

INVESTIGATION PROCEDURES MANUAL

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CHAPTER 1

POWERS AND RESPONSIBILITIES OF INSPECTORS

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1 POWERS AND RESPONSIBILITIES OF INSPECTORS

1.1 INTRODUCTION

The Queensland Boating and Fisheries Patrol (QBFP) undertake compliance and enforcement activities on behalf of a number of state and commonwealth government departments. This chapter outlines the role and responsibilities of Officers that are appointed as QBFP Officers. Inspectorial powers are also included here.

1.2 LEGISLATION

QBFP delivers enforcement and compliance activities for a number of State and Commonwealth agencies including:

- Department of Agriculture and Fisheries
- Department of Transport and Main Roads
- Department of Environment and Heritage Protection
- Department of National Parks, Sport and Racing
- Great Barrier Reef Marine Park Authority (GBRMPA)
- Australian Fisheries Management Authority (AFMA)
- Australian Maritime Safety Authority (AMSA)

Accordingly, Officers of QBFP may be authorised under various State and Commonwealth legislation including:

- *Fisheries Act 1994*
- *Sustainable Planning Act 2009*
- *Biosecurity Act 2014*
- *Transport Operations (Marine Safety) Act 1994*
- *Transport Operations (Marine Pollution) Act 1995*
- *Transport Infrastructure Act 1994*

- *Transport Infrastructure (Waterways Management) Regulation 2012*
- *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*
- *Marine Parks Act 2004*
- *Nature Conservation Act 1992*
- *Great Barrier Reef Marine Park Act 1975 (Commonwealth)*
- *Fisheries Management Act 1991 (Commonwealth)*
- *Torres Strait Fisheries Act 1984 (Commonwealth)*
- *Torres Strait Fisheries Act 1984 (Queensland)*

State legislation should be read in conjunction with *Criminal Code Act 1899* (Queensland), *Justices Act 1886* (Queensland), *Evidence Act 1977* (Queensland) and *Acts Interpretation Act 1954* (Queensland).

Commonwealth legislation should be read in conjunction with *Criminal Code Act 1995* (Commonwealth), *Crimes Act 1914* (Commonwealth), *Evidence Act 1995* (Commonwealth) and *Privacy Act 1988* (Commonwealth).

NOTE: Current legislation can be found at www.legislation.qld.gov.au

1.3 FUNCTION OF QBFP IN RELATION TO COMPLIANCE MANAGEMENT AND CONDUCTING INVESTIGATIONS

Primarily, QBFP seeks to undertake compliance and enforcement activities in relation to State fisheries and fish habitats as well as State and National maritime safety.

QBFP also undertakes compliance and enforcement activities in relation to State marine parks, Commonwealth fisheries and the Great Barrier Reef Marine Park.

In conjunction with its partner agencies, QBFP is committed to having in place a robust, but fair and equitable, compliance strategy. The strategy seeks to protect both State and Commonwealth fisheries and fish habitats, and to promote marine safety by maximising compliance with relevant legislation.

QBFP recognises that optimal compliance should be achieved through:

- Maximising voluntary compliance (encouraging and educating commercial and recreational users to voluntarily comply with legislation).
- Providing an effective deterrent capability (detection and prosecution) for non-compliance by ensuring that any deterrent offsets the gains of the non-compliance activity. Effective deterrence is achieved by either issuing infringement notices for minor matters or gaining appropriate penalties in Queensland Courts. This is aided by high quality investigation that follows best practice and thorough preparation of prosecution briefs.

1.4 ROLE OF A QBFP OFFICER

All Officers of the QBFP have compliance and enforcement responsibilities. Generally their role includes undertaking activities for the purpose of preventing, detecting and investigating alleged offences committed against the legislation under which Officers of the QBFP are authorised.

With regard to compliance and enforcement functions, Officers of QBFP shall:

- Work in partnership with State and Commonwealth agencies in gathering, recording and managing strategic and operational intelligence, which relates to compliance management activities.
- Gather relevant evidence to support prosecution cases.
- Prepare briefs of evidence for referral to the relevant Departments legal unit.
- In relation to Commonwealth matters, prepare briefs of evidence for subsequent referral to the Commonwealth Department of Public Prosecutions (CDPP)
- Provide assistance to the relevant State legal unit on prosecution matters.
- Provide assistance to the CDPP on prosecution matters
- Liaise with external agencies in relation to specific joint investigations or case referrals.
- Provide briefings, reports and advice on compliance and investigation issues and associated matters.

1.5 RESPONSIBILITIES OF A QBFP OFFICER

To ensure that compliance and/or investigation activities are undertaken in the most effective manner, QBFP Officers must ensure that they are familiar with the general principles and key elements of the legislation that they are authorised under. In addition, Officers must be aware of the compliance and enforcement policies and procedures that have been developed by the Government agencies that administer this legislation. This includes any appropriate risk assessments and control plans that have been developed by AFMA or GBRMPA in accordance with the requirements of the Commonwealth Fraud Control Guidelines.

QBFP Officers must be conversant with the Departments [Prosecution Policy](#). This policy has been established to enhance general regulatory compliance activity through the application of transparency and consistency. In-house Legal, who is the primary prosecution agency for QBFP, conducts prosecutions within this framework.

QBFP Officer must also be aware of enforcement directives that may be issued by either QBFP or Maritime Safety Queensland.

QBFP Officers should also be aware of current fishery management strategies, fishery management policies and the relative importance of fisheries offences. In part, a hierarchy of offences has been established in a number of fisheries through the compliance risk assessment program. It is often important to provide supporting information to In-house Legal regarding the importance of an offence in a fisheries management context. The risk assessment documents can assist with this.

1.6 POWERS OF INSPECTORS

An Officer's powers are legal authorisations which are required to effectively undertake certain functions and duties to meet defined objectives of the legislation. For instance, an Inspector appointed under the *Fisheries Act 1994* has the function of conducting investigations and inspections to monitor and enforce compliance with this Act. Therefore Inspectors appointed under this Act have prescribed powers of entry for places, boats and vehicles and the ability to search on entry.

An instrument of appointment specifies the powers that an Officer may exercise under certain legislation. This may not necessarily include all powers that might be available under a particular statute.

It is the responsibility of all individual Officers to be aware of the responsibilities, requirements and limitations which may be placed on the instruments of appointment that have been issued to them.

Officers must exercise their powers within the framework of the relevant legislation and in accordance with the policies and procedures developed by the Government bodies that administer the legislation. Inspectorial powers are also influenced to some degree by the common law. Failure of an Officer to exercise these powers in a proper manner may frustrate the purposes of the relevant legislation and compromise proceedings against a person for an alleged offence.

Officers must carry out their duties whilst ensuring discretion is appropriately used without favour. In exercising their powers, Officers must maintain moral integrity, be honest in their dealings with the public, exercise their powers lawfully and in a fair manner, be committed to and have pride in their work, be courteous in their dealings with the public and be accountable for their actions.

1.7 POWERS UNDER RELEVANT LEGISLATION

An Officer appointed as an Inspector under the *Fisheries Act 1994* should have a detailed understanding of its provisions including:

- Part 8 of the Act

An Officer appointed as a Shipping Inspector under the *Transport Operations (Marine Safety) Act 1994* should have a detailed understanding of its provisions including:

- Part 13 of the Act

An Officer appointed as a Shipping Inspector under the *Transport Operations (Marine Pollution) Act 1995* should have a detailed understanding of its provisions including:

- Part 12 of the Act

An Officer appointed as an Authorised Person under the *Transport Infrastructure Act 1994* should have a detailed understanding of its provisions including:

- Chapter 15, part 2

An Officer appointed as a Marine Safety Inspector under the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* should have a detailed understanding of its provisions including:

- Schedule 1, Part 6

An Officer performing the function of an Inspector under the *Marine Parks Act 2004* should have a detailed understanding of its provisions including:

- Part 5 and Part 6

An Officer appointed as a Conservation Officer under the *Nature Conservation Act 1992* should have a detailed understanding of its provisions including:

- Part 8, Sections 127, 130, 131, 136 and 142 and Part 9

An Officer appointed as an Inspector under the *Great Barrier Reef Marine Park Act 1975 (cwth)* should have a detailed understanding of its provisions including:

- Part VA Division 6 and Part VI

An Officer appointed as an Officer under the *Fisheries Management Act 1991 (cwth)* should have a detailed understanding of its provisions including:

- Part 6, Division 1

An Officer appointed as an Officer under the *Torres Strait Fisheries Act 1984 (Commonwealth)* should have a detailed understanding of its provisions including:

- Part VI of the Act

1.8 IDENTITY CARDS

sch3(10)(1)(f)

Each relevant statute requires that the authority appointing the Officer as an Inspector “must give”, “must issue”, or “must cause to be issued” an identification card in an approved form containing a recent photograph of the Officer. The card must also show the Officer’s signature.

Each relevant statute also requires an Officer, at the time of exercising a power provided by the Act, to produce the identity card for inspection. If the legislation under which an Officer is acting requires the Officer to have the identity card displayed so that it is clearly visible to the person, the Officer must comply with the legislation.

If, for any reason, it is impractical to show identification before exercising the power, the Officer must produce the identity card for inspection by the person at the first reasonable opportunity. Generally this should mean shortly thereafter.

The following applies to QBFP Officers whilst on duty:

- (i) The identity card and wallet and badge (where applicable) should not leave the personal possession of the holder.
- (ii) The identity card must not be handed to an unauthorised person. The identity card needs to be shown only.
- (iii) Do not rely on displaying the identity card, when exercising a power, attention should be drawn to the card.
- (iv) When the identity card is not carried it must be kept in a secure and safe place at all times.

Duplicate identity cards are held at the District in a secure place. If an identity card is lost the District Officer/Manager can issue a replacement. The QBFP Administration Officer, Head Office, must be notified immediate via email to ensure that another replacement is ordered.

If it is suspected that an identity card has been stolen, a report is to be made to the nearest Police Station immediately. The relevant District Officer/Manager is to be advised in writing as soon as possible. The report should detail the circumstances surrounding the theft or loss and include relevant information provided to Police, the name of the Police Officer and Station where the report was made, including the lost property number provided by the Police.

1.9 POWERS OF ENTRY

Powers of entry can be found in the below sections of relevant legislation for both State and Commonwealth Acts:

State legislation

Fisheries Act 1994, Part 8, Division 2, Sections 145-149

Transport Operations (Marine Safety) Act 1994, Part 13, Division 3, Sections 162-166

Transport Operations (Marine Pollution) Act 1995, Part 12, Division 3, Sections 77-80

Transport Infrastructure Act 1994, Chapter 15, Part 2, Subdivision 2

Marine Parks Act 2004, Part 5, Division 2, Sections 59-65

Nature Conservation Act 1992, Part 9, Sections 144-150

Commonwealth legislation

Marine Safety (Domestic Commercial Vessel) National Law Act 2012, Schedule 1, Part 6, Division 2

Great Barrier Reef Marine Park Act 1975, Part VA, Division 6, Section 39S-U

Fisheries Management Act 1991, Part 6, Division 1 Sections 84-86

Torres Strait Fisheries Act 1984, Part VI, Division 1, Section 42

The powers discussed below pertain to the *Fisheries Act 1994*.

Officers will routinely inspect vessels for monitoring compliance with maritime safety and fisheries legislation. These inspections will almost always be carried out without warrant.

An Inspector may enter a place if it is a public place and the entry is made when it is open to the public. Beyond that there are three permitted methods of entry i.e. entry by consent, entry authorised by an Act and entry under a warrant.

1.9.1 Entry by Consent

There may be occasions where Officers seek entry to a place by consent of the owner/occupier. In such circumstances Officers should always record the consent in writing and have the owner/occupier sign documentation accepting such consent.

The *Fisheries Act 1994* has specific requirements that the Inspector must fulfil before seeking entry by consent (see Section 181 of the Act for details). A form has been developed for recording these details. This "[Acknowledgement of Consent to Entry](#)" is completed in triplicate. In other cases, Officers should record the consent in their official notebook.

For fisheries matters, if an official form is not available the consent to enter can be recorded in the official note book and signed by the person giving consent.

Tape recording the owner/occupiers consent is also advisable and will eliminate any later claims of inducement or coercion to provide consent. If consent is obtained in a notebook and signed by the owner/occupier, a copy of this acknowledgement should be provided to such person at the earliest convenience.

At the time of seeking consent Officers must advise the owner/occupier of the purpose of the entry, that anything seized during the course of entry can later be used as evidence and that the owner/occupier is not required to give consent.

When an Officer is refused entry to a place, notification of the refusal is to be recorded in the Officers official notebook.

If consent is provided, the owner/occupier may withdraw this consent at any time. If consent is withdrawn, the Officers must leave the premises immediately and notes of such withdrawal should be made in the Officers notebook.

