiarise themselves with any place to be entered and searched;
- (ii) conduct a briefing involving all officers and persons who are to assist in the search of a place. This briefing should outline:
 - (a) all identified non-confidential information relating to the place;
 - (b) any specific powers or conditions contained in the order;
 - (c) the purpose of the search and the details of the child to be recovered;
 - (d) the person or persons thought to be a resident or otherwise in the place;
 - (e) the possibility of a dangerous situation arising; and
 - (f) anything else relevant to the purpose of the search or the safety of the officer and persons helping to recover the child;
- (iii) advise the officers' immediate supervisor prior to executing the order;
- (iv) seek the cooperation of any person in possession of the child named in the order;
- (v) supply their details in accordance with s. 637: 'Supplying police officer's details' of the PPRA;
- (vi) ensure that as little as possible physical and emotional disturbance occurs in executing the order, including consideration of the time of day or night the order is executed;
- (vii) ensure that the minimum number of officers, persons and equipment required to execute the order safely and effectively are used;
- (viii) complete register entries for any enforcement act as outlined in s. 2.1.2: 'Registers required to be kept' of this Manual; and
- (ix) enter a QPRIME Child/Young Person report under the name of each child recovered under the order and complete a QPRIME occurrence linking each child recovered under the order.

Officers are not to use force to execute a Recovery Order unless the use of force has been authorised in the order.

PROCEDURE

Officers who enter a place and recover a child under a Recovery Order should ensure that the following details are recorded in the relevant QPRIME Child/Young Person Report in the QPRIME occurrence:

- (i) the reason for the entry; and
- (ii) the purpose of the entry.

Breaches of injunctions

The FLA also provides that a Family Law Court may issue injunctions under the provisions of s. 68B: 'Injunctions' or s. 114: 'Injunctions'. These injunctions can be issued for the personal protection and welfare of a child or a party to a marriage.

Powers of arrest are provided by s. 68C: 'Powers of arrest' and s. 114AA: 'Powers of arrest' respectively for breaches of injunctions issued for the personal protection of a person under s. 68B or s. 114, where the respondent causes or threatens to cause bodily harm to the person protected by the injunction.

However, the inability of police prosecutors to appear in subsequent court proceedings make the application of Queensland laws a more effective and efficient response to any act or omission which might also constitute a breach of an injunction.

POLICY

Officers receiving complaints of breaches of injunctions made under the FLA, should take appropriate action under any relevant Queensland law, e.g. prosecution for assault, wilful damage or stalking (s. 112AM of the FLA refers).

If the application of Queensland law is not appropriate or the complainant seeks the enforcement of rights conferred by an injunction, officers should advise the complainant to seek legal advice with a view to enforcing the injunction through the Family Law Court.

ORDER

Officers receiving complaints which give reasonable grounds to suspect that a person is an aggrieved spouse (see s. 15(2): 'Meaning of spousal relationship' of the DFVPA) are to investigate the matter and take such action as is required by the provision of Chapter 9: 'Domestic Violence' of this Manual.

11.13.3 Family Law Court order inconsistent with domestic violence order

Section 68Q: 'Relationship of order or injunction made under this Act with existing inconsistent family violence order' of the *Family Law Act* (Cwlth) (FLA) provides an order made by the Family Law Court will take precedence over a domestic violence order (DVO) to the extent of the inconsistencies between the orders (see s. 11.4: 'Inconsistencies between the State and Commonwealth Legislation' of this chapter).

PROCEDURE

When officers become aware of the existence of:

- (i) a parenting order;
- (ii) a recovery order; or
- (iii) an injunction,

made under the provisions of the FLA that are inconsistent with a current DVO, officers should make inquiries with the Duty Registrar, Family Law Court Brisbane to obtain a court copy of the order or injunction (see SMCD).

An officer upon receiving a copy of the court order or injunction should update the relevant domestic violence occurrence.

ORDER

Officers in charge of a station or establishment upon receiving a copy of a Family Law Court parenting order, recovery order or injunction made under the provisions of the FLA, are to ensure any details inconsistent with an existing DVO are entered in QPRIME. The entry is to be recorded under the relevant domestic violence occurrence in the 'Conditions tab' of the 'Order' of the respondent person on the same day as the copy of the order or injunction is received. Officers are to ensure an effective from and an expiry date are also entered in QPRIME for the new condition. The copy of the order or injunction is to be uploaded as an attachment to the relevant domestic violence occurrence.

11.13.4 Missing persons

PROCEDURE

Refer to Chapter 7: 'Child Harm' of this Manual.

11.13.5 Child custody disputes

Frequently, separated parents contact police requesting intervention in a dispute over custody arrangements of their children. The Service's position with respect to these custody matters is that the Service will not intervene on behalf of a parent of a child unless a court order exists or the child is at risk of harm or there is some other compelling reason.

ORDER

Officers receiving requests for assistance in child custody disputes are not to adjudicate in custody matters or make any decisions as to which parent is to have custody of the child.

Officers are not to retrieve a child in child custody matters unless acting in accordance with a court order or legislative authority.

POLICY

Where there is a dispute about which person a child is to live with, or what contact a child is to have with another person, and there is no Family Law Court order (see 'Family Law Court orders' as described in s. 11.13.2: 'Domestic complaints which involve breaches of an order or injunctions of the Family Law Court' of this chapter), a police officer does not have power to act unless the police officer believes on reasonable grounds that the child is in imminent danger (see s. 7.4.1: 'Children at immediate risk of harm' and, if relevant, subsection 'Protection of children of mentally ill persons' of s. 6.6.1: 'Dealing with mental illness generally' of this Manual) or the circumstances of the contact create an offence (e.g. a parent is subject to a bail condition which requires the parent not to have contact with the child as the child is a prosecution witness for an offence committed by the parent).

Request for police assistance

PROCEDURE

When officers:

- (i) receive a request from a parent of a child to:
 - (a) recover a child from the other parent's custody;
 - (b) recover a child from another party who has permission from the other parent to have custody of the child at that time;
 - (c) keep the peace in relation to recovering a child; or
- (ii) attend or are requested to attend a location where a child custody dispute is taking place;

officers should, where practicable:

- (i) establish if the child is the subject of a current Family Law Court order, and if so, comply with s. 11.13.2: 'Domestic complaints which involve breaches of an order or injunctions of the Family Law Court' of this chapter;
- (ii) if no Family Law Court order exists, advise the parties to seek legal advice with a view to obtaining a Family Law Court order;
- (iii) conduct inquiries to establish whether the child is at risk of harm, including relevant checks on all parties establishing:
 - (a) their personal particulars including name, date of birth and their usual place of residence;
 - (b) their mental state and whether there is a history of mental illness;
 - (c) any previous dealings with police (QPRIME), and where possible, other agencies including other jurisdictions; and
 - (d) if there is a history of domestic violence or child welfare issues.
- (iv) ensure that the subject child is safe and not at risk of immediate harm. If at risk of immediate harm, officers are to take action in accordance with s. 7.4.1 of this Manual;
- (v) if allegations of child harm are made where a child is subject to a Family Law Court order, officers are to comply with s. 7.3.8: 'Allegations of child harm where child is subject of Family Law proceedings' of this Manual;
- (vi) seek advice from their local Child Protection and Investigation Unit office should officers have any concerns;
- (vii) take any other enforcement action as required by legislation (e.g. DFVPA and *Mental Health Act*);
- (viii) where a child is present during a custody dispute between parents, consider furnishing an 'Emotional Abuse of Child' Policelink occurrence for assessment by Child Protection and Investigation Unit; and
- (ix) advise the parent in general terms of police inquiries made regarding the welfare of the child. For example the subject child was sighted by officers to be in good health.