Nothing prevents Officers from entering a place in order to seek consent of entry from the owner/occupier. If upon seeking consent of entry, such entry is refused, Officers must immediately depart the place unless authorised to stay by some other means e.g. a search warrant.

1.9.2 Statutory Powers of Entry

Entry may be authorised specifically under the legislation, such as entry to boats, vehicles or public places.

Boarding a boat or entering a vehicle (s146)

An Inspector can board a boat to find out whether the *Fisheries Act 1994* is being complied with. However, an Inspector can only enter a vehicle if there is "reasonable grounds for suspecting" that the vehicle is being/has been used in the commission of an offence or that there is a thing in the vehicle that may provide evidence of the commission of an offence. Therefore there must be some basis for that suspicion which could be considered and evaluated objectively. In other words, an Inspector must be able to justify the decision to enter the vehicle.

Officers are not permitted to conduct routine road blocks with the intent of inspecting vehicles without reasonable suspicion that the vehicle contains evidence of the commission of an offence.

Before boarding an unattended boat or entering an unattended vehicle the Inspector must take reasonable steps to advise its owner, or the person in control of the boat or vehicle of the intention to board or enter. The steps taken to advise the appropriate person given must be documented.

It should be noted that where an unattended boat is boarded, entry into any part of the boat the door to which is secured, requires consent or warrant. However, this does not prevent an Officer from opening and inspecting an unlocked freezer, esky or other container upon the deck of the boat. In the case of a closed, but unlocked door to a hold, subsection 146(4) would not prevent an Officer from opening the door of the hold upwards or outwards **PROVIDED THAT** no part of the body of the Officer in any way entered the hold i.e. look but do not enter.

1.9.3 Entry provided by condition of an authority

There are certain provisions in the legislation that provide for the unloading of quota species to be conducted only at a place that is open for inspection by an Inspector. This does not provide Inspectors with the power to enter, however if entry to a premises is refused during an unload, the fisher may be committing an offence under the Act.

1.9.4 Entry provided by a warrant

Officers can also enter a place as authorised under a warrant. This warrant and subsequent entry to a place will enable Officers to enact their powers in or on a place once the warrant has been executed. [Chapter 4](#) covers the swearing and execution of warrants prior to enacting such powers.

1.9.5 Entry to Queensland Airports (Commonwealth Land)

QBFP Inspectors can exercise their powers under Part 8 of the *Fisheries Act 1994* (Qld) at Queensland airports that are not Commonwealth Places and also at those Queensland airports that are Commonwealth places by virtue of the *Commonwealth Places (Application of Laws) Act 1970* (Cth).

Certain airports in Queensland (both on Commonwealth and State land) have been established as “Security Controlled Airports” by virtue of the *Aviation Transport Security Act 2004* (Cth). QBFP Inspectors are restricted from entering airside areas, security restricted areas and landside security zones of security controlled airports without an exemption by the Secretary under the *Transport Security Act* and without the permission of the responsible aviation industry participant.

Queensland Airports not on Commonwealth Land

Australian airports are not automatically deemed to be Commonwealth land, and the Commonwealth Government does not automatically have the exclusive power to legislate in relation to Australian airports. In order for the Commonwealth government to be able to legislate exclusively in relation to airports, that place must first be acquired by the Commonwealth for a public purpose pursuant to section 52(i) of the Constitution.

The following is a list of Queensland airports that are not on Commonwealth Land. Fisheries Inspectors can exercise their powers in these airports below as set out under Part 8 of the *Fisheries Act 1994*, **subject to** the *Aviation Transport Security Act 2004* (Cth):

- Alpha Airport;
- Aramac Airport;
- Aurukun Airport;
- Badu Island Airport;
- Barcaldine Airport;
- Bedourie Airport;
- Birdsville Airport;
- Blackall Airport;
- Blackwater Airport;
- Boigu Island Airport;
- Boulia Airport;
- Brisbane West Welcamp Airport
- Bundaberg Airport;
- Burketown Airport;
- Cairns Airport¹;
- Charleville Airport;
- Charters Towers Airport;
- Chinchilla Airport;
- Cloncurry Airport;
- Coconut Island Airport;
- Coen Airport;
- Cooktown Airport;
- Cunnamulla Airport;
- Darnley Island Airport;
- Donnington Airpark (Woodstock Airport);
- Doomadgee Airport;
- Dunk Island Airport;

¹ Note- although the Cairns Airport was not acquired by the Commonwealth through the Federal Airports Corporation, it was sold by the Queensland Government in December 2008 to a private consortium. It is currently operated by the North Queensland Airports Group and is NOT classified as Commonwealth land.

- Edward River Airport;
- Emerald Airport;
- Gladstone Airport;
- Great Barrier Reef (Hamilton Island) Airport;
- Gympie Airport;
- Hervey Bay Airport;
- Horn Island Airport;
- Hughenden Airport;
- Julia Creek Airport;
- Karumba Airport;
- Kowanyama Airport;
- Kubin Airport;
- Lizard Island Airport;
- Lockhart River (Iron Range) Airport;
- Longreach Airport;
- Mabuiag Island Airport;
- Mackay Airport;
- Maryborough Airport;
- Moranbah Airport;
- Mornington Island Airport;
- Murray Island Airport;
- Muttaburra Airport;
- Normanton Airport;
- Northern Peninsula (Bamaga/Injinoo) Airport;
- Palm Island Airport;
- Proserpine (Whitsunday Coast) Airport;
- Quilpie Airport;
- Redcliffe Airport;
- Richmond Airport;
- Rockhampton Airport;
- Roma Airport;
- Saibai Island Airport;
- Saint George Airport;
- Sunshine Coast Airport;
- Thangool Airport;
- Thargomindah Airport;
- Toowoomba Airport;
- Warraber Island Airport;
- Weipa Airport;
- Whitsunday Airport;
- Windorah Airport;
- Winton Airport;
- Yam Island Airport; and
- Yorke Island Airport.

Queensland Airports on Commonwealth Land

The now repealed *Federal Airports Corporation Act 1986* (Cth) established the Federal Airports Corporation (FAC) and vested certain land in the FAC to be held “for and on behalf of the Commonwealth”. Thus the land acquired by the FAC were places “acquired by the Commonwealth” for a public purpose under the acquisitions power of the Constitution.

The airports acquired by the FAC included the following Queensland Airports:

- Brisbane Airport;
- Archerfield Airport;
- Coolangatta (Gold Coast) Airport;
- Townsville Airport; and
- Mount Isa Airport.

These airports were subsequently leased by the Commonwealth government to private corporate entities. As these airports were leased as opposed to sold as freehold land, these airports remain Commonwealth land.

The *Commonwealth Places (Application of Laws) Act 1970* (Cth) ('*Commonwealth Places Act*') was passed to combat the problem of State governments being unable to legislate in relation to land acquired by the Commonwealth for public purposes.

A “Commonwealth place” is defined in the Commonwealth Places Act to mean “...a place (not being the seat of government) with respect to which the Parliament, by virtue of section 52 of the Constitution, has, subject to the Constitution, exclusive power to make laws for the peace, order and good government of the Commonwealth...”. Accordingly, the Commonwealth Places Act deals with the five Queensland airports on Commonwealth land previously acquired by the FAC to which this advice relates.

Section 6(2) of the *Commonwealth Places Act* allows for an arrangement between the Commonwealth and State governments to allow for the exercise of powers, duties and functions in Commonwealth places by State authorities. An arrangement pursuant to this section between the Commonwealth and the State of Queensland was gazetted on 30 September 1971, and the Queensland Parliament passed complementary legislation in the *Commonwealth Places (Administration of Laws) Act 1970*.

As “Officers or employees of the State”, QBFP Officers fall within the definition of an

“authority” for the purposes of the *Commonwealth Places Act*.

To the extent that there is no conflict with other Commonwealth legislation, any powers, duties or functions of the QBFP may be “exercised or performed” in Commonwealth places under the *Commonwealth Places (Application of Laws) Act 1970 (Cth)*.

1.10 POWER TO SEARCH

An Inspector who has lawfully entered a place, boarded a boat or entered a vehicle has the power to search any part of the place, boat or vehicle (s150). However, it is important to note that the Inspector must not enter a part of a boat or vehicle used only as a living area unless accompanied by the person in control of the boat or vehicle. If the person in control of the boat or vehicle is unwilling to accompany the Inspector, entry may still be made, however the Inspector should not enter alone.

In addition, an Officer who has lawfully boarded a boat or entered a vehicle has the power to require the person to take the boat or vehicle to a reasonable place at a reasonable time to enable the Inspector to exercise powers (a) to (g) under section 150(1). This must be supported by written notice and a form has been developed for this purpose. Generally this notice is of a temporary nature and once the powers have been exercised the person should be permitted to leave.

1.11 POWER TO STOP PERSONS

Section 170 (1) of the Act states that an Inspector may require a person to stop, and not to move on until permitted by the Inspector, if the Inspector –

- (a) finds the person committing an offence against this Act; or
- (b) Finds the person in circumstances that lead, or has information that leads, the Inspector to suspect on reasonable grounds that person has just committed an offence against the Act.

Section 170 (2) states that an Inspector may require a person not to move on only for as long as it is reasonably necessary for the Inspector to exercise the Inspector’s powers under this Act in relation to the person.

Section 170 (3) states that a person must comply with a requirement under subsection (1), unless the person has a reasonable excuse for not complying with it.

This section does not provide the authority for an Inspector to physically detain a person from leaving if they choose to do so. This includes physically holding a person against their will. Anything less than allowing them to leave could be seen as an unlawful act on the behalf of the Inspector.

If the person does leave then they themselves have committed an offence under this section and should be prosecuted as you would with any other offence by way of Complaint & Summons.

1.12POWER TO REQUIRE NAME AND ADDRESS

Inspectors can require a person's name and address in certain circumstances. All Acts which empower QBFP Officers cater for this particular requirement when Officers wish to discover a person's identity.

Officers must be aware that this requirement is only to be made of persons found committing an offence or in circumstances that lead the Officer to reasonably believe that a person has committed an offence.

If Officers believe that they have been supplied with a false name and address, they must warn the individual concerned that it is an offence not to comply with the requirement. Officers should then again request the person's name and address after giving the warning. Officers should seek identification from any suspect person, where possible this should be in the form of a driver's licence displaying a recent photograph.

If a person does not freely supply name and address to an Officer the suggested format of the requirement is as follows:

I now require you to provide me with your correct name and residential address. I must warn you that it is an offence to fail to provide me with your correct name and residential address, unless you have a reasonable excuse. Do you understand this requirement?

If it is the Officer's opinion that the person is still providing a false name and address the suggested format of this requirement is as follows:

I suspect that the name and address you have provided is false. I now require you to provide me with evidence of the correctness of your name and residential address. I warn you that it is an offence to disobey this requirement unless you have a reasonable excuse. Do you understand this requirement?

When considering whether to initiate proceedings against a person for failing to supply a name and address, Officers should be aware that the person does not commit the offence of failing to supply their name and address if the original requirement to supply such name and address was made for an offence which they were not proved to have committed.

It should be noted that some Officers from external agencies including police Officers may have some powers and responsibilities under Fisheries Legislation.

1.13 POWERS OF SEIZURE

1.13.1 Seizure of all things (including fisheries resources) from places, boats and vehicles

If lawful entry as permitted under Part 8 of the *Fisheries Act 1994* is made an Inspector may seize anything (including fisheries resources) for which the warrant was issued or entry made if the Inspector believes on reasonable grounds that the thing is evidence of the commission of an offence against the Act and the seizure is necessary to prevent the concealment, loss, death or destruction of the thing or the use of the thing in committing, continuing or repeating the offence².

An Inspector may also seize anything in or on a boat or vehicle, or the boat or vehicle itself but only if the Inspector believes on reasonable grounds that the boat or vehicle is evidence of the commission of an offence against the Act. When seizing a boat consideration must also be given to the effort need to keep the boat in a similar condition as it was in when it was seized, see [1.13.8](#).

Also, if the thing found after entry is a container, the container and its contents may be seized if the Inspector believes on reasonable grounds that the contents are fisheries resources, fisheries apparatus or anything else and that an offence has been committed in relation to all or some of the contents³.

For regulated fish an Inspector may seize all the fisheries resources in a heap, collection or container if it is believed that a forfeiture offence has been committed in relation to the fisheries resources⁴. The weight or number of the suspect fisheries resources must be more than 5% of the total weight or number of the declared fisheries resources. The threshold percentage of Saucer Scallops is prescribed in section 167 of the *Fisheries Regulation 2008* whilst other resources are prescribed in section 694. There is a guideline for the [sampling of scallops](#).