11.14 Commonwealth support and the Australian Defence Force assistance and aid

11.14.1 Introduction

Standing arrangements are in place for provision of support, assistance and aid by the Commonwealth to the States and Territories for acts of terrorism, other serious acts of violence that may be beyond the capability of the State or Territory police, civil emergencies/disasters, significant Commonwealth/State anniversaries, significant cultural events, and special medical evacuations.

11.14.2 Commonwealth support (includes Defence Assistance to the Civil Community)

Emergency Management Australia (EMA) is responsible for the coordination of all Commonwealth support during periods of disaster.

PROCEDURE

The Executive Officer, Queensland Disaster Management Committee, is the nominated Queensland official to request Commonwealth support from EMA in a disaster.

11.14.3 Defence Assistance to the Civil Community

Defence Assistance to the Civil Community is the provision of Australian Defence Force personnel, equipment, facilities or capabilities to perform tasks that are primarily the responsibility of civil authorities or organisations, and for which the

civilian community lacks the necessary equipment or resources. It includes assistance in counter disaster training. Such assistance is not automatic, except where a local Australian Defence Force commander may authorise assistance in civil emergencies where immediate action is necessary to save the lives or property of people in imminent danger and where local civilian resources are inadequate or unavailable.

The six categories of Defence Assistance to the Civil Community

The six categories of Defence Assistance to the Civil Community (DACC) are summarised in the following paragraphs:

(i) Emergency situations:

(a) **Category 1 DACC** is emergency assistance for a specific task(s) provided by a Local Commander/Administrator, from within his or her own resources, in localised emergency situations when immediate action is necessary to save human life, alleviate suffering, prevent extensive loss of animal life or prevent widespread loss/damage to property. A category 1 DACC is not normally longer than 24 hours. Examples include aviation and/or personnel for search and rescue tasks;

(b) **Category 2 DACC** is emergency assistance, beyond that provided under Category 1, in a more extensive or continuing disaster where action is necessary to save human life or alleviate suffering, prevent extensive loss of animal life or prevent loss/damage to property, and when State/Territory resources are inadequate. Examples include use of plant equipment or aviation for movement of people. Ministerial approval is required after requesting assistance from Emergency Management Australia; and

(c) **Category 3 DACC** is assistance associated with a civil emergency or disaster recovery, which is not directly related to the saving of life or property. Examples include temporary bridging, clean up of oil pollution and generators. Ministerial approval is required after requesting assistance from Emergency Management Australia; and

(ii) Non-emergency situations:

(a) **Category 4 DACC** is non-emergency assistance provided to other government departments or authorities, to the States or Territories, local government or other authorities or organisations, commercial enterprises, non-profit organisations, or individuals or bodies in the general community. The range of tasks for a category 4 DACC request is wide and examples may include support for significant sporting events, use of specialist defence resources, disposal of dangerous materials and training assistance;

(b) **Category 5 DACC** is non-emergency assistance of a minor nature, excluding flying tasks, provided to local organisations and which is within the capacity of a Local Commander/Administrator's resources and authority. The difference between category 4 and 5 requests is the amount of assistance and/or the possibility of public controversy or political sensitivity. If in doubt, requests will be treated as a category 4 request; and

(c) **Category 6 DACC** is assistance to civil authorities in the performance of non-emergency law enforcement related tasks where there is no likelihood that Australian Defence Force personnel will be required to use force. Examples include non-emergency explosive ordnance disposal relating to commercial explosives and chemicals (other than of a military origin), surveillance, searches for hidden materials, provision of communications and control facilities, interpreters and transportation.

Call out procedure

POLICY

Requests for Defence Assistance to the Civil Community for categories 2 and 3 are made under the Queensland Disaster Management Arrangements. Applications for defence assistance in these circumstances are to be made by the relevant District Disaster Coordinator through the State Disaster Coordination Centre (also see ss. 17.2: 'Disaster Management', 17.2.1: 'District Disaster Management Group members' responsibilities', and 17.2.2: 'Declaration of a disaster situation' of this Manual).

A request for Defence Assistance to the Civil Community other than for categories 2 and 3 should be made in accordance with local arrangements or district or station instructions to the commanding officer or nominated delegate of the relevant Australian Defence Force establishment.

Cost recovery for Defence Assistance to the Civil Community

Category 1 and 2 Defence Assistance to the Civil Community is cost free (unless the recipient agrees to pay costs of support). For Categories 3 through to 6 Defence Assistance to the Civil Community, there is direct cost recovery by the Australian Defence Force where the tasks cost more than \$2500 (unless a cost waiver/variation is approved). All decisions on cost recovery are made by the Australian Defence Force.

Requesting Defence Assistance to the Civil Community (primary considerations)

POLICY

Before any request for Defence Assistance to the Civil Community is submitted, the following criteria should be met:

- (i) it should be demonstrated that no suitable alternative resource is available;

- (ii) there is an inability to react with sufficient speed;
- (iii) appropriate resources are not available; or
- (iv) there is a need for immediate action necessary to:
 - (a) save human life;
 - (b) alleviate suffering;
 - (c) prevent extensive loss of animal life; or
 - (d) prevent wide spread loss/damage to property.

As a general principle, the provision of Defence Assistance to the Civil Community should be regarded as the exception rather than the rule.

Requests for supplies and/or Australian Defence Force equipment under Defence Assistance to the Civil Community (additional considerations)

PROCEDURE

The following factors should be considered before requesting supplies and/or equipment under Defence Assistance to the Civil Community:

- (i) description of item(s), including any known handling restrictions (e.g. weight and dimensions if aircraft movement is involved);
- (ii) quantities required (by location);
- (iii) whether the request includes transport or whether transport arrangements have been made;
- (iv) whether the request is a loan (i.e. are items recoverable);
- (v) person or authority who will take responsibility for the supplies or equipment when delivered on site;
- (vi) address and telephone number of consignee who will accept delivery if not on site;
- (vii) urgency of request, including date and time by which delivery should be completed; and
- (viii) reasons of inability to provide or arrange for supplies/equipment from local or commercial sources.

Requests for Australian Defence Force air support under Defence Assistance to the Civil Community (additional considerations)

POLICY

The following factors should be considered before requesting aircraft support under Defence Assistance to the Civil Community:

- (i) description of types of tasks likely to be undertaken (e.g. pre-positioning of aircraft in an area for prolonged period, casualty evacuation, distributing relief supplies or reconnaissance);
- (ii) an indication of the likely commitment including anticipated radius of operation and number of tasks per day;
- (iii) person or authority who will be coordinating requests at the disaster site, including call sign and frequency;
- (iv) location of the base that aircraft will be working from and, if possible, the availability of fuel by type at the base;
- (v) current conditions of airfields and loading zones in the area;
- (vi) expected duration of task; and
- (vii) reasons alternate methods not used (e.g. commercial or other aircraft).

11.14.4 Defence Force Aid to the Civil Authority

National agreements for State/Commonwealth involvement are coordinated through the National Counter-Terrorism Committee (NCTC). The Australian Defence Force (ADF) can provide assistance to civil authorities to perform their law enforcement tasks where such tasks are beyond the capability of that authority and where ADF resources may be required to use force against persons. Such assistance may be in response to terrorism or other serious acts of violence. Assistance to the Civil Authority is facilitated through the process of 'Defence Force Aid to the Civil Authority' (DFACA).