² See section 151, 152 and 153 of the Act

³ See section 153(3) and section 154 of the Act.

⁴ See section 154 of the Act

To facilitate the seizure of a boat, vehicle or other thing the Inspector may require a person to “*deliver up*” the thing within a specified time and to a specified place. There is a [form](#) that can be used for this purpose.

Firearms, power heads, and explosives

Section 81 of the Act prescribes an offence for the use of firearms, power heads, explosives and other “restricted things” being used to take fish.

Section 81(2) provides exemption for persons conducting authorised activities under contract for the shark control program. Section 81(3) provides a defence for a person to have a restricted thing (a firearm, power head attached to a spear gun or hand propelled spear) if the firearm or power head is used, or intended for use, only in defence against sharks.

Section 155 also provides power to seize explosives etc. where the Inspector believes, on reasonable grounds, that the suspect thing has just been used or is just about to be used to commit an offence against the Act.

The DAF firearms safety policy is available on the intranet and QBFP Officers are required to comply with this policy whilst on department workplace, or department boats or vehicles.

Therefore firearms, power heads (the weapon), or explosives are not to be seized and retained. If it is discovered that a weapon or explosive is being used (or was used) in the commission of an offence under the Act and the Officer believes the weapon, explosive etc. are or will afford evidence as to the commission of an offence, a full description (photograph) including a serial number of the weapon must be recorded, and the kind of explosive and explosive components e.g. detonator and or fuse used or likely to be used with the explosive. Police assistance should be sought.

DO NOT HANDLE THE FIREARM, EXPLOSIVES OR DETONATORS

1.13.2 The decision to seize for evidentiary purposes

If a thing is liable to seizure on one or more of the above grounds, an Inspector must then decide whether it is appropriate in the circumstances to exercise the power to seize the thing. There are number of considerations when making this decision:

For all things, the first question is whether the retention of the thing is necessary for evidence

To answer this, the Inspector should assess the evidentiary value of the thing in proving the offence alleged **and** decide whether the retention of the thing itself is the best way to adduce the evidence the thing provides.

To satisfy this test, it may not be enough to simply assert that the thing was used in the commission of the offence or is in some way connected with it. To be evidence of the commission of the offence, the thing itself must go to proving one or more of the essential elements of the offence.

Even if this is so, seizure for the purpose of retaining the physical thing for evidence should only be contemplated where this is the necessary or best way of gathering the evidence. For example, while a thing liable to seizure may help to prove an element of an offence, seizure may not be necessary if the evidence can be presented in another way, such as by photographic means. However, seizure may be necessary where further assessment needs to be made of the thing before its evidentiary value can be properly assessed, such as where it is suspected that fisheries resources have been taken unlawfully and the resources need to be retained for species identification.

1.13.3 Treatment of seized fisheries resources

The available courses of action differ depending on whether or not the thing liable to seizure is fisheries resources and whether the fisheries resources are live or dead.

Live fisheries resources

If the Inspector is satisfied the resources were taken unlawfully, the most appropriate course may be to seize it for the purposes of immediate release back into the wild or the place from which it was taken⁵. The objective of the action is to return the fisheries resources to the wild on the basis they should not have been removed in the first place. Relevant considerations would include the number and type of resources, condition of the resources, the likelihood of post-release survival and the practicality of release.

For example:

- seizure of live fish at a premise should in most cases be dealt with by sale as it is likely to be impractical to return them to the place from which they were taken;

⁵ See section 159(1) and 159(2) of the Act.

- live fish unlawfully taken at sea (and seizure occurs at sea) would be released where they are taken, however depending on the circumstances these may also be sold in accordance with the established procedure, see below; and
- seizures of live fisheries resources at remote landing places would have to be considered on their individual merits (especially if fish cannot be picked up by a buyer).

The Chief Executive may sell live fish at any time after the seizure⁶. If the resources are to be sold, the method of sale must be reasonable or as agreed with the owner or former owner. At least three prices will ordinarily be obtained to ensure the best price is obtained from the available market. Depending on the circumstances, other appropriate methods might be considered such as auction or tender. While the main consideration in deciding on the method of sale is maximising the return for the resources, other factors may be relevant, such as the size of the market available at the location, the condition of the resources and the practicalities of transporting the resources for sale. Procedures regarding the proceeds of sale are provided in the document ["Guidelines for the sale of seized fisheries resources"](#).

Live resources should not be stored for any longer than is necessary, for example, for evidentiary purposes or to secure a sale at market price. They should be returned, sold or otherwise finally dealt with as is appropriate in the circumstances.

RELEASING FISH FROM UNKNOWN ORIGIN

In recent times QBFP has seized large consignments of crabs. In some cases the origin of the product has come under question. If the location of where the fish was originally taken is in doubt a precautionary approach should be considered in terms of releasing the fish, until the origin is established.

sch3(10)(1)(f)

⁶ See section 160A of the Act

You should also consider any risk to fish stocks when releasing fish so as not to introduce a potential disease into another area or fishery. For example, after recent issues in Gladstone where fish were suffering from an un-known disease, if these fish were subject to an investigation and seizure, should not be released into another area.

Attempting to keep fish or crabs alive for a period of time until their origin can be established is a time consuming and expensive exercise. This strategy should only be considered when it is confident that the analysis is expected in short period of time and you have resources to do so.

Dead fisheries resources

If the Inspector believes on reasonable grounds that the fishery resources are diseased, putrid, or of no nominal value so that sale is not justifiable, the most appropriate course may be to immediately dispose of the dead resources after seizure in the best way decided by the Inspector⁷. This is the usual treatment when fishers are found to be in unlawful possession of small amounts of regulated fish.

In the case of dead marine plants, these could be disposed of by their return to the tidal environment as part of the food/nutrient web.

Fisheries resources (that are not live fish that must be sold) will become the property of the State after seven days if no appeal against seizure is lodged; or if an appeal is lodged, if the seizure is confirmed by a court, or if the owner and the Chief Executive agree, in writing, that the resources should become the Chief Executive's property⁸. However, if they have a market value the Chief Executive must sell them in a reasonable way where this is a practicable option.

⁷ See section 159(1) and 159(3) of the Act.

⁸ See section 160(1)-(2) of the Act

This sale should take place after the 7 day appeal period and should follow the same process as that taken for live product. If sold within the 7 day appeal period written agreement must be made with the owner.

With regard to fisheries resources that are not live and have been sold, fishers have the right to appeal to a Magistrates Court within 7 days after the seizure⁹. Verbal advice about these appeal rights must be given to the person from whom fisheries resources are seized, at the time of seizure or as soon as practicable thereafter.

Therefore it is relevant to the decision to seize to take into account the desirability and practicality of being obliged to sell the fisheries resources.

1.13.4 When seized things must be returned

If a prosecution for an offence involving the fisheries resources that have been sold is not started with 6 months of the offence, the proceeds must be returned to the owner¹⁰. Starting a prosecution is taken to mean when a Complaint and Summons is served and filed.

This 6 month timeframe is also in place for things other than fisheries resources (fishing apparatus, containers, boats, vehicles or any other things). However, if the Chief Executive believes that the thing is liable to forfeiture, including forfeiture by the Courts¹¹, the seized thing can be kept until the statute of limitations expires. Therefore, if it is intended to seek forfeiture of a thing other than fisheries resource in Court, the Chief Executive can advise the alleged offender in writing that the thing will be kept by the Department until the Court makes the final determination.

Apart from things other than fisheries resources that are liable to forfeiture the Chief Executive **must** return things immediately the chief executive is not satisfied that the thing is needed as evidence. To clarify:

In cases of things other than fisheries resources where retention of the thing for evidentiary purposes is not necessary, the only other basis on which seized resources may be retained by the chief executive is if the resources are liable to forfeiture under the Act¹².

⁹ See section 160(3), 165 - 169 of the Act

¹⁰ See section 163(1)-(2) of the Act

¹¹ See section 162(4)

¹² See section 162(3)-(5) of the Act.

While this decision will be made by a delegate as soon as practicable after a seizure report is received from an Inspector, it is not desirable for things to be seized at first instance if an immediate return will be necessary due to:

- a. the thing itself not being needed to be retained as evidence; and/or
- b. being no grounds for forfeiture.

Therefore an Inspector should make an assessment of the likelihood of forfeiture if this is to be the reason for retention and take this into account at the time of assessing the appropriateness of making a seizure.

1.13.5 Obligations of Inspectors after making a seizure

An Inspector must give the person from whom anything is seized a receipt for it as soon as practicable¹³.

Where the seizure is of a boat and vehicle, reasonable enquiries must also be made by the Inspector to ascertain the ownership of the boat or vehicle and if the owner is a different person from the person from whom it was seized, a receipt must also be given to the owner as soon as possible.

There is a form to be used in this instance that covers the following information:

- time, date and place of seizure;
- name of the owner or the witness the item was seized from;
- name of the Investigating Officer;
- description of the item; and
- description of the location where the item was located prior to seizure.

The Inspector must sign the receipt as the person seizing and taking possession of the item. If a witness provides an item voluntarily, the Officer should ask the witness to sign the receipt as well.

The seizure receipt is completed in triplicate as follows:

- original receipt must be given to the person from whom the item was seized;

¹³ See section 157 of the Act.

- duplicate copy of the receipt must be placed on the appropriate file; and
- triplicate copy of the receipt must remain in the receipt book.

It should be noted that the continuity of possession of any potential exhibit must be documented in the relevant statements, i.e. Investigating Officers statement, corroborating Officers statement or witness statement.

Until the seized thing is forfeited, returned to the owner or otherwise dealt with under the Act, an Inspector must allow a person otherwise entitled to possession of it access to the seized thing to inspect it, and if it is a document, to make copies of it¹⁴.

1.13.6 Seizure Report

Where the seized thing is of a significant nature and is sought to be retained due to an evidentiary need or for the purposes of seeking administrative or court-ordered forfeiture, a [seizure report](#) is to be prepared as soon as practicable. This form should be accompanied by explanatory notes in support of the seizure.

Completed seizure reports and any supplementary material are to be forwarded as soon as practicable to the Senior Compliance Officer who will arrange for a delegate of the Chief Executive to consider the further action to be taken in respect of the seized thing (i.e. to keep or return it).

1.13.7 Seizure Register

Where practicable, the seized thing must be placed into a clear plastic bag (or other bag as appropriate), and the bag must be tagged with an identifying tag. Where it is not practicable to place an item into a bag, the item must be tagged with an identifying tag. The information recorded on the identifying tag must include details similar to those recorded on the seizure receipt. The item must then be stored in a secure safe, room, shed or freezer.

The seized thing must also be recorded in a seizure register. A seizure register is maintained at each district and can take the form of a written document or computer-generated database. The information recorded in the seizure register should include details similar to those as recorded on the seizure receipt.

¹⁴ See section 158 of the Act.

Any subsequent movements of an item must be recorded in the seizure register and a [receipt of transfer of evidence](#) must be obtained. The record must include the date, the name and signature of the person who removes the item, the reason for the removal and the destination of the item.

A designated Officer should monitor and maintain the seizure register. A supervising Officer should monitor the use of the exhibit safe, exhibit room, exhibit shed or exhibit freezer.

Seized things and potential exhibits should remain in the possession of the Investigating Officer until they are required for production at court. It is the Investigating Officer's responsibility to ensure continuity of possession of potential exhibits.

Other statutes

With respect to the seizure of evidence obtained under other State and Commonwealth legislation, Investigating Officers must ensure that they comply with any legislative provisions or requirements established by the administering authority.

In the absence of any policy or procedure issued by the administering authority, the principles outlined in respect of seizure of evidence under State Fisheries legislation should be applied where possible.

1.13.8 Storage care and maintenance of seized items

In order to ensure continuity of potential exhibits, and in order to maintain exhibits in as close to the condition they were seized as reasonably possible, Inspectors must ensure that:

- All things seized are sequentially numbered and a seizure record kept of that number and description of the thing;
- All things are cleaned and appropriately stored to minimise deterioration and the thing is secure;
- All mechanical things (boats, engines, vehicles, trailers, etc.) are to be maintained in accordance with standard QBFP practice, see below;
- Every effort is made to limit damage to all things seized. Damage or loss caused while in QBFP possession is reported and explained in writing to the District Officer/Manager immediately;
- All 'fisheries resources' are appropriately prepared (washed if necessary, etc.) prior to storage;

- Suitable quality clean plastic/poly bags are used for ‘fisheries resources’ and secured in a manner that minimises leakage or spillage of the item;
- Fisheries resources are stored and packed in such a way that damage or breakage to exhibits does not occur. Finfish are stored in a way that the length is not distorted where a fish is regulated by way of size;
- All freezers are cleaned of fisheries resources that are no longer required for a legal purpose, which are disposed of in accordance with an order by a Court or Chief Executive approval; and
- All freezers are cleaned regularly.