Templates for the requests of ADF through DFACA are found in the 'Guidelines for requesting support from the Australian Defence Force (Call Out) under Part IIIAAA of the *Defence Act 1903* by States and Territories'.

ORDER

Police Commanders are to adhere to the guidelines set down in the 'Guidelines for requesting support from the Australian Defence Force (Call Out) under Part IIIAAA of the *Defence Act 1903* by States and Territories' available from

the Security Advisory Unit, Prepare, Prevent, Protect Group, Security and Counter-Terrorism Command website on the Service Intranet.

11.15 Migration Act (Cwlth)

The *Migration Act* (Cwlth) relates to the entry into, and presence in Australia of aliens, and the departure or deportation from Australia of aliens and certain other persons.

11.15.1 Department of Home Affairs and Australian Border Force

The Department of Home Affairs (DHA) sets the policy and legal framework for the management of Australia's borders as well as contributing to other policy outcomes (e.g. productivity and trade). The department also delivers:

- (i) information strategy and intelligence services;
- (ii) offshore maritime security;
- (iii) migration and humanitarian programmes;
- (iv) visa and citizenship application assessments; and
- (v) corporate services for the department and the Australian Border Force.

The Australian Border Force is the operational enforcement entity within the DHA, focussing on border protection and border enforcement activities, including investigations, compliance and detention.

For all request for Immigration, visa or movements information see s. 7.2.9: 'Requesting information from Department of Home Affairs' of the MSM.

Queensland Police Liaison Unit

The DHA has a Queensland Police Liaison Unit (QPLU) that monitors non-citizens who are currently charged with any offence and monitors court outcomes to action cancellations and detention/removal processes, where required. The QPLU should be advised if charges are laid to temporary or permanent visa holders. The QPLU can be contacted by phone to assist with other enquires (see SMCD). It should be noted that QPLU do not have access to immigration and visa records or movement and passenger information.

Border Operations Centre

The DHA has also created the Border Operations Centre. This Centre is responsible for the management of an electronic database, the Central Movement Alert List (CMAL). CMAL stores details about people of immigration concern to Australia. It is used for screening entry to Australia and is the key tool in detecting applications for entry from persons Australia may wish to exclude.

It is important that the CMAL contains as much information as possible regarding possible threats to the safety of Australian citizens and national security. Such threats may be posed by an individual or group. It is important that law enforcement agencies disseminate any relevant information on foreign nationals to DHA for inclusion on CMAL. Any inquiries in relation to the CMAL are to be made to the QPLU. See also s. 11.15.2: 'Assistance to officers of the Department of Home Affairs and Australian Border Force' subsection: 'Providing intelligence to the Department of Home Affairs' of this chapter.

The Compliance Operations and Removals Section

The Compliance Operations and Removals Section (see SMCD) located in Brisbane provides operational assistance to police on joint operations in areas of mutual interest. They also provide advice and assistance regarding any necessary action that may be taken in regard to unlawful non-citizens or deportees, once their status as unlawful non-citizens or deportees is determined. See also s. 11.15.3: 'Deportation and removal' of this chapter.

Immigration Status Service

DHA has also created the Immigration Status Service (ISS). The ISS facilitates the checking of the immigration status of persons of interest to determine if they are lawfully or unlawfully in Australia. The ISS 24 hour helpline can assist police (see SMCD). See also s. 11.15.4: 'Unlawful non-citizens' of this chapter.

11.15.2 Assistance to officers of the Department of Home Affairs and Australian Border Force

Officers who are called upon to assist officers from the Australian Border Force should do so in order to control breaches of the peace (see also s. 13.4.9: 'Breaches of the peace' of this Manual and s. 50: 'Dealing with breach of the peace' of the PPRA).

Assistance to Australian Border Force officers may include:

- (i) arrest of persons detained by Australian Border Force officers;
- (ii) escort of persons detained to the nearest detention centre; and

(iii) location of persons who have escaped immigration detention.

Assistance does not normally extend to the escort of detainees from prisons or watch-houses to airports or to interstate destinations, as this responsibility rests with the Australian Federal Police in conjunction with the Australian Border Force.

Where Australian Federal Police or immigration authorities are unable to attend, the escort of such prisoners can be undertaken within the State provided that no expense concerning the escort is incurred by the Service.

Providing intelligence to the Department of Home Affairs

Officers who are requested to provide intelligence held by the Service to the Department of Home Affairs (DHA) are to forward a report outlining the intelligence sought through their regional crime intelligence coordinator to the Detective Superintendent, Crime and Intelligence Command.

The Detective Superintendent, Crime and Intelligence Command, should consider the request and advise DHA what intelligence if any will be released.

See also s. 5.6.15: 'Requests for information from other law enforcement agencies' of the Management Support Manual.

11.15.3 Deportation and removal

Deportation and removal of non-citizens is a Federal responsibility. Officers will provide assistance to the Federal authorities where necessary regarding any investigations involving non-citizens as suspects.

Sections 201: 'Deportation of non-citizens in Australia for less than 10 years who are convicted of crimes' and 203: 'Deportation of non-citizens who are convicted of certain serious offences' of the *Migration Act* (Cwlth) (MA) set out the conditions necessary for non-citizens to be deported.

Section 501: 'Refusal or cancellation of visa on character grounds', of the MA allows for the refusal or cancellation of visas for non-citizens who it is believed do not pass the character test. Subsection 501(6) of the MA outlines when a person does not pass the character test. This can include when a person:

- (i) has a substantial criminal record where the person has been:
 - (a) sentenced to death, or life imprisonment;
 - (b) sentenced to terms of imprisonment totalling 12 months or more (see s. 501(7A) of the MA);
 - (c) acquitted of an offence on the grounds of unsoundness of mind or insanity, and as a result the person has been detained in a facility or institution; or
 - (d) found by a court to be unfit to plead to an offence but nonetheless found on the evidence available to have committed the offence, and as a result has been detained in a facility or institution;
- (ii) is reasonably suspected by the Minister to have been or is:
 - (a) a member of a group or organisation, or has had an association with a group, organisation or person which is or has been involved in criminal conduct; or
 - (b) involved in conduct constituting:
 - people smuggling;
 - trafficking in persons; or
 - the crime of genocide, a crime against humanity, a war crime, a crime involving torture or slavery or a crime of serious international concern;
- (iii) is not of good character (relating to their past or present criminal or general conduct);
- (iv) if allowed to enter or remain in Australia there is a risk the person would:
 - (a) engage in criminal conduct;
 - (b) harass, molest, intimidate or stalk another person;
 - (c) vilify a segment of the community;
 - (d) incite discord in the community; or
 - (e) represent a danger to the community, whether by way of being liable to become involved in activities that are disruptive to, or in violence threatening harm to, that community, or in any other way;
- (v) has been found guilty of a sexual offence involving a child in Australia or elsewhere, even if discharged without a conviction;
- (vi) has been charged in Australia or elsewhere for the crime of genocide; a crime against humanity; a war crime; a crime involving torture or slavery or a crime of serious international concern;
- (vii) has been assessed by the Australian Security Intelligence Organisation to be a security risk;

- (viii) is the subject of a current Interpol notice which reasonably indicates they present a risk to the Australian community, or a segment of the Australian community;
- (ix) convicted of an offence committed whilst in immigration detention; or
- (x) convicted of an offence committed after the person escaped immigration detention but before being taken into immigration detention again.

A non-citizen who does not pass the character test may have their visa cancelled and be removed from Australia.

Officers investigating matters involving non-citizens who may be liable to deportation or removal from Australia in accordance with the MA are to furnish a report through the regional crime co-ordinator or for members of Crime and Intelligence Command, a detective superintendent, to the State Manager, Department of Home Affairs (DHA) (see SMCD), advising of the circumstances and that deportation or removal may be considered for that non-citizen. Officers who suspect a person is an unlawful non-citizen or deportee should contact DHA to establish that person's status (see s. 11.15.4: 'Unlawful non-citizens' of this chapter).

Officers who become aware of the location of unlawful non-citizens or deportees should seek advice regarding any necessary action from the DHA. Contact the Compliance Operations and Removals section of DHA (see SMCD and s. 11.15.1: 'Department of Home Affairs and Australian Border Force' of this Manual).

Where the DHA request information in accordance with s. 501L: 'Disclosure of information to the Minister' of the MA, the information is to be released in accordance with Delegation D 61.2.

11.15.4 Unlawful non-citizens

Unlawful non-citizens are people who are not citizens of Australia and do not hold current visas permitting them to be in Australia. There is an exception made for non-citizens who are traditional visitors within the Torres Strait Protected Zone.

Police officers of the Queensland Police Service are 'officers' for the purpose of the *Migration Act* (Cwlth) (MA) (s. 5: 'Interpretation') and pursuant to Delegation D 61.1.

Officers who locate persons that they know or reasonably suspect are unlawful non-citizens should require them to produce evidence that they are lawful non-citizens (s. 188: 'Lawful non-citizen to give evidence of being so' of the MA). If the persons are unable to produce such evidence officers should:

- (i) obtain:
 - (a) their full name, date and place of birth and nationality;
 - (b) any other names used by the person;
 - (c) any current and previous addresses;
 - (d) date and port of arrival;
 - (e) the type of visa held and whether it is current;
 - (f) details of any other visa applications made; and
 - (g) any other documentation which proves identity and right to be in Australia;
- (ii) contact the 'Immigration Status Service (ISS)' of the Department of Home Affairs (DHA) by telephone, e-mail or facsimile to confirm the immigration status of the persons, see SMCD. (If the request is by telephone, a follow-up written request on official letterhead or email will also be required);
- (iii) if the person's unlawful non-citizen status is confirmed then detain the person at a watch-house (s. 189: 'Detention of unlawful non-citizens' of the MA); and
- (iv) arrange with Compliance Operations and Removals of the Australian Border Force, see SMCD for the persons to be taken into their custody or be issued with bridging visas.

ORDER

Officers are to detain persons whom they know or reasonably suspect are unlawful non-citizens. Detention under the MA can include requiring persons to remain in the company of an officer while further inquiries are made. Officers are to document the reasons for detaining persons they suspect are unlawful non-citizens in the relevant QPRIME Custody Report or Custody Report (Full) in the Detention Log, under General Detention.

A person so detained is to be detained until lawfully released or until that person is taken into custody by the Australian Border Force or the DHA.

Officers are to release the person from immigration detention if:

- (i) the person provides evidence of Australian citizenship;
- (ii) the officer comes to know or later forms a belief on reasonable grounds that the person is an Australian citizen;
- (iii) the person provides evidence that they are a lawful non-citizen; or

- (iv) the person is granted a visa.

Officers who detain unlawful non-citizens are to advise them that they will be detained until they are removed from Australia or until they can be lawfully released and that they may apply to the DHA for a visa within two working days of the beginning of their detention (ss. 194: 'Detainee to be told of consequences of detention' and 195: 'Detainee may apply for visa' of the MA). Officers detaining any person under the provisions of s. 189: 'Detention of unlawful non-citizens' of the MA are to complete a Form 1275: 'Police record of immigration detention' and forward this form to the ISS by e-mail or facsimile. See SMCD.

11.15.5 Criminal justice certificates

Officers investigating an offence involving a non-citizen may apply to the Commissioner for the issue of a 'State criminal justice entry certificate' or a 'State criminal justice stay certificate' if it is deemed necessary for:

- (i) the administration of justice; and
- (ii) authorisation is required for the non-citizen to enter Australia; or
- (iii) the non-citizen unlawfully in Australia to remain,

as either a person charged with or witness to a criminal offence.

A 'State criminal justice entry certificate' is required if a non-citizen is:

- (i) to be extradited to Australia from another country under the *Extradition Act* (Cwlth);
- (ii) a person who has a criminal record or is otherwise generally prohibited from obtaining a visa to enter Australia; or
- (iii) a witness in a criminal matter and is required to enter Australia.

A 'State criminal justice stay certificate' is required if the continued presence of a non-citizen is required in Australia for:

- (i) an investigation to determine if an offence has been committed;
- (ii) the prosecution of the person for an offence; or
- (iii) the punishment by way of imprisonment of the person for an offence.

Expenses

The Service is responsible for all costs and associated incidentals e.g. travel (to and from Australia), accommodation, health and other living expenses for non-citizens on a:

- (i) criminal justice entry visa; or
- (ii) criminal justice stay visa.

Any payments made to the non-citizen are usually equivalent to a Centrelink unemployment benefit but the final determination of any expenses will be made by a court (see s. 160 'Conditions of criminal justice visa' of the *Migration Act* (Cwlth) (MA)).

Application for a State criminal justice entry certificate

Officers applying for a State criminal justice entry certificate are to:

- (i) complete the following correspondence (see the Deputy Commissioner, Regional Operations and Youth Crime (DCROYC) site, Service Intranet):
 - (a) Commissioner's cover letter;
 - (b) maintenance (cost) undertaking;
 - (c) questionnaire; and
 - (d) certificate;
- (ii) submit a report in hard and electronic form through the chain of command to the relevant assistant commissioner addressing:
 - (a) the reasons the non-citizen's entry into Australia is required;
 - (b) details of the person's valid travel document (passport etc.);
 - (c) itinerary of the proposed travel arrangements (including the date of departure from Australia);
 - (d) address whilst staying in Australia;
 - (e) all anticipated expenses including:
 - travel to and from Australia; and
 - living expenses (including accommodation, meals and medical);

- (f) confirmation the expenditure will be authorised and borne by the relevant district or command;
 - (g) arrangements made to ensure a non-citizen with a history of violence will not be a danger to the general public; and
- (iii) forward all correspondence to the DCROYC requesting approval for the issue of a certificate (see s. 146: 'State criminal justice entry certificate' of the MA).

Application for a State criminal justice stay certificate

Officers applying for a State criminal justice stay certificate are to:

- (i) complete the following correspondence (see the DCROYC site, Service Intranet):
 - (a) Commissioners cover letter;
 - (b) maintenance (cost) undertaking;
 - (c) questionnaire; and
 - (d) certificate;
- (ii) submit a report in hard and electronic form through the chain of command to the relevant assistant commissioner addressing:
 - (a) circumstances surrounding the status of:
 - the non-citizen's authority to be in Australia; and
 - the unlawful non-citizen's removal or deportation from Australia;
 - (b) details of the offence and the non-citizen's involvement play in the judicial process;
 - (c) details of arrangements made for the non-citizens including:
 - living expenses (including accommodation, meals and medical); and
 - confirmation the expenditure will be authorised and borne by the relevant district or command;
 - (d) the address of the unlawful non-citizen if the person is not being kept in detention or custody; and
 - (e) arrangements made to ensure a non-citizen with a history of violence will not be a danger to the general public; and
- (iii) forward all correspondence to the DCROYC requesting approval for the issue of a certificate (see s. 148: 'State criminal justice stay certificate' of the MA).