Maintenance of boats, engines, vehicles and trailers

- On seizure of boats/trailers and vehicles an Inspector should allow personal items to be removed from the vessel/vehicle. A complete inventory of all items on board should then be completed. Have the inventory signed by the owner and supply them with a copy.
- Wash and clean the item thoroughly and ensure that the boat motor is flushed out. Inspect item for damage and document findings.
- Before storage spray the motor to prevent corrosion. Like all other seized items ensure that the items is stored securely.
- These types of items must be checked regularly. The motor must be run on a regular basis and the battery charged as required. In addition, the trailer must be moved regularly to ensure movement of the wheel bearings and brakes.
- For extended storage periods, engaging an outboard mechanic should be considered to complete a service of the motor.

1.13.9 Forfeiture

Unattended Apparatus

A reasonable proportion of seizures will be of unattended/unmarked apparatus such as crab pots and nets. These things are subject to forfeiture which can be ordered by the chief executive¹⁵. Unattended apparatus must be treated with the same care as apparatus which has an obvious owner, however a seizure receipt is not able to be given. Notes should be taken where the apparatus was seized and the item tagged as usual. Unattended seizures can be entered in the field using eFOLs. If an unattended seizure is not entered via eFOL's then the unattended item will need to be entered into CAS. After 28 days, or longer as appropriate, a request may be forwarded to the Chief Executive delegate for these items to be destroyed. A report may be generated directly from CAS for this purpose. This report can be emailed to a delegate of the Chief Executive to approve the destruction. The appropriate delegate can be determined by reviewing the '[Dealing with seized things](#)' administrative directive.

It should be noted that if it is possible to find the owner of the thing after reasonable enquiries (and the thing is considered valuable enough) that forfeiture is not available under this section.

Unlawful apparatus

If the thing itself contravenes fisheries legislation, for example, fishing apparatus of illegal dimensions, the Chief Executive may order forfeiture¹⁶. This applies if a prosecution involving a thing is not started, for instance a FIN or caution is issued. It is important to note that it is not sufficient grounds for forfeiture if the thing is simply being used unlawfully.

1.13.10 Police Officers

Police Officers do not have *ex-officio* powers under the *Fisheries Act 1994* and *Transport Operations (Marine Safety) Act 1994*. However, any Public Official (Inspector) is able to technically "authorise" a Police Officer as an Inspector for the purposes of a specific task and thereby seek assistance in emergent, remote or out of hours situation. This power lies within the *Police Powers and Responsibilities Act 2000 (PPRA)*.

¹⁵ See section 164 of the Act

¹⁶ See section 164(2) of the Act

However an Inspector cannot authorise a Police Officer who is already appointed under the Act you are trying to administer (for example, the *Fisheries Act 1994*). Should a Police Officer hold such appointment, and they have conditions on their appointment for example, recreational inspections only, they will only be able to assist you to the extent of those conditions.

Generally speaking there are two scenarios that will cause PPRA to be considered and invoked:

1. At the request of a QBFP Officer after receiving a complaint, etc. and then contacting the local Police for assistance when they can't attend the job themselves; or
2. After receiving information from a Police Officer who has attended a scene for some reason as a part of their normal functions, ie. Search Warrants, road blocks, RBT, Marine Incident attendance, vehicle interceptions, etc.

For the PPRA to be properly and legally invoked, certain criteria must first be met. Chapter 1, part 3, division 2, section 16 of the PPRA provides;

- (1) *This section applies if an Act (**authorising law**) authorises a public official to perform functions in relation to a person or thing.*
- (2) *However, this section only applies to a police Officer who is not a public official for the authorising law.*
- (3) *If a public official asks, a police Officer may help the public official perform the public official's functions under the authorising law.*
- (4) *Before the police Officer helps the public official, the public official must explain to the police Officer the powers the public official has under the authorising law.*
- (5) *If the public official is not present or will not be present when the help is to be given, the police Officer may give the help only if the police Officer is satisfied giving the help in the public official's absence is reasonably necessary in the particular circumstances.*
- (6) *The police Officer has, while helping a public official, the same powers and protection under the authorising law as the public official has.*
- (7) *Subsection (6) is in addition to, and does not limit, the powers and protection a police Officer has under this or any other Act.*

“Authorising law” includes any Queensland legislation the particular QBFP Officer is appointed under and includes the *Nature Conservation Act 1992* and various Waterways Management Plans, etc. if the QBFP Officer is so appointed. *PPRA* is not able to be employed for any Commonwealth or Interstate appointments.

Additionally, *PPRA* only applies to Police Officers. There is no current avenue for QBFP Officers to authorise other State Inspectors (ie, Marine Parks, NPWS, etc.) to carry out duties in the Inspectors absence. For example, section 150 of the *Fisheries Act 1994* only allows an Inspector to gain assistance from people while you are in their presence.

QPS Officers have high expectations placed upon them by the community to perform a wide variety of functions. QPS has its own compliance priorities and resource limits so it is essential that any requested assistance be limited to urgent or serious matters.

It is expected that QBFP Officers will provide any necessary assistance and relieve QPS Officers of their “Fisheries” obligations as soon as practical during or after the event.

Any QBFP Officer who intends on invoking the provisions of the *PPRA* are to advise their respective District Manager as soon as practicable.

CHAPTER 2

OFFENCES

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2 OFFENCES

2.1 INTRODUCTION - WHAT ARE OFFENCES

The majority of offences investigated by QBFP Officers are simple offences against State Legislation. It is necessary for Officers to have a sound knowledge of the relevant legislation and have an understanding of some aspects of the Criminal Law of Queensland.

Chapter 1, Section 2 of the *Criminal Code Act 1899* (Criminal Code) defines an offence as:

An act or omission which renders the person doing the act or making the omission liable to punishment is called an offence.

Chapter 1, Section 3 of the Criminal Code classifies offences:

1. Offences are of two kinds, namely, criminal offences and regulatory offences.
2. Criminal offences comprise crimes, misdemeanours and simple offences.
3. Crimes and misdemeanours are indictable offences; that is to say, the offenders cannot, unless otherwise expressly stated, be prosecuted or convicted except upon indictment (i.e. tried by Judge and Jury)
4. A person guilty of a regulatory offence or a simple offence may be summarily convicted by a Magistrate's court. (i.e. *matter determined by Magistrate*)
5. An offence not otherwise designated is a simple offence.

All offences created by the *Fisheries Act 1994* (The Act) and the associated regulation and management plans are simple offences. Persons charged with simple offences cannot be tried for such an offence by a Judge and Jury, as such all matters that proceed to court are initially heard in a Magistrate's Court. The only time a matter may proceed to a higher court is on appeal

There are no powers of arrest for Queensland fisheries offences and all proceedings for offences against this Act must commence within:

- (a) 1 year after the offence is committed; or
- (b) 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.¹⁷ [Refer to Chapter 9.5.1.](#)

The majority of offences created by the *Transport Operations (Marine Safety) Act 1994* and the *Transport Operations (Marine Pollution) Act 1995* (and the associated regulations) are simple offences. However, there is provision for indictable offences in certain circumstances, where death or grievous body harm occur as a result of marine incidents. Section 196(1) of the *Transport Operations (Marine Safety) Act 1994* states an offence against this Act is a summary offence, unless it is expressly provided to be an indictable offence. Section 123 of the *Transport Operations (Marine Pollution) Act 1995* states an offence against this Act for which the maximum penalty is at least 850 penalty units is an indictable offence. In these cases the matters are heard in a District Court and Officers may have to give evidence if they are involved in any part of that investigation.

Provisions in the *Fisheries Management Act 1991* (Cwth), *Torres Strait Fisheries Act 1984* (Cwth) and *The Great Barrier Reef Marine Park Act 1975* (Cwth) designate certain offences as being indictable. Each provides in similar terms that can be summarised as follows:

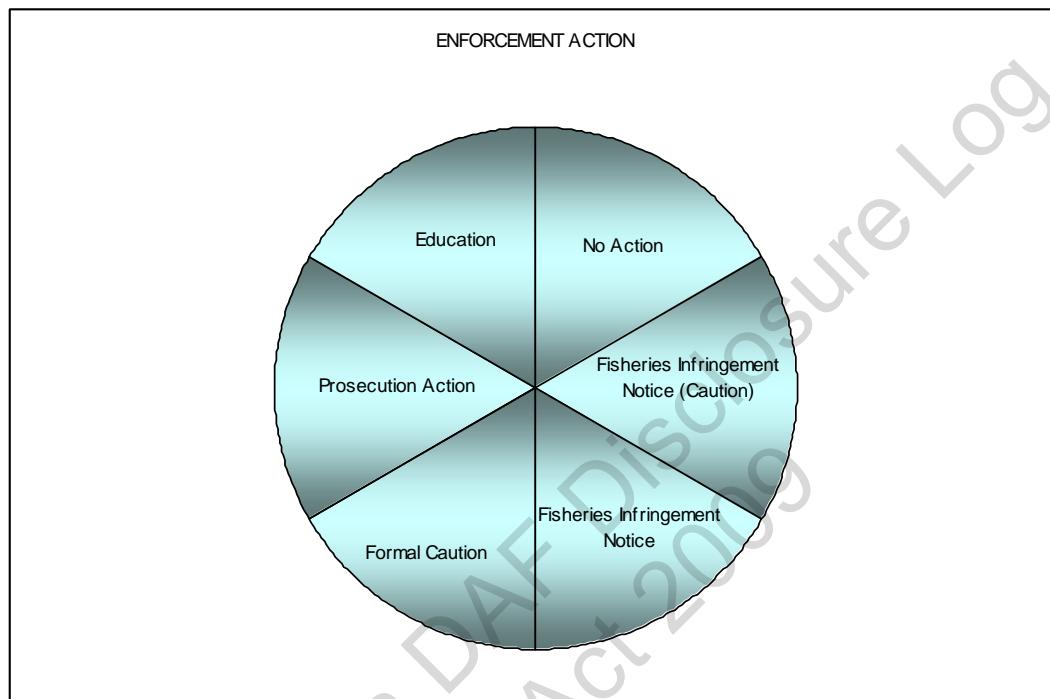
- That such offence may be heard and determined in a court of summary jurisdiction, that is heard in a Magistrate's Court if the Prosecutor and Defendant consent to the matter being heard in the summary jurisdiction; and/or
- The Court is satisfied that it is proper to do so.

Commonwealth offences (be they designated as summary or indictable and punishable summarily) may be heard and determined in the manner provided for in the *Justices Act, 1886*.

¹⁷ Section 220 Fisheries Act 1994

2.2 HOW FISHERIES OFFENCES ARE DEALT WITH

After a matter has been investigated, and the Investigating Officer is of the opinion that an offence has been committed, there are a number of options available depending on the seriousness of the matter under investigation.



2.3 ELEMENTS OF AN OFFENCE

Every offence consists of a series of sub components known as “elements”. Elements are sometimes referred to as “proofs”.

The term ‘elements of the offence’ refers to the separate parts or elements that make up the wording of a complaint.

To successfully prosecute an offence it is necessary to know and to prove each element beyond a reasonable doubt. An ‘element’ is essentially any significant word or phrase contained in the section of the Act that creates the offence. Insignificant words (e.g. ‘the’, ‘of’, ‘be’) in the section are not individual elements but may form a component of the elements.

Unless each element of an offence is proven beyond a reasonable doubt and any defences negated prosecution action will not proceed.

Four elements are common to every offence. They are the time, date, and place of the offence and the person or entity charged. For convenience, time, date and place are generally treated as one element and while offence sections do not have the words “time, date and place”, they should always be included as elements that must be proved.

2.3.1 Identifying the Elements of an Offence

Elementising an offence involves examining each word or phrase in the offence and determining whether that word or phrase involves particular issues of law or fact.

Consider the following example:

Section 123 of the *Fisheries Act 1994* - A person must not unlawfully —

- (a) remove, destroy or damage a marine plant; or
- (b) cause a marine plant to be removed, destroyed or damaged.

The elements of this offence can be identified as:

- Time, date, place (not explicit in offence though requisite elements)
- Person (can also be a company, individual person or both)
- Unlawfully remove, destroy, damage, cause – (refer to dictionary if terms are defined in legislation)
- marine plant

2.4 SAMPLE QUESTIONS – SECTION 123 OF THE FISHERIES ACT 1994

In order for interviews to be successful, Inspectors should ask questions that cover the elements of the offence including the requisite elements of time, date and place.

Questions that might be asked with respect to the individual elements could include:

In order to establish time, date and place –

- Who owns /leases the property where the damage has occurred?
- What is the Lot number of this property?
- When did the damage to the marine plants occur?
- Do you agree that damage occurred to marine plants at?

In order to establish a person –

- What is your name
- What is your current address?
- What is your date of birth?
- What is your place of birth?
- What is your occupation?
- Were you authorized to damage/destroy marine plants?
- Who authorized you to damage/destroy marine plants?
- Who did you authorize to damage/destroy marine plants?

In order to establish damage, destruction–

- How did the damage/destruction of the marine plants occur?
- Are you aware marine plants are protected?
- Who caused the damage?
- Who authorized the damage to occur?
- Why was the damage caused?
- How was the plant pruned/cut

In order to establish marine plants–

- What types of plants have been damaged?
- How do you identify marine plants?
- What does that law say about marine plants?
- How do you know what the law says?

In order to establish unlawful –

- Have you applied for a developmental approval allowing you to damage/destroy marine plants?
- Do you have developmental approval allowing you to damage/destroy marine plants?
- Self-assessable codes may be used for low-impact works involving aquaculture, disturbance to marine fish habitats and waterway barriers under the *Sustainable Planning Act 2009*. Do you hold any authority to damage/destroy marine plants in excess of what is permissible in the self-assessable code?
- Do you have any lawful excuse for damaging/destroying marine plants?
- Do you have any emergent reason for damaging/destroying marine plants?

These are sample questions, which are by no means exhaustive. However, they should help to provide an understanding of the types of questions, which are needed to cover the elements for this kind of offence.

In this particular case, Officers would also require a statement from a qualified person to prove that the plant material involved in the particular investigation is in fact a marine plant, to assist in proving this element of the offence.

For more detailed information regarding the evidence required for this type of offence refer to [Chapter 3](#).

Just as important it is to prove every element of the offence, it is equally important to negate any defences in law if a prosecution is to proceed.

2.5 APPLICATION OF THE CRIMINAL CODE

When investigating an offence it is important to be aware of any statutory defences or excuses that exist with respect to the suspect or incident. The investigator must negate any possible statutory defence that may be raised by the suspect through proper questioning and evidence gathering. This is necessary as the Criminal Code has detailed a number of circumstances whereby a person may do an act or make an omission that would otherwise have been an offence. If the investigator does not negate the Criminal Code defences, there is a risk of a prosecution failing.

The reason for this is that the suspect need only raise a defence and provide sufficient proof to the balance of probabilities that the defence did in fact exist. The prosecution must on the other hand prove beyond reasonable doubt that the defence did not exist.

Section 36(1) of the Criminal Code provides that Chapter 5 (Criminal Responsibility) applies to all persons charged with any criminal offence against the statute law of Queensland.

These relevant sections are listed below:

2.5.1 Intention - Motive

Chapter 5, Section 23 Criminal Code

- (1) Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for—
- (a) an act or omission that occurs independently of the exercise of the person's will; or
 - (b) an event that—
 - (i) the person does not intend or foresee as a possible consequence; and
 - (ii) an ordinary person would not reasonably foresee as a possible consequence.

Note—

Parliament, in amending subsection (1)(b) by the *Criminal Code and Other Legislation Amendment Act 2011*, did not intend to change the circumstances in which a person is criminally responsible.

- (1A) However, under subsection (1)(b), the person is not excused from criminal responsibility for death or grievous bodily harm that results to a victim because of a defect, weakness, or abnormality.
- (2) Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.
- (3) Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility.

This section provides that a person is criminally responsible only for his or her 'willed acts' and then only for the 'foreseeable consequences' of those willed acts.

It should be noted that the test has both a subjective and objective aspect. The fact that the accused must not have intended or foreseen the consequence is a subjective test. The additional requirement, that an ordinary person would not have foreseen the consequence, is an objective test.

An example of the application of s23:

- If a skipper could prove mechanical failure resulted in the vessel inadvertently traversing a scallop replenishment zone, a defence may exist under this section.

2.5.2 Mistake of Fact

Chapter 5, Section 24 Criminal Code

- (1) A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as the person believed to exist.
- (2) The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.

The defence of Mistake of Fact overlaps to an extent with the s22 Bona Fide Claim of Right defence, though that section relates more so to property. The most common application of the s24 defence is where a mistaken identity of a fish existed due to incorrect information being supplied.

It is important to note the word "reasonable" within s24. Failing to take reasonable steps to check the accuracy of a belief may mean that the defence cannot be relied on.

An example of the application of s 24:

- Where a person engages in a fishing activity on behalf of another person who purports to hold a commercial fishing licence. If that person does not hold any authority the fisher may claim a mistake of fact.

- A recreational fisher honestly and reasonably believes a fish to be of a different species to its actual identity.

sch3(10)(1)(f)

Inspectors should also be aware of section 4 of the Criminal Code (Attempts to commit offences) and certain sections of chapter 2 of the Criminal Code referring to (Parties to offences) i.e. persons involved with the accused in the commission of an offence.

2.5.3 Attempts to commit offences

Chapter 1, Section 4 Criminal Code

- (1) When a person, intending to commit an offence, begins to put the person's intention into execution by means adapted to its fulfilment, and manifests the person's intention by some *overt act*, but does not fulfil the person's intention to such an extent as to commit the offence, the person is said to attempt to commit the offence.
- (2) It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on the offender's part for completing the commission of the offence, or whether the complete fulfilment of the offender's intention is prevented by circumstances independent of his or her will, or whether the offender desists of his or her own motion from the further prosecution of the offender's intention.
- (3) It is immaterial that by reason of circumstances not known to the offender it is impossible in fact to commit the offence.
- (4) The same facts may constitute one offence and an attempt to commit another offence.

Further to the Criminal Code, Section 215 of the *Fisheries Act 1994* provides that a person who attempts to commit an offence against the Act commits an offence. It is necessary to prove in such cases, that the person advanced from the stage of intending to commit an offence to attempting to put that intent into manifestation, i.e. some overt or observable act.

For example:

A person who possesses non prescribed apparatus (a cast or seine net) in a boat is about to launch in non-tidal waters. The person has not proceeded to the stage of using the net (the overt or observable act). In such a case the person would not be guilty of attempting to use non prescribed apparatus in non-tidal waters.

2.5.4 Principal Offenders

Chapter 1, Section 7 Criminal Code

- (1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say—
 - (a) every person who actually does the act or makes the omission which constitutes the offence;
 - (b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
 - (c) every person who aids another person in committing the offence;
 - (d) any person who counsels or procures any other person to commit the Offence;
- (2) Under subsection (1)(d) the person may be charged either with committing the offence or with counselling or procuring its commission.
- (3) A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.
- (4) Any person who procures another to do or omit to do any act of such a nature that, if the person had done the act or made the omission, the act or omission would have constituted an offence on the person's part, is guilty of an offence of the same kind, and is liable to the same punishment, as if the person had done the act or made the omission; and the person may be charged with doing the act or making the omission.

There are occasions where there is more than one offender who has committed an offence. In such cases, section 7 of the *Criminal Code* details the circumstances in which a second or more persons may be linked to the offence. In case where multiple offenders have been identified, it is a requirement that all persons are interviewed separately regarding their involvement in the alleged offence and separate briefs prepared on all identified offenders.

It is important that Investigating Officers ensure that all potential parties to an alleged offence are interviewed and considered when recommending charges be laid.

All persons identified as a party to the offence should be investigated and an appropriate recommendation provided to ensure consistency, the proper application of the law and to remove any opportunity to suggest bias.

For example:

An example relates to the unlawful damage to marine plants. The person who actually does the damage, for example the driver of the earth moving equipment is a principal offender as he is the person who actually does the act: [s 7(1)(a) Criminal Code]. This is the case unless the driver was instructed to do the act by, for example, the owner of the property.

The owner of the land may have procured the clearing contractor to undertake the works: [s 7(1)(d) Criminal Code] and would be guilty of an offence unless clear and unambiguous instructions were given to the contractor as to what works were to be carried out, for example, unless the driver was told not to damage or destroy marine plants on site.

2.5.5 Double Jeopardy

Double jeopardy is the common law principle that a person who has been either acquitted or convicted of an offence cannot be prosecuted or punished for the same conduct. This principle also prevents an offender from being tried for a second time on substantially the same facts. This principle is set out in section 16 of the Queensland Criminal Code which states;

“A person cannot be twice punished either under the provisions of this Code or under the provisions of any other law for the same act or omission, except in the case where the act or omission is such that by means thereof the person causes the death of another person.....”

Section 78 of the *Fisheries Act 1994* provides an offence to take, possess, use or sell a regulated fish. Further to this the *Fisheries Regulations 2008* provide that a fish may be regulated in multiple ways e.g. size, gender, form and number.

Consider for example a person possesses twelve male mud crabs, four of which are undersize. In this case it is a requirement that the prosecution prove the elements of the offence;

- A person (identity)
- Possesses a fish
- The fish was regulated
- That the possession of the fish was unlawful.

The relevant act or conduct by the defendant that gives rise to the offence is the possession of the fish. The defendant has committed one act in possessing the fish, the fact that the fish may be regulated in more than one way does not necessarily mean that a separate offence has been committed. It is rather the case that the prosecution must prove how the fish was regulated in order to prove the offence of possessing the fish has occurred.

In the above example the mud crabs may be regulated by size (four undersize) or by number (two over the possession limit). However the alleged offender has only committed one act of possessing the crabs. Charging the alleged offender in this case with both four undersize and two over the possession limit may amount to double jeopardy.

2.6 SPECIFIC OFFENCES UNDER *FISHERIES ACT 1994*

2.6.1 Mutual Recognition and the sale of regulated fish

Section 78 of the *Fisheries Act 1994* (“the Act”) prescribes prohibited acts about regulated fish and states that a person must not unlawfully take, possess, use or sell a regulated fish.

The Australian Constitution seeks to guarantee free trade between the states and in reinforcing the principles of free trade. The Commonwealth enacted the *Mutual Recognition Act (C'wth) 1992* which complements section 92 of the constitution in addressing the different regulatory schemes for goods and services that exist in each state.

The Commonwealth’s mutual recognition principal is intended to remove unnecessary barriers to interstate trade. In simple terms it means that goods lawfully produced in one state should be able to be sold in another state irrespective of any regulatory restrictions.

However section 14 of the *Mutual Recognition Act 1992 (C'wth)* provides for permanent exemptions to the operation of this legislation. This part does not affect the operation of laws described in Schedule 2, the second section of which states:

“A law of a state to the extent that it is enacted or made substantially for the purpose of protecting a species or other class of animals or plants from extinction in the State and that it prohibits or restricts the possession, sale, killing or capture of animals or plants of that species or other class in the State”.

sch3(10)(1)(f)

[redacted] Fisheries Queensland has determined that it will adopt a policy which recognises an individual's right to possess or sell fisheries resources which have been taken lawfully anywhere in Australia.

In Practice

Officers should make such enquiries to satisfy themselves that the regulated fish were not taken from Queensland waters. [redacted]

2.6.2 Noxious fish and the Biosecurity Act 2014

Noxious fish are dealt with under the *Biosecurity Act 2014* and are defined as restricted matter. All noxious fish currently known to be in Queensland waters fall under restricted matter category number 7 but may also fall under a number of other category numbers. For example;

Carp fall under restricted matter category numbers 3, 5, 6 and 7. Carp are known to be in a number of waterways throughout Queensland.

Alligator gar fall under restricted matter category numbers 2, 3 and 4. Alligator gar are not known to be in Queensland waters, but are known to be in Queensland under permit.

S44(1) of the *Biosecurity Act 2014* requires that all category 7 restricted matter is killed as soon as practicable and S44(2) requires that restricted matter which has been killed, is disposed of in a way prescribed under legislation. An infringement notice is available for not disposing of the restricted matter as required under S44(2) of the *Biosecurity Act 2014*.

S18 of the *Biosecurity Regulation 2016* details that the restricted matter is to be disposed of by burying it ‘in a whole state’ above the high water mark or by placing it in a waste disposal receptacle (bin).

Public Place

If, while in the course of exercising powers under the *Fisheries Act 1994* at a public place, officers detect a noxious fish offence, enforcement action can be taken utilising powers outlined in the *Biosecurity Act 2014*.

Officers must explain to the person that they are carrying restricted matter as outlined under the *Biosecurity Act 2014* and explain the obligation to kill and dispose of the restricted matter. The person should be allowed to complete this whilst still in the officer’s presence for minor offences.

Consent to Entry

If, while in the course of exercising powers under the *Fisheries Act 1994* at a place other than a public place, officers detect a noxious fish offence, officers should finalize all fisheries matters first and then ‘re-enter’. Enforcement action can then be taken utilising powers outlined in the *Biosecurity Act 2014*.

To re-enter the officer must advise the person that they possess restricted matter as outlined under the *Biosecurity Act 2014* and seek consent to remain on the property or on the vessel.