Cancellation of certificates

Officers are to advise the office of the DCROYC at the earliest opportunity about a non-citizen on a criminal justice stay certificate no longer being required.

When a non-citizen is no longer required for the administration of justice, the officer is to:

- (i) complete the following correspondence (see the DCROYC site, Service Intranet);
 - (a) cancellation letter; and
 - (b) cancellation certificate;
- (ii) complete a report which addresses:
 - (a) the reason why the non-citizen is no longer required;
 - (b) the date after which the non-citizen will no longer be required;
 - (c) the non-citizen's current address; and
 - (d) details of the arrangements (State criminal justice entry certificates) made for the non-citizen's departure from Australia; and
- (iii) submit this correspondence by the most expedient means through the chain of command to the DCROYC.

The Department of Home Affairs is responsible for the removal of an unlawful non-citizen from Australia once a State criminal justice stay certificate is cancelled.

ORDER

The investigating officer is to comply with this section and provide all written correspondence to the DCROYC at the earliest opportunity.

Responsibilities of the Deputy Commissioner, Regional Operations and Youth Crime

If the DCROYC is satisfied the information supporting the application for the issue of a;

- (i) State criminal justice entry certificate; or
- (ii) State criminal justice stay certificate,

is sufficient then the application is to be forwarded to the Commissioner for the issue of a certificate.

Where a certificate is issued, the Commissioner's cover letter, certificate, questionnaire and maintenance (cost) undertakings will then be forwarded by the Office of the DCROYC to:

- (i) the Minister for Home Affairs (for entry visas only for endorsement by the Minister for Home Affairs in accordance with s. 146(2): 'State criminal justice entry certificate' of the MA), see SMCD; and/or
- (ii) the Criminal Justice Programme (within Human Trafficking and Criminal Justice Visas section) of the Department of Home Affairs (for both entry and stay visas), see SMCD.

The DCROYC will forward all reports requesting the cancellation of a State criminal justice certificate to the Commissioner for approval prior to referring the signed documents to the Criminal Justice Programme, the Human Trafficking and Criminal Justice Visas section of the Department of Home Affairs.

11.16 Racial Discrimination Act

The *Racial Discrimination Act* (Cwlth) is an Act relating to the elimination of racial and other discrimination.

Policy and procedures regarding discrimination are contained within Chapter 6: 'Persons who are vulnerable, disabled or have cultural needs' of this Manual and in the Human Resources Policies.

11.17 Offences against Services Australia legislation

Services Australia is responsible for administering the federal:

- (i) Centrelink;
- (ii) Medicare; and
- (iii) Child Support,

agencies through a number of complex legislative arrangements.

The *Social Security Act* (Cwlth) provides for the payment of certain pensions, benefits and allowances, and for related purposes.

The *Child Support (Assessment) Act* (Cwlth) and *Child Support (Registration and Collection) Act* (Cwlth) provides for the payment of benefits to assist the costs of raising children following their parent's separation.

The *Health Insurance Act* (Cwlth) provides for the partial payment of the costs involved in providing medical care and for related purposes through Medicare.

The Pharmaceutical Benefits Scheme subsidises the costs of certain prescription medicines to members of the public.

Services Australia has two branches responsible for conducting investigations into breaches of the:

- (i) Medicare and Pharmaceutical Benefits Scheme; and
- (ii) Centrelink and Child Support,

which are coordinated from the department's facilities in Canberra. There are investigation teams based in each State and Territory.

POLICY

A member who receives a complaint of a fraud related offence committed against any of the legislation administered by Services Australia should:

- (i) create a QPRIME occurrence and ensure the following information is recorded in the occurrence:
 - (a) full circumstances of the complaint, including any supporting evidence, such as CCTV and documents;
 - (b) details of informant and any witnesses regarding the complaint; and
 - (c) any known details of the suspect for the offence; and
- (ii) where a suspect is nominated in the occurrence, a copy of the QPS Occurrence Report should be forwarded by email to the relevant Services Australia investigation branch (see SMCD).

An officer who receives a QPRIME occurrence for investigation concerning a fraud related offence committed against any of the legislation administered by Services Australia, should:

(i) contact the relevant Services Australia investigation branch by email to determine whether the Service or Services Australia will investigate the offence; and

(ii) ensure that the informant is contacted and advised of any action to resolve the complaint, especially if the matter is transferred to Services Australia for investigation.

Officers who wish to access information held by the Department of Human Services should refer to s. 7.2.3: 'Services Australia (Centrelink, Medicare and Child Support)' of the Management Support Manual.

11.18 Airports legislation

See s. 14.11: 'Carriage of firearms or ammunition on aircraft and at airports' of this Manual.

11.18.1 Air Navigation Act

The *Air Navigation Act* (Cwlth) is an Act relating to air navigation.

11.18.2 Civil Aviation Act

Section 24: 'Interference with crew or aircraft' of the *Civil Aviation Act* (Cwlth) includes an offence for interfering with a crew member of an aircraft in the course of the performance of his or her duties as such a crew member or for doing anything which threatens the safety of an aircraft or of any persons on board the aircraft.

11.18.3 Civil Aviation Regulations

The *Civil Aviation Regulations* (Cwlth) contains provisions including an offence for disorderly and offensive behaviour in an aircraft (s. 256AA refers).

11.18.4 Crimes (Aviation) Act

The *Crimes (Aviation) Act* (Cwlth) is an Act relating to crimes and certain other acts committed on or in respect of certain aircraft, aerodromes, airports and air navigation facilities and for related purposes.

11.18.5 Crimes (Hostages) Act

The *Crimes (Hostages) Act* (Cwlth) is an Act which gives effect to the International Convention against the taking of hostages and for other related purposes.

11.19 Other Acts

Generally, officers are not required to take any action in relation to these Acts.

Matters that come to the attention of members of the Service relating to these Acts should be referred to the relevant authority.

11.19.1 Customs Act

Where members of the Service assist the Australian Border Force enforcing provisions of the *Customs Act* (Cwlth), it should be noted that State police officers are authorised persons under s. 183UA: 'Definitions' of the *Customs Act* (Cwlth). Part XII, Division 1: 'Powers of Officers' of the *Customs Act* (Cwlth) contains the powers, duties and responsibilities of an authorised person.

POLICY

Before exercising the powers, duties and responsibilities of an authorised person under the *Customs Act* (Cwlth), officers are to ensure that they have been granted approval in compliance with s. 14: 'Declaration of police officers as public officials' of the PPRA.

See also s. 11.5.1: 'Department of Home Affairs and Australian Border Force' of this chapter.

11.19.2 Navigation Act

The *Navigation Act* (Cwlth) is an Act relating to navigation and shipping.

11.19.3 Defence Force Discipline Act

The *Defence Force Discipline Act* (Cwlth) is an Act relating to the discipline of the Defence Force and for related purposes.

11.20 Other Commonwealth matters and agencies

11.20.1 Australian Protective Service (cultural property)

The Australian Protective Service (APS), a division of the Commonwealth Department of Administrative Services, protects certain property which is owned by the Commonwealth, as well as property for which the Commonwealth accepts responsibility while it is in Australia.

For the purposes of this section, the term 'cultural property' includes valuable works of art, antiquities, property of artistic interest, rare manuscripts and archives. Displays of Aboriginal artefacts, properly identified and valued as such, could be cultural property.

Responsibilities of the APS include the escort and protection of Commonwealth indemnified exhibitions of cultural property, assessment of security arrangements at cultural institutions accepting cultural property for display and the exchange of information with Interpol regarding the theft or vandalism of any cultural property.

POLICY

Members investigating offences in relation to cultural property should contact the Australian Protective Service and supply information as to the:

- (i) complainant person or organisation;
- (ii) location of the offence;
- (iii) description of property;
- (iv) value of property and whether or not indemnified by the Commonwealth; and
- (v) if property has been stolen, the likelihood of attempts being made to dispose of the property interstate or overseas.

11.20.2 Interpol

Section 7.3.1: 'International inquiries through Interpol' of the Management Support Manual contains Service policy and procedures relating to requests for Interpol assistance.

See also s. 8.4.7: 'Advising relatives', s. 10.9.3: 'Action prior to approval to seek extradition' and s. 12.4.1: 'Responsibility of officer who receives a report' of this Manual.

11.20.3 War crimes tribunal inquiries

In Australia, the primary function of investigating war crimes activities rests with the Commonwealth and, in particular, the Australian Federal Police (AFP) in conjunction with the Department of Home Affairs (DHA) and the Attorney General's Department. The DHA has responsibility for liaising with relevant ethnic groups and non-government organisations to facilitate reported sightings of alleged war criminals in Australia.

The various state and territory Police Services have been requested to refer the report of any sightings, which have been made to them, to the AFP in their respective states and territories.

There may be occasions where persons seek to report sightings of alleged war criminals to officers of the Service.

Officers should not interview suspected war criminals. In all circumstances the presumption of innocence is to prevail including due regard to privacy. Officers should also be aware of the possibility of malicious allegations.

Where persons seek to report sightings of alleged war criminals, officers should refer the complainant to, and separately report details of the complainant/complaint to the AFP (see SMCD).

11.20.4 Assistance to Australians overseas

The Department of Foreign Affairs and Trade is responsible for the provision of consular services to Australian citizens overseas.

Consular assistance and protection are typically provided to Australians overseas who:

- (i) are detained by the local authorities for alleged breaches of local law;
- (ii) fall ill or are injured and need help in dealing with the local medical services and/or in keeping family members in Australia informed;
- (iii) encounter an unexpected difficulty, e.g. loss of travel documents, tickets or money, and need guidance or assistance; or
- (iv) have been out of contact with their family for an extended period or family members need to make urgent contact with them due to matters such as the death of a family member.

POLICY

Members who receive inquiries in relation to assistance which may be required by an Australian citizen overseas should advise the inquirer to contact the Consular Operations Centre, Department of Foreign Affairs and Trade, Canberra (see SMCD).

See also s. 12.4: 'Missing person occurrence' of this Manual in relation to residents of Australia missing overseas.

11.20.5 International persons wishing to defect from their country of origin

Persons who are not Australian citizens are permitted to be in Australia if they hold an appropriate current visa.

There may be instances where a lawful non-citizen may approach an officer and claim that they wish to defect to Australia from their country of origin, i.e. they wish to seek political asylum.

Officers who are approached by a person claiming to be a defector are to endeavour to determine the status of the person.

To assist in establishing whether the person is a genuine political defector or an economic refugee, officers are to determine:

- (i) the person's name (surname, former surname or maiden name, first names and any other names known by, including pseudonyms and nicknames);
- (ii) the person's address (current address in Australia and address in their country of origin);
- (iii) the person's date and place of birth;
- (iv) the person's nationality, citizenship or ethnicity;
- (v) any identifying documents in the person's possession;
- (vi) any safety issues;
- (vii) the languages spoken or read by the person; and
- (viii) the person's basis for claiming to be a 'political defector' or economic refugee.

Officers have a responsibility to ensure the safety of a genuine political defector or an economic refugee and the community, although matters relating to the defection or immigration status of the subject person are the responsibility of the Department of Home Affairs (Home Affairs).

Upon being notified of a claim as a genuine defector or economic refugee, officers are to contact Home Affairs to provide further information in relation to Home Affairs making an application for a Protection visa.

Further information can be obtained by going to the Department's website – www.homeaffairs.gov.au, or by telephone – 131 881.

Officers are to generate an Intelligence Submission including all relevant information of the person and provide the available information relating to the possible defector as outlined in points (i) to (viii). An intelligence submission is to be completed under the headings *Security/Illegal Immigration* and be tasked to QTASIG (5856) in order for it to be assessed in the National Security space in consultation with partner agencies.

11.20.6 Commonwealth department responsible for education or employment

The Commonwealth departments responsible for education or employment administer Commonwealth funded programs.

These departments' national offices and a joint Investigations Branch, Shared Services Centre (see SMCD) (IB) are located in Canberra. The purpose of the IB is to investigate and initiate prosecutions where fraud is detected and to undertake fraud prevention against departmental programs.

A member of the Service who receives a complaint or report concerning a fraud related offence relevant to funding from a Commonwealth department for education or employment, should:

- (i) comply with the provisions of s. 1.11: 'QPRIME – PoliceLink entered occurrences' of this Manual; and
- (ii) ensure the following information is recorded in the QPRIME occurrence:
 - (a) full circumstances of the complaint/report;
 - (b) details of person(s) making the complaint/report; and
 - (c) details and contact telephone number of the member taking the complaint/report.

An OIC of a station or establishment detailed a QPRIME occurrence (s. 1.11.4: 'Assigning PoliceLink entered occurrences' of this Manual) concerning a fraud related offence committed against a Commonwealth department responsible for education or employment should:

- (i) check the details of the QPRIME occurrence with the member who took the complaint or report of the fraud related offence and ensure all available information is included in the report;
- (ii) ensure the QPRIME occurrence is cross referenced with the initial report (hard copy);
- (iii) forward to the Director, IB:
 - (a) an email copy of the QPRIME occurrence; and
 - (b) any evidentiary material; and
- (iv) ensure that the complainant is contacted and advised of any action to resolve the complaint.

Members who detect a matter that may impact on a Commonwealth department responsible for education or employment operations should advise the Director, IB.

Officers who wish to access information held by a Commonwealth department responsible for education or employment should refer to s. 7.2.5: 'Requesting information from the Commonwealth department responsible for education or employment' of the MSM.

11.21 Public Order (Protection of Persons and Property) Act

The *Public Order (Protection of Persons and Property) Act* (Cwlth) is an Act relating to the preservation of public order and security in certain territories and in respect of Commonwealth premises, premises and personnel of diplomatic and special missions, consular posts, and international organisations, federal courts and tribunals.

Policy regarding public order/safety within the terms of State legislation is in Chapter 13: 'Miscellaneous' of this Manual.

POLICY

Officers are to familiarise themselves with the following provisions of the *Public Order (Protection of Persons and Property) Act* (Cwlth):

Part IIA – Provisions relating to premises of certain investigatory authorities

- s. 13C: 'Power of authorised officer to require information';
- s. 13D: 'Power of authorised officer to search a person or require a person to deposit personal effects';
- s. 13E: 'Removal from authority premises';
- s. 13F: Person not to carry firearm, explosive substance or offensive weapons on authority premises';

Part IV – General

- s. 22: 'Arrest'.

11.22 Excise Act

11.22.1 Seizure of illicit tobacco products

All tobacco products manufactured (including cultivated) in or imported into Australia are subject to payment of Federal Government taxes in the form of excise/customs duty and/or licensing fees.

This policy is concerned with possession of or trade in locally cultivated tobacco plants or manufactured tobacco products (commonly referred to as '**chop-chop**') for which excise or relevant license fees have not been paid ('**illicit tobacco products**' or 'ITP').