Before asking for consent the officer must comply with section 267 of the *Biosecurity Act 2014* by giving a reasonable explanation;

- About the purpose of the entry, including the powers intended to be exercised; and
- That they are not required to consent; and
- That the consent may be given subject to conditions and may be withdrawn at any time.

If consent is given, the officer should complete an '[Acknowledgment of consent for entry](#)' form. If the form is completed a copy must be given to the person immediately.

Complaints or allegations of non-compliance concerning noxious fish received by the Department will be investigated by Biosecurity Queensland officers. QBFP officers will act in a supporting role.

The Department does not wish to encourage the use of noxious fish, such as Tilapia, as food. Although, consideration should be given towards the *Mutual Recognition Act (C'wth) 1992*, which has been discussed in section [2.6.1](#) of this manual.

What should be of **primary** concern to QBFP officers regarding noxious fish is:

- Persons in possession of live noxious fish;
- Persons returning live or dead noxious fish to the water;
- Persons using noxious fish as bait.

2.6.3 Marine Plant/Fish Habitat Investigations

Any complaints or incidents of habitat destruction/damage should be fully investigated. Habitat protection is a core function of the QBFP and should be given appropriate District priority. It should be noted that incidents of this nature could fall under the *Fisheries Act 1994* or the *Sustainable Planning Act 2009*.

It is advisable that any marine plant or fish habitat investigations are discussed with the Impact, Assessment and Management group (IAM). IAM are available to assist with providing technical advice in the field as well as providing statements and/or technical advice in relation to appropriate restoration outcomes.

Restoration under the *Sustainable Planning Act 2009*

Restoration and prosecution actions should be considered and dealt with together and not as a separate actions.

Restoration is achieved by the issuing of a Show Cause notice followed by an Enforcement notice under the *Sustainable Planning Act 2009*; after a brief of evidence has been provided and considered against the Prosecution Policy. These notices are drafted by In-House Legal with assistance of IAM.

The State Assessment and Referral Agency (SARA), Department of Infrastructure, Local Government and Planning (DILGP), are to be provided copies of all Show cause and Enforcement notices issued.

Where restoration is being recommended along with a penalty being sought by prosecution action in a Magistrates court, a full brief of evidence should be compiled and request that restoration is considered within the sentencing submissions.

Restoration can also be considered as an appropriate action on its own, and it is available without having to proceed through a Magistrates court. In these instances, a full brief of evidence should be compiled, providing special instructions that restoration is the only action being recommended.

- If restoration is being recommended, sufficient technical information is to have been obtained from IAM and included in the brief, to allow for notices to be drafted.
- Restoration can be sought after the limitation date although it is expected that officers will continue to comply with the [investigation timeframes](#).

Fish Habitat Areas

Enquiries regarding Fish Habitat Areas are to be directed to the Department of Environment and Heritage Protection.

Marine Plants

The term “marine plant” given under Section 8 of the Act it is not limited to mangroves, seagrasses and plants growing at ground level e.g. “salt water couch”. Other tree species usually found adjacent to tidal land e.g. *Casuarina* and *Melaleuca* are also included. Damage to these species may also be investigated as a breach of the Act.

Investigation Methods

Ensure that the following procedures are used in a habitat investigation:

sch3(10)(1)(f)

The usual rules of evidence and collection of samples and continuity of possession of samples will apply.

2.6.4 Obstruction of Officers

In 2004 Section 182 of the *Fisheries Act 1994* was amended to include “assault” in definition of “obstruct”.

The definition of “obstruct” in the *Transport Operations (Marine Safety) Act 1994* does not include “assault”.

All allegations of obstruction and/or assault are to be immediately referred to the relevant District Manager. The District Manager is to make a decision as to the appropriate course of action and, depending on the seriousness of the obstruction and or assault the following options are to be considered:

- Officer alleges an offence against Section 182 as part of their Brief of Evidence (BOE) and submits the report as normal
- Investigated locally by a suitable Officer (District Officer/Manager) isolated from the incident.
- Referred to the local Police station for investigation

When the matter is investigated by an Officer other than the Officer involved in the incident, than that Officer takes full carriage of the investigation and if the investigation warrants, instigates Court proceedings via their normal processes.

Definitions

Definition of Assault in *Criminal Code Act 1899*

245 Definition of assault

(1) *A person who strikes, touches, or moves, or otherwise applies force of any kind to, the person of another, either directly or indirectly, without the other person's consent, or with the other person's consent if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without the other person's consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect the person's purpose, is said to assault that other person, and the act is called an assault.*

(2) *In this section—*

applies force includes the case of applying heat, light, electrical force, gas, odour, or any other substance or thing whatever if applied in such a degree as to cause injury or personal discomfort.

Physical Assault

Instances where an Officer is physically assaulted the incident should be referred for investigation to the Queensland Police Service - usually the local office responsible for the area where the obstruction occurred. It is also understood that if an Officer is threatened with any type of actual physical assault the incident should be treated as serious and dealt with as above.

Obstruction

If the matter is unable to be effectively dealt with at the time of the incident and the Officer(s) feels their safety is at risk they should act accordingly. The Officer(s) are to discuss the matter with their District Officer and District Manager as to the appropriate course of action.

Any allegations of obstruction when performing duties as authorised Officers under the *Great Barrier Reef Marine Park Act 1995* is to be documented in an Incident Report and referred to the Great Barrier Reef Marine Park Authority.

2.7 WHO IS RESPONSIBLE FOR COMPLIANCE WITH THE FISHERIES LEGISLATION?

2.7.1 The operation of section 219

Section 219 *Fisheries Act 1994* - **Holder of authority responsible for ensuring Act complied with** - should be considered in an investigation of certain offences. This section provides that the holder of an authority is responsible and liable (subject to a defence under section 219(4)) for the actions of persons acting under the authority. Therefore it is the responsibility of the holder of the authority to ensure that the person/s acting under the authority comply with the Act.

This section is particularly relevant, for example, where the holder of a primary commercial fishing boat licence allows someone else to use the boat identified in the licence in an area of regulated waters.

However section 219 is not confined to the example of the use of a primary commercial fishing boat, as there are other authorities or provisions under the Act that permit someone else to act under an authority. Therefore the circumstances of the particular case will determine the use of the section.

It should be noted that Section 52 allows the holder of an authority to authorise other persons to act under that authority, for example, a person who is a member of the crew of a boat owned by the holder.

S219(1) The holder of an authority must ensure that everyone acting under the authority complies with this Act.

The key word in this section is the word "authority". The Dictionary in the Act defines "authority" means a licence, permit, resource allocation authority, a quota or other authority in force under this Act. The definition uses the words "in force under this Act". If the particular authority to be examined for purpose of the section has expired and or has not been renewed at the time the particular act had been committed, it is "not in force", and section 219 has no application. The Investigating Officer would then at least investigate an offence under section 82 of the Act, and any other offence that may have been committed. The reference to "complies with this Act" is very broad and means compliance in all respects to those provisions under the Act, and a Regulation or Management Plan made under the Act.

S219(2) If another person acting under the authority commits an offence against a provision of this Act, the holder of the authority also commits an offence, namely, the offence of failing to ensure the other person complied with the provision.

Maximum penalty-the penalty prescribed for contravention of the provision.

The section would apply if e.g. the person in control of the boat (who is a person other than the holder of an authority for the boat the person is on) commits an offence against a provision of the Act. The offence committed by the holder of the authority (subject to sub section 4) is the offence "of failing to ensure the other person complied with the provision".

To report a breach of section 219, the Investigating Officer would allege for e.g. for an offence under a regulated waters declaration, section 77(2) of the Act, the Regulation or Management Plan, Schedule No, Part No, section 77 and closed waters heading to have been committed by the person in control of the boat.

A further allegation would be made, in a separate brief of evidence, against the holder of the authority under section 219(2), for the offence of failing to ensure that the person in control of the boat complied with the regulated waters declaration. In effect, this is a rewording of the charge against the person in control of the boat. The penalty for the offence committed by the holder of the authority is the offence committed by the person in control of the boat.

S219(3) Evidence that the other person has been convicted of an offence against the provision while acting under the authority is evidence that the holder of the authority committed the offence of failing to ensure the other person complied with the provision.

Clearly to apply sub section (3) it is tactically advantageous and preferable to obtain a conviction against the person in control of the boat in a timely way before the hearing of the matter of complaint against the holder of the authority. However, a complaint should still be taken out and duly served on the “the holder of the authority”. The matter against the holder will be adjourned for mention until a conviction is recorded against the person mentioned in sub section (2).

Where proceedings are unable to be commenced against the primary offender (i.e. because of death or where the offender cannot be located), the proceedings against the authority holder can still go ahead. However, the prosecution will need to prove the original offence in the ordinary manner.

S219(4) *However, it is a defence for the holder of the authority to prove-*

- (a) *the holder issued appropriate instructions and used all reasonable precautions to ensure compliance with this Act; and*
- (b) *the offence was committed without the holders knowledge; and*
- (c) *the holder could not by the exercise of reasonable diligence have stopped the commission of the offence.*

This subsection prescribes specific defences for the holder of the authority and, as always, it is the responsibility of the Investigating Officer to negate these defences where possible. To establish whether a defence under this subsection questions must be asked of the person acting under the authority. Attempts must also be made to question the authority holder.

sch3(10)(1)(f)

The holder of the boat licence should then be interviewed to obtain his/her version of the nature of any instructions (and/or lack of them) that may have been given to the person in control of the boat at the time the offence was committed.

If the holder of the licence is a company it is necessary to establish that the person who gave the instruction to the employee is a person authorised by the company to do so, and whether the person holds a particular position in the company, e.g. a director.

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CHAPTER 3

EVIDENCE GATHERING

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3 EVIDENCE GATHERING

INTRODUCTION

This chapter examines appropriate procedures Officers should employ in the gathering of evidence. Fundamental principles of investigation, what constitutes evidence, and how evidence should be evaluated in relation to the elements of an offence, will be briefly outlined to place *Evidence gathering* into context.

This chapter will focus on the procedures Officers should adopt in relation to the use of notebooks (and other forms of note taking); the seizure of exhibits (and the taking of samples); the taking and use of photographs; and the continuity of seized exhibits.

Related chapters

Officers should refer to the following chapters of this manual for guidance in relation to related subject matter briefly referred to in this chapter:

- [Chapter 1 – Powers and Responsibilities of Inspectors](#): in relation to powers of entry, search and seizure (and entry, inspection and sampling);
- [Chapter 2 – Offences](#): in relation to the elementising of offences;
- [Chapter 4 – Warrants](#): in relation to Search Warrants;
- [Chapter 5 – Interviewing](#): in relation to confessional evidence; and
- [Chapter 6 – Statements](#): in relation to testimonial (witness) evidence.

3.1 PRINCIPLES OF INVESTIGATION

Investigating Officers are often called upon to inquire into circumstances that appear to be criminal activity, but in reality have resulted from other causes, or the activity concerned does not in fact constitute a crime.

Investigating Officers must remember the fundamental rule of investigation:

The Investigating Officer must first establish whether or not an offence has actually been committed.

The elements of offences will differ, in some cases greatly, between statutes and jurisdictions. The Investigating Officer must develop the ability to break down an offence into its elements (or points of proof), a process known as “elementising the offence”. [Refer to Chapter 2.3](#)

In order to prove the offence, the Investigating Officer must be able to lawfully obtain admissible evidence that proves all of those elements beyond reasonable doubt.

The Investigating Officer must establish:

- **That an offence has been committed;**
- **The identity of the offender;**
- **The whereabouts of the offender; and**
- **A nexus between the offender and the offence.**

The Investigating Officer is the person tasked with the responsibility of conducting an investigation into the activity of concern.

The Investigating Officer is a collector of evidence.

The Investigating Officer’s approach must be completely objective and be concerned with the exculpation of the innocent as well as the conviction of the guilty. Investigating Officers seek the truth.

An investigation is a search for the truth, in the interests of justice, and in accordance with the specifications of the law.

The process of investigation involves an evaluation by the Investigating Officer of the persons and things involved in the offence.

[3.1.1 Individuals involved in an offence](#)

The individuals involved in an offence will include victims, witnesses, and offenders. Investigating Officers will also obtain information from other individuals during the course of their investigation; such other individuals will include colleagues, experts and informers. Refer to [Chapters 5 and 6](#).

The information received from individuals may be influenced by misunderstanding, poor memory, prejudice, uncertainty, or other imperfection. Investigating Officers should always seek to corroborate information derived from individuals by independent means.

3.1.2 Things involved in an offence

The things involved in an offence can generally be regarded as physical evidence. Physical evidence is factual evidence, it is not subject to the frailties of human memory, and should always tell the same story.