Officers who detect ITPs in the course of their duties or suspect a person is cultivating tobacco plants or manufacturing tobacco products should contact the Australian Taxation Office (ATO) on 1800 060 062 or forward the information to the ATO via the www.ato.gov.au website.

Relevant legislation

The *Excise Act* (Cwlth) (EA) contains a number of offence provisions, within ss. 117 to 117I, relating to trade in ITP, including unlawful possession, moving, selling, and buying of excisable goods, and tobacco leaf, plant and seed.

Section 116: 'Forfeiture' of the EA (Cwlth) provides for the automatic forfeiture to the Crown classes of goods relating to the unlicensed manufacture or possession of excisable goods and tobacco seed, plant and leaf, and their transport and packaging.

Section 9: 'Seizure and condemnation of forfeitable goods' of the *Crimes Act* (Cwlth) (CA) provides any officer may, without warrant, seize any articles which are forfeited or are reasonably believed to be forfeited under any law of the Commonwealth.

Section 107FA(4): 'Seized goods to be secured' of the EA (Cwlth) provides if an officer seizes any forfeited goods under s. 9 of the CA (Cwlth), the officer is to, as soon as practicable, deliver the goods into the custody of an officer (see s. 4: 'Definitions' of the EA (Cwlth)).

Action following detection of forfeitable tobacco related goods

POLICY

Officers should not automatically seize any goods which can be forfeited under s. 116 of the EA (Cwlth) without first contacting the ATO for assistance in determining:

- (i) the status of the suspected goods; and
- (ii) whether seizure is warranted in the circumstances.

If it is recommended that the goods be seized, the ATO will provide advice concerning:

- (i) to whom and when the delivery of the goods will be effected (see subsection 'Action following seizure of forfeitable tobacco related goods' of this section); and
- (ii) if any additional assistance the ATO can provide with respect to the seized goods, such as transport and storage arrangements for large seizures.

Officers should not prosecute a person for an offence under the EA (Cwlth) before contacting the ATO for advice.

Officers may use discretion in applying the above policy in cases where small amounts of goods which are forfeited or are reasonably believed to be forfeited pursuant to s. 116 of the EA (Cwlth) are detected (i.e. an officer may locate, upon searching a person, a clear plastic bag containing 10 grams of tobacco suspected of being chop-chop).

Action following seizure of forfeitable tobacco related goods

POLICY

The term '**relevant commonwealth officer**' means an officer for the purpose of the EA (Cwlth).

An officer who seizes goods under s. 9 of the CA (Cwlth) should:

- (i) as soon as reasonably practicable deliver the goods into the custody of a relevant commonwealth officer (see s. 107FA(4) of the EA (Cwlth)); and
- (ii) advise the person to direct any inquiries with respect to the seized goods to the Regional Manager, Excise Investigations, ATO; and
- (iii) issue a QPB 32A: 'Field Property Receipt';
- (iv) as soon as practicable after delivering the seized goods, obtain a receipt from the relevant commonwealth officer nominated by the ATO; and
- (v) if the goods cannot be immediately delivered into the custody of a relevant commonwealth officer, as soon as practicable lodge the goods at an appropriate property point and comply with the provisions of paragraph (iv).

The Service's involvement in the seizure of goods is considered finalised once:

- (i) the goods are delivered into the custody of the relevant commonwealth officer; and
- (ii) a receipt has been issued for the seized goods, unless the seizing officer is required to:
 - (a) provide a statement or affidavit; or
 - (b) give direct evidence at any subsequent hearing,with respect to the seizure.

Costs associated with seizure

POLICY

The ATO has undertaken to cover all costs incurred by the Service for transport and storage of goods deemed to be forfeited pursuant to s. 116 of the EA (Cwlth) and seized by officers under s. 9 of the CA (Cwlth). Application for reimbursement of these costs should be negotiated directly with the regional investigations office of Excise, ATO, by the officer in charge of the station, establishment or district concerned.

Regional investigations office of ATO

In addition to providing advice and other assistance to officers with respect to the issues addressed in this policy, the ATO (see SMCD), will also provide advice with respect to other articles subject to excise and which may be liable to seizure, such as suspected illicit alcohol products.

11.23 Aviation and maritime transport security

The *Aviation Transport Security Act (Cwlth) (ATSA(C))* provides a regulatory framework to safeguard against unlawful interference with aviation within Australia. To achieve this purpose the ATSA(C) establishes minimum security requirements for civil aviation in Australia by imposing obligations upon persons engaged in civil aviation related activities. Part 5, Division 3: 'Law enforcement officers' of the ATSA(C) provides police with specific powers relating to areas in and around airports.

Similarly, the *Maritime Transport and Offshore Facilities Security Act (Cwlth) (MTOFSA(C))* provides a safeguard against unlawful interference with maritime transport and achieves this by establishing minimum security requirements. Part 8, Division 4: 'Law enforcement officers' of the MTOFSA(C) provides police with specific powers in and around ports and ships.

11.23.1 Aviation Transport Security Act

For the definitions of 'airport', 'airside area', 'airside security zone', 'landside area', 'landside security zone', and 'security controlled airport' see s. 9: 'Definitions' of the *Aviation Transport Security Act (Cwlth) (ATSA(C))* and for a definition of 'unlawful interference with aviation' see s. 10 of the ATSA(C). For the definition of 'law enforcement officer', see s. 82: 'Law enforcement officers' of the ATSA(C).

See also s. 14.11: 'Carriage of firearms, ammunition, handcuffs, batons, conducted energy weapons and Oleoresin Capsicum (OC) Spray etc. on aircraft and at airports' of this Manual.

Access

Officers performing duty at a security controlled airport may enter and remain in any part of a security controlled airport at any time. See s. 83: 'Access to airports by law enforcement officers' of the ATSA(C).

Stopping and searching

Sections 84: 'Stopping and searching people' and 85: 'Stopping and searching vehicles' of the ATSA(C) provides officers with the authority to stop and search people and vehicles within an airside area, where the officer reasonably believes that it is necessary to do so for the purposes of safeguarding against unlawful interference with aviation.

Removal of people and vehicles

Officers are authorised under s. 86: 'Requests to leave areas or zones' of the ATSA(C) to request people to leave an aircraft, an area, a zone, or an airport when the officer reasonably suspects that a person is committing or has committed an offence against the ATSA(C). Once a request has been made, and the person fails to comply with the request, officers are authorised to remove people from the aircraft, area, zone, or airport under s. 87: 'Removing people from aircraft, airports, areas or zones' of the ATSA(C). When removing people officers may only use as much force as is reasonably necessary.

Officers have the authority under s. 88: 'Removing vehicles from areas or zones' of the ATSA(C) to remove a vehicle from an area or zone of a security controlled airport, where the officer reasonably suspects that the vehicle presents a risk to aviation security or the vehicle is in the zone without the proper authority. However, the officer must not remove the vehicle without making reasonable efforts to have the person in control of the vehicle remove the vehicle.

11.23.2 Maritime Transport and Offshore Facilities Security Act

For definitions of 'maritime industry participant', 'maritime security zone', 'security regulated port' and 'security regulated ship' see s. 10: 'Definitions' of the *Maritime Transport and Offshore Facilities Security Act (Cwlth) (MTOFSA(C))*. For definition of 'unlawful interference with maritime transport' see s. 11 of the MTOFSA(C). For the definition of 'law enforcement officer', see s. 151: 'Law enforcement officers' of the MTOFSA(C).