Physical evidence may include fisheries resources, marine plants, fishing apparatus, packaging, tool marks, floats, ropes, documents, and a large variety of other things that may be involved in any particular offence.

Physical evidence cannot perjure itself, only failure by the Investigating Officer to find it and understand it can undermine its value to an investigation.

3.1.3 Evidence

Evidence then, is derived from persons and things.

Evidence consists of:

- **Facts;**
- **Testimony**
- **Documents; and**
- **Physical exhibits.**

Evidence may be legally admitted in order to prove or disprove the facts under inquiry.

The Investigating Officer is a collector of evidence and must allow the evidence to present its own conclusions.

Investigating Officers must avoid the temptation to seek evidence to support their own theories as to what may have occurred. Such a course will often result in the Investigating Officer overlooking vital evidence. Investigating Officers should seek all the available evidence in relation to the activity under inquiry, and allow that evidence to disclose what has occurred.

Should a suspect confess to the commission of an offence, the Investigating Officer must continue to obtain all the available evidence in relation to that offence. It is vital that the Investigating Officer gain corroboration of any admissions made from independent sources. A prosecution that relies solely on a confession will certainly fail if the admissions are excluded from admission into evidence.

The forensic evidence afforded by science and technology are extremely valuable tools in any investigation. Investigating Officers must remember that these tools are aids to, and not a substitute for, investigation. The Investigating Officer of course, must first locate the physical evidence before these tools can be used.

The quality of an investigation, and its final outcome, will reflect the diligence with which an Investigating Officer applies these principles in the collection and evaluation of evidence.

3.2 EVIDENCE

3.2.1 Criminal prosecution

For the purposes of a criminal prosecution,

Evidence consists of:

- *Facts;*
- *Testimony;*
- *Documents; and*
- *Physical exhibits;*

which may be legally admitted in order to prove or disprove the facts under inquiry.

The “facts under inquiry” include the elements (or “points of proof”) of the offence with which the offender is charged. The facts under inquiry in a prosecution are what are known as “relevant facts”. Generally any fact which is relevant may be proved.

3.2.2 The facts

Facts in issue

In criminal cases, the facts in issue are those set out in the complaint or charge. These will be those elements that comprise the offence.

Facts surrounding the issue

The term “Res Gestae” means the facts surrounding or accompanying a transaction which is the subject of legal proceedings. Acts, declarations, and incidents which constitute, accompany, and explain the facts in issue are admissible in evidence as forming part of the Res Gestae.

Relevant facts

Relevant facts then comprise the “facts in issue” and the “facts surrounding the issue”. These matters will generally be admissible in evidence in a trial. For example, evidence that the accused did the acts charged are relevant facts (facts in issue). Facts connected with those facts, for example motive, threats, preparations, concealment or destruction of evidence, false statements, etc. are also relevant facts (facts surrounding the issue).

Facts not relevant

As a general rule, facts which are not relevant to the facts in issue are not admissible in proceedings.

3.2.3 Evaluating the evidence

When conducting an investigation, Investigating Officers must ensure that the evidence is lawfully obtained and that it is relevant to the charge contemplated.

A good way to proceed is to follow these steps:

1. Consider the possible charge/s arising from the activity being investigated.
2. Establish the elements of the offence/s that have to be satisfied by the evidence.
3. Consider what evidence is available, and what evidence needs to be obtained to satisfy those elements; also consider where such evidence may be found.

A simple tool Investigating Officers can adopt during the course of an investigation that assists in this ongoing evaluation is the [evidence matrix](#). The following example is particularly useful when new to investigating offences or for a complex matter.

Evidence matrix

The following example shown is a table that lists the elements of an offence on the vertical axis.

The items of evidence collected are listed along the horizontal axis.

	Seized crab pots	Photographs at scene	Officer's observations	
Identity				
Unlawfully				
Possess				
Fishing				
Qld waters				

As the items of evidence are evaluated a symbol, in this case a closed circle (●), is placed in the box that corresponds with the element it affords evidence of.

	Seized crab pots	Photographs at scene	Officer's observations	
Identity				
Unlawfully				
Possess			●	
Fishing	●	●	●	
Qld waters			●	

As the case develops and the located evidence is evaluated, it will become apparent which elements have been established, and which have not.

Corresponding symbols (●) in a horizontal line, applicable to a particular element, indicate where the various items of evidence corroborate one another. The greater the corroboration, the stronger the case. Investigating Officers should always seek to corroborate evidence, particularly testimonial and confessional evidence.

The absence of the (●) symbol indicates where the evidence is either weak or lacking. In the above example, at this stage, evidence of possession is weak. Evidence of identity and that the fishing apparatus was possessed unlawfully has yet to be established. Unless all the elements are established beyond reasonable doubt, any prosecution will fail.

The matrix at this stage clearly shows what evidence needs to be sought.

As Officers are tasked to pursue likely sources of evidence, those potential sources can be shown on the same matrix by use of an open circle (○).

	Seized crab pots	Photographs at scene	Officer's observations	S184 Certificate	Boat registration	Interview of suspect
Identity					○	○
Unlawfully				○		○
Possess			●			○
Fishing	●	●	●			○
Qld waters			●			○

In this example, Officers have been tasked to obtain an Evidentiary Provisions Certificate under the provisions of Section 184 of the *Fisheries Act 1994* in order to establish the element of unlawfully; and to obtain a Court Certificate from Queensland Transport in relation to the suspect vessel's ownership to afford some evidence of identity. An Investigating Officer has been tasked to commence planning the interview of the suspect, including the points to be covered in the interview.

These tasks are shown on the matrix by the symbol (○). Once the task has been completed and the evidence obtained, then the open circle symbol (○) is replaced with a closed circle symbol (●).

As an investigation progresses, more items of evidence will be collected. This may include physical exhibits, documents, and the statements of witnesses. As the items of evidence are collected, they are added to the horizontal axis of the matrix, and the evidence they afford entered on the chart.

The chart should be set out in such a way that it can continue to expand as new evidence is sought and obtained. A simple case may only involve a dozen items of evidence; a more complex case may involve hundreds. Whatever the case, this evidence matrix is a useful tool for both managers and Investigating Officers. It is a chart that displays the strengths and weaknesses of the case and can assist in providing direction to the investigation.

NOTE:

As the offences that QBFP Officers will investigate exist at criminal law, the Investigating Officer must be able to prove all of the elements of the offence/s beyond reasonable doubt.

If the evidence collected by the Investigating Officer establishes that one of the required elements does not exist, then the Investigating Officer has proved that the offence was not committed.

If the evidence collected fails to establish one of the required elements (as opposed to proving it does or does not exist), then the offence has not been proved or disproved, and further evidence of the existence or absence of that element should be sought. See [Chapter 2.3](#) for more information.

3.3 EVIDENCE COLLECTION

3.3.1 Photographs and Video Footage

Investigating Officers should photograph their observations, particularly observations of items, premises or the like, that are significant to the outcome of the investigation or inspection.

Photographs preserve evidence.

A properly identified series of photographs can more accurately depict what an Investigating Officer observes than what the Investigating Officer describes in their notes. Photographs can provide more compelling evidence of what was actually seen and also serve to corroborate the Investigating Officers written notes.

sch3(10)(1)(f)

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It is important that Field Officers and Investigating Officers incorporate the taking of photographs into their routines of inspecting and sampling; and searching and seizing. **Photographs preserve evidence.**

3.3.2 CCTV and unmanned cameras

Investigating Officers may also have access to Closed Circuit Television (CCTV) and/or unmanned cameras which are capable of capturing video and/or still images and/or audio.

These devices are able to be used when undertaking a QBFP investigation and their use must comply with the “Standard Operating Procedure - Use of Closed Circuit Television (CCTV) and Unmanned Cameras”.

The deployment of each camera is to be maintained on the central register.

[CCTV and Unmanned Camera Use ‘Register’.](#)

The Investigating Officer may provide the photographs and/or footage which was produced by the device, in evidence, and should simply and clearly describe what was done, including the setting up of the device and if applicable the associated apparatus, and accurately depict the photographs and/or footage.

3.3.3 Samples and seizures (also see Chapter 1.13)

Samples and seizures need to be taken and handled in a way that preserves the item in the condition in which it was found. The item must be secured to prevent the item being tampered with, and all movements of the item must be recorded. It is vital to maintain an unbroken trail of the item's movement from time of location to final production in court proceedings. This is known as the "chain of continuity" and any unrecorded break in this chain will generally result in the item being excluded from evidence.

An exhibit number should be assigned to the item concerned. This numbering may vary however should be sequential and include all of the items seized during the particular search/investigation.

The Investigating Officer then completes a located evidence slip which briefly describes the item, when and where it was located, and by whom it was located.

The item is then secured into a sealed container along with the located evidence slip. The type of container used will vary depending on the nature of the item sampled or seized. Commonly used containers include clear zip-lock bags, opaque sample bags, paper bags, cardboard cartons, insulated foam boxes, clear plastic or glass jars, and the like.

There is no rule as to what type of container is used other than it must be suitable to the item seized. Corrosive or volatile chemicals must be secured in containers specific to that purpose. Items that need to be kept chilled must be stored in containers suitable for that purpose.

Investigating Officers should bear in mind however, that items sealed in clear plastic or glass containers may enable them to be examined visually without breaking the seal. This can maintain the integrity of the exhibit and prevent the need to reseal the item. Any such examination of the exhibit must be recorded however. All handling and movement of the item must be tracked.

sch3(10)(1)(f)

When property is sampled a record needs to be maintained as to what was taken, when, by whom and from where. This can be done by the Investigating Officer taking the sample, and in a simple case a record in the Investigating Officer's notebook may suffice. In cases where a large number of samples are taken, it is usually appropriate to appoint an Officer to specifically attend to recording this activity.

In the case of items seized as evidence a record must be maintained of what is seized and a seizure receipt for the items seized given to the individual concerned.

In the case of both samples and exhibits, each individual item should be allocated its own unique number for ease of tracking and identification. Experience shows that allocating this number to the items at the time of their sampling or seizure is the best course to adopt. This enables each item to be accurately identified and tracked throughout the entire process. These labels should be small enough so that they can be affixed to small items and documents. The numbering should be large enough to be legible.

In all investigations a full description of the property seized (fully itemised, including all seals and labels used), the circumstances surrounding the seizure, and all movements of property seized, must be maintained by the Investigating Officer.

Taken together, photographs and items seized or sampled, can provide compelling evidence of the matters referred to in the Investigating Officer's notes and provide strong corroboration of the Investigating Officer's observations.

3.3.4 Note taking

In many jurisdictions legislation now dictates the manner in which much evidence is collected, in particular the manner in which any admissions made by suspects are to be recorded. Refer to [Chapter 5](#)

The use of handwritten notes by Investigating Officers however, remains very important. Notes are still required for investigative reasons and for the recording of information, which may be used in evidence.

Notes made by Investigating Officers will enable a true chronology of the investigation to be maintained. This in turn will allow a considered judgement to be made as to the best methods of investigation. Regardless of the admissibility or otherwise of the contents of the notes, they are still an integral part of the investigative process.

Similarly, anything of significance which occurs during the course of an inspection should be noted by the Investigating Officer. The maxim to be adopted by Investigating Officers is that:

If it is worth making a mental note of something, it is worth making a written note.

An official notebook can be used for this purpose and would normally be the preferred manner of recording a routine vessel inspection or the audit of a buyer's records. Such inspections are normally completed in an hour or two and in some cases within several minutes.

In the case of searches conducted under warrant, provision for the taking of notes by the Search Officer is included in the Field Evidence Seizure Kit, refer [Chapter 4](#).

The purpose of taking any notes is to provide a permanent, written record of the material which is the subject of the notes.

Investigating Officer's notes should be made at the time of the occurrence or as soon as practicable thereafter.

When recording conversations, the exact words spoken should be recorded. Entries should be fully and clearly set out.

Whether the notes are taken in an official notebook, an Investigating Officer's day book, or on sheets of paper, they become what are known as "notes taken at the time". There is always the possibility that these notes will have to be produced in court, and as such all notes should be made in as neat, legible and precise a fashion as the circumstances permit.

All QBFP Officers should develop a note taking system so that the practice becomes second nature and nothing is overlooked. Times when things occur, arrival on site, departure, the taking of samples, the locating and seizure of exhibits, when refreshments were taken, etc. should all be recorded. Everything said, done, or observed of any significance should be noted. The purpose of developing a note taking system is that the notes may be used to corroborate the evidence of the Investigating Officer concerned and should be used in the preparation of statements, briefs of evidence, file notes, reports and the like.

Any observation, conversation or other relevant fact mentioned in the Investigating Officer's report or statement should also be contained in the notes of the inspection or search.

sch3(10)(1)(f)

Although any conversation recorded in a note book will be in the exact words spoken, other observations and things done may be more briefly described in an Officer's notebook than in any resultant statement. A notebook is just that, a book containing notes. It should not be a slavish written version of an Officer's subsequent statement. It is quite proper for an Officer to use abbreviations in recording observations in an official notebook. Commonly used abbreviations may include GPS (Global Positioning System); SW (South West); 15nm (15 nautical miles); RMDL (Recreational Marine Driver's Licence); and SM (Spanish Mackerel); for example.

The notes are the Officer's notes, and the Officer can use abbreviations that are clear and unambiguous to the Officer. The notes should not be in shorthand, however the Officer may develop and use abbreviations to assist with keeping notes in pace with the events that unfold.

For example, an Officer's statement may in part read:

3. Mr GANGPLANK who was operating the patrol vessel, positioned our boat alongside this vessel and I spoke to the two men on board. I introduced Mr GANGPLANK and myself to them as Inspectors with the QBFP and we produced our identity cards to them for inspection. I told these men that we were conducting inspections for safety equipment and fishing catch.

-
4. I then conducted an inspection of the vessel in relation to safety equipment and fishing catch. Whilst doing so, I saw that on the bait board mounted at the rear of the vessel were two fish frames of fish that appeared to have been recently caught. By fish frames, I mean that these two fish had fillets removed from each side, but were otherwise complete, including their heads, spine, and tails. I also saw some cut bait, pilchards, on this board. I recognised one of the filleted fish as being a Coral Trout.
 5. Schedule 2 of the *Fisheries Regulations 2008* provides that Coral Trout less than 38cm in size are regulated fish; that is 38cm is the minimum size at which a Coral Trout may be taken. I saw that the Coral Trout on the bait board was clearly less than 38cm in size. I estimated the size of this Coral Trout to be about 31cm.

This may have been recorded in the Officer's notebook as:

"*ALONGSIDE, INTRO & ID
SAFETY EQUIP & CATCH INSP
2 FISH FRAMES & CUT PILLY
1 FRAME = C/T @ 31CM
ON BAIT BOARD*"

3.4 OFFICIAL NOTEBOOKS

3.4.1 Issue of Official Notebooks

QBFP Officers are issued with official notebooks to record particulars of observations, conversations, versions of events, names, addresses, notes regarding investigations etc. during the performance of their duty.

Official notebooks are accountable items and are subject to audit. They are only to be used for official purposes and not for the recording of personal information. An Officer must only have or use 1 notebook at any one time.

District Officers/Managers record the issue of official QBFP notebooks in a Register of Notebooks issued under the following headings:

- Official QBFP notebook number
- Date received and signature of DO/DM
- Name of Officer receiving official notebook and badge number

- Date of issue
- Signature of Officer/Printed name
- Date returned on completion/finalised
- Signature of receiving DO/DM and signature
- Comments to include:
 - Date removed from file
 - Date returned to file
 - Purpose of removal

When Officers are issued official QBFP notebooks the following particulars are to be written on the inside of the front cover of the notebook:

- Name of the Officer to whom it is issued
- Name of the District to which such Officer is attached
- The date of issue of the official QBFP notebook
- Name of Issuing Officer
- Signature of Recipient

3.4.2 Damage to official notebooks

A damaged or defective official QBFP notebook should be immediately reported to the District Officer/Manager and it will be replaced.

3.4.3 Use of official notebooks

Officers on duty should carry their official QBFP notebook at all times. The notebook must be used for official purposes only and in the following way:

- Make entries in ink, commencing on the first page and making subsequent entries in chronological order
- Commence each entry with the date and time it is made, draw a line under the completed entry and leave a one line space between entries. Continue with entries in consecutive order until the official QBFP notebook is completed.
- Make entries neatly and concisely, ensuring that the notes are legible and understandable.

- Make a note at the relevant entry when a report is furnished or action taken. The date of furnishing a report or taking action and any reference numbers are to be included. When the matter is finalised a line is to be drawn in “**pencil**” diagonally through the entry without obliterating any particulars of the entry.
- If necessary, make alterations by ruling through the original, leaving it legible and making the new entry. If the alteration is likely to be of importance, bring it to the notice of, and obtain the signature of, a supervising or other Officer (corroborating Officer to the notes) to verify the time and making of the alteration; and
- Leave their official QBFP notebook at their District or establishment when absent on leave or for any lengthy period, for reference if required.

District Officers/Managers will also make random checks of entries within official QBFP notebooks to ensure their correct use. When the official notebooks are inspected they will be dated and initialed.

3.4.4 Return of official notebooks

Official notebooks are to be returned to the District Officer/Manager of the issuing District when completed and/or immediately prior to departure on transfer or termination of employment for filing purposes.

The following particulars are recorded on the inside of the back cover of the notebook in the spaces provided:

- (a) Name of District where the official QBFP notebook is handed in
- (b) Date on which the official QBFP notebook is handed in
- (c) Signature of Officer and badge number

District Officers/Managers receiving a completed official QBFP notebook or a notebook of an Officer transferring or terminating employment undertake the following procedures:

- Record the name/signature and date of receipt inside the back cover of the official QBFP notebook in the spaces provided.
- Ensure that the Register of Notebooks Issued is completed
- Ensure the official QBFP notebook is securely filed in numerical order.

In cases where the Officer who is handed an official QBFP notebook is not the District Officer/Manager of the District where the official notebook was issued, the notebook should be forwarded to the District Officer/Manager of the District where the notebook was issued.

3.4.5 Removal of official notebooks from file

When a request is received for a completed official QBFP notebook the District Officer/Manager will note the Official Notebook Register in the “comments” column when official QBFP notebooks are removed from or returned to file. This should be monitored until the notebook is returned to the file.

3.4.6 Ordering of official notebooks

Bulk supplies of official notebooks are acquired by the QBFP Equipment Officer (EO). The EO records receipt of each delivery of notebooks and the notebooks are stored securely.

New notebooks can be provided to the Districts on written request from the District Officer/Manager. The EO will then issue notebooks by secure mail or freight. A receipt will be sent with the issued notebooks. The receipt will detail the number of notebooks and the individual serial numbers. On receipt the District Officer/Manager will check the consignment and confirm receipt of the notebooks to the EO.

The receipt is retained in the Notebooks Register.

3.5 PHOTOGRAPHS, NOTES, SAMPLES AND SEIZURES

Officers need to develop a system of taking photographs; copying documents, books or records; seizing exhibits; taking samples; and making notes that they can employ almost as second nature. A system that ensures everything is properly documented and nothing is overlooked.

If the Officer has an established system for undertaking field tasks that is second nature and followed almost without thinking; the Officer will not overlook important items or processes in the face of more complex matters. Any resultant statement will be relatively easy for the Officer to compile and contain all relevant details.

Developing a structure and proceeding in a systematic way that has become second nature to the Officer will enable the Officer to conduct field investigations with confidence. By following their systems Officers will be much more able to take control of the situation in a calm manner; be less likely to overlook something; and less likely to be flustered by the attitude of the suspect, or other outside influences.

Adopting such systems will provide strong corroboration of the Officer's observations, file notes and reports. Employed properly, such a system will also provide corroborative evidence that should also be admissible in court proceedings.

The Investigating Officer is the person ultimately responsible for the property that comes into their possession, whether by way of sampling or seizure. This is of particular importance if a vessel is seized. The vessel must be maintained in an appropriate manner. Properly maintained records will also ensure the chain of continuity of exhibits and enable seized property to be accounted for and acquitted.

The following approach with regard to the use of digital photographs should be adopted to ensure admissibility in court. The Officers who took the photographs should take the following steps:

sch3(10)(1)(f)

~~sch3(10)(1)(f)~~

~~Like any evidence, the weight that a magistrate will give to it will turn upon the credibility of the witness. So, Officers must keep contemporaneous notes concerning the photographic evidence.~~

3.6 GENERAL FISHERIES PERMIT

a [General Fisheries Permit](#) (GFP) has been issued to QBFP
sch3(10)(1)(f)

3.7 ELECTRONIC EVIDENCE

Scope

The general powers afforded to an authorised Officer to seize 'anything' comes from sections 150 to 153 inclusive of the Fisheries Act 1994 and relates to items seized with or without a warrant.

sch3(10)(1)(f)

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3.8 USE OF CHARTS

Ensure that current charts are used where possible with the latest amendments, including Notice to Mariners, attached or marked thereon. Also ensure that the chart datum is compatible.

3.9 MEASURING DEVICES

The following devices will be issued to Field Officers and districts.

Some devices may be issued to other external agencies where warranted at the discretion of the Manager, QBFP.

3.9.1 Personal/District Issue

- One certified 300mm stainless steel ruler - personal issue.
- One certified 150mm standard stainless steel vernier caliper - personal issue.
- One certified thirty (30) metre tape measure - security shed use only - not for field use.

- One certified one metre (1m) fish measuring board - district field use as required
- One certified 600mm fish measuring board - district field use as required
- One certified 1500mm stainless steel ruler - district field use as required.
- One certified Polypropylene 5000ml (5 litre) graduated jug - district field use as required.
- Aluminium crab carapace gauge/s 149 mm - district field use as required (while stocks remain & **not** certified).

3.9.2 Vernier Calipers

sch3(10)(1)(f)

- The caliper is capable of obtaining a more accurate measurement than the standard 150mm stainless steel rule.

The use of a metal ruler by an Officer is acceptable, excepting that the ruler requires the recording of the size of mesh to the nearest millimetre to the advantage of the fisher, where the vernier may record a fraction of the millimetre. It is recommended that Officers experiment as to which device they prefer to use for this purpose. Generally, all sizes of mesh measurements would be taken to the nearest millimetre to be in the favour of the owner, person who is using or possessing the net.

3.9.3 Polypropylene 5000 ml (5 litre) Graduated Jug

A 5 litre graduated jug is used to measure prawns regulated by volume for recreational fishers under the *Fisheries Regulation 2008*. In using this jug the following procedures must be adhered to:

- Remove or drain off ice/water or other foreign matter that might be mixed with the prawns before measuring the volume of prawns;
- After measuring the prawns by volume place them in a 10 litre bucket (not certified) that is supplied with the jug;
- Keep the graduated jug and 10 litre bucket clean and uncontaminated especially if the prawns have been cooked; and
- Ensure the graduated jug is not exposed to direct sunlight for long periods (UV factor).

3.9.4 General

All devices are considered precision instruments and must be cared for accordingly by an Officer who may possess or use them. The devices should be secured to prevent loss or theft when and where it is reasonable to do so.

It is acceptable for Officers to use uncertified fibreglass tape measures in the field to determine on reasonable grounds that a length of a net is other than prescribed. A net that is seized must then be measured in accordance with the provisions of the *Fisheries Regulation 2008* or a Management Plan using a certified measuring device prior to storage in a security shed.

Any device that is damaged or inaccurate shall be withdrawn from use and returned to the District Officer Resources for replacement.

The removal of the depth gauge of a Vernier caliper does not affect the status of the certification. Officers are permitted to have the depth gauge removed flush when the jaws are fully opened.

An advantage of any measurement to the nearest millimetre must be extended to the person who possessed or used the thing in question.

3.9.5 Re-certification of devices

All devices are purchased by QBFP Head Office. A certificate of verification is issued under the *National Measurement Act 1960*. An original certificate of verification is obtained by the District Officer Resources and will accompany the device on original issue. This certificate must be retained by the District. A scanned copy of the certificate will be retained and stored centrally.

All devices are to be recertified every 5 years (or sooner if required for a defended matter; see section 3.9.6). Re-certification is the responsibility of the District. Re-certification certificates of verification are to be retained by the District and a scanned copy is to be stored centrally.

A device that is damaged or fails re-certification must be retained until all matters relating to the use of the device are finalised before requesting approval of the District Officer Resources to write off the device and destroy it.

3.9.6 Defended hearings

sch3(10)(1)(f)

3.9.7 Care and maintenance

All devices are to be treated as precision instruments and must be maintained in good order and condition. The District Manager/Officer must ensure that all devices are correctly maintained with at least annual inspections of all measuring devices are to be undertaken and recorded on the central measuring devices register. The inspection should ascertain the following:

- Is the identification number clearly visible?
- Are the scale graduations easily discernible?
- Is the device clean and rust-free?
- Is the device free from burrs and dents?

- For stainless steel rules: is the shape of the rule regular, straight and free from distortion?
- Are the ends and corners of the rule free from wear which would otherwise impair accurate measurement.

3.9.8 Hygiene

To avoid food contamination and possible complaints, if cooked prawns are to be measured the container should be cleaned with detergent, sanitiser or germicide as used in the food industry.

Chlorine based products have a short shelf life and are not suitable for use.

Care