Access

Officers may enter and remain in, any part of a security regulated port at any time. However, before entering any part of a security regulated port the officer is to identify themselves to the maritime industry participant who is in control of the area the officer is entering, and inform the participant why the officer is entering that part of the security regulated port, (see s. 152: 'Access to ports by law enforcement officers' of the MTOFSA(C)).

Stopping and searching

When an officer reasonably believes that it is necessary to do so for the purposes of safeguarding against unlawful interference with maritime transport, the officer may stop a person, vehicle or vessel that is within a maritime security zone or a person that is on a security regulated ship and may search the person, vehicle or vessel. See ss. 153: 'Stopping and searching people', 154: 'Stopping and searching vehicles' and 155: 'Stopping and searching vessels' of the MTOFSA(C).

When an officer stops a person, vehicle or vessel the officer is to identify themselves as a police officer to the person or the person in charge of the vehicle or vessel, and then tell the person the reason for being stopped. If a search is then to be conducted, the officer is to tell the person the reason for the search.

Removal of people, vehicles and vessels

Where an officer reasonably suspects that a person who is on a ship or within a maritime security zone, has committed or is committing an offence against the Act, the officer may request the person to leave the ship or the zone. See s. 156: 'Requests to leave ships or zones' of the MTOFSA(C).

When a person fails to comply with a request from an officer to leave a ship or maritime security zone, the officer may remove the person using as much force as is reasonably necessary to do so (see s. 157: 'Removing people from ships or zones' of the MTOFSA(C)).

When an officer reasonably suspects that a vehicle or vessel that is in or near a maritime security zone and presents a risk to maritime transport security or is there without the proper authorisation, the officer may remove the vehicle or vessel (see ss. 158: 'Removing vehicles from zones' and 159: 'Removing vessels from zones' of the MTOFSA(C)).

11.23.3 General provisions

POLICY

To comply with the provisions of either Act, officers may only remove a vehicle or vessel after making reasonable efforts to have the person in control of the vehicle or vessel remove it. When a vehicle is to be removed, officers are to comply with the provisions of s. 13.1: 'Towing of motor vehicles' of this Manual.

Any person who hinders or obstructs an officer exercising a power under either Act commits an offence. When commencing an investigation for an offence against either Act refer to ss. 11.5: 'Investigation of Commonwealth offences' and 11.3: 'Prosecution of Commonwealth offences' of this Chapter and Chapter 3: 'Prosecution Process' of this Manual.

When searching people under the provisions of either Act, an 'ordinary search' or a 'frisk search' may be conducted, for the definitions of these terms see s. 3C: 'Interpretation' of the *Crimes Act* (Cwth). See also s. 16.10: 'Search of persons' of this Manual.

In all cases where a person or vehicle has been stopped and searched, officers are to comply with the requirements of s. 2.1.2: 'Registers required to be kept' and s. 16.8: 'QPRIME custody, search and property reports' of this Manual.

Officers should remain aware at all times that an incident at airports and ports may relate to terrorist acts or preparatory activities relating to terrorism. When officers suspect that an incident may relate to terrorism, officers should refer to the relevant provisions of s. 17.3.26: 'Terrorist emergency' of this Manual.

For the carriage of weapons and prohibited items within airports refer to s. 14.11: 'Carriage of firearms or ammunition on aircraft and at airports' of this Manual. For the escort of persons in custody by commercial aircraft, see s. 10.4.18: 'Escort of persons in custody by commercial transport' of this Manual.

11.24 Human trafficking (offences against humanity and related offences)

Human trafficking is a colloquial term used to cover a wide range of offending behaviours for the purpose of exploitation which include the recruitment, transportation, transfer, harbouring or receipt of persons by means such as the threat or use of force, other forms of coercion or deception. The *Criminal Code Act* (Cwth) contains the relevant provisions for offences against humanity and related offences (see Chapter 8: 'Offences against humanity and related offences' and particularly Division 270: 'Slavery and slavery-like offences' and Division 271: 'Trafficking in persons'). The offence types include and are not limited to:

- (i) slavery—the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised—and applies whether or not:
 - (a) the conduct occurred in Australia; or
 - (b) the victim or the offender are Australian citizens or residents;
- (ii) slavery-like practices, including:
 - (a) servitude;
 - (b) forced labour; and
 - (c) deceptive recruiting for labour or services.

These offences can apply to the exploitation:

- (a) of a person's labour or services in any industry; or
- (b) within intimate relationships, such as forced marriage, which is where one or both parties to the marriage do not fully and freely consent because of coercion, threat or deception, or because they are incapable of understanding the nature and effect of a marriage ceremony, for reasons including age or mental capacity.

The slavery-like offences can apply where the conduct occurred:

(a) in Australia; or

(b) outside Australia but the offender was an Australian corporation, citizen or resident.

None of the above offences require the victim to be moved across or within Australia's borders;

(iii) trafficking in persons, which includes:

(a) trafficking people into, out of, and within Australia; and

(b) specific provisions for:

- domestic trafficking;
- organ trafficking; and
- trafficking in children;

(iv) debt bondage; and

(v) harbouring a victim.

For further in depth information see the Commonwealth Home Affairs' People Smuggling and Human Trafficking webpage.

Whilst the Australia Federal Police (AFP), are the operational enforcement agency responsible for human trafficking related offences, states and territories have a range of responsibilities to combat human trafficking.

The Service is responsible for the collection, collation and analysis of information obtained from frontline policing relating to human trafficking. Due to the diversity of offences under this statute, the Child Abuse and Sexual Crime Group (CASCG) and Drug and Serious Crime Group (DSCG), of the Crime and Intelligence Command (CIC) will assume joint responsibility for the review of any suspected human trafficking offence prior to dissemination to the AFP.

CASCG and DSCG undertake investigations in partnership with regional investigators, external law enforcement agencies, government and non-government participants nationally and internationally.

Any human trafficking offences involving children or of a sexual nature falls under the responsibility of CASCG. All other human trafficking offences including prostitution falls under the responsibility of DSCG.

Investigations regarding human trafficking

Officers who receive information relating to a human trafficking offence are to:

- (i) record an intelligence submission in QPRIME at the first available opportunity (see s. 2.10.2: 'Intelligence submissions' of this Manual); and
- (ii) forward completed intelligence submission via a QPRIME task to the relevant district or local regional intelligence office for investigation.

Intelligence officers who receive a QPRIME intelligence submission relating to human trafficking are to:

- (i) review the submission and ensure the information is effectively assessed and evaluated and a sanitised copy is created; and
- (ii) create and assign a QPRIME task:
 - (a) 'for your attention' to CASCG [1432] or DSCG [5735] for review;
 - (b) 'for your information' to State Intelligence [3067] for consideration; and
 - (c) 'for your information' to the relevant local CPIU or CIB unit for information.

ORDER

Officers who suspect human trafficking or become aware of any human trafficking offences under Divisions 270: 'Slavery and slavery-like offences' and 271: 'Trafficking in persons' of the *Criminal Code Act (Cwlth)* are to notify their shift supervisor and DDO or RDO. The notified DDO or RDO is to notify the regional crime coordinator (RCC) and seek advice on how to proceed. The RCC is to facilitate engagement with CIC through the on-call Duty Inspector, CIC.

In circumstances where officers locate a human trafficking victim, or receive reliable information relating to a human trafficking offence where there is imminent risk of harm to any person, they are to comply with this order immediately.

Where an officer believes a child has been harmed or is at risk of harm, they are to apply the Child Harm Referral Process (see s. 7.3.1: 'Initial action for reports of child harm' of this Manual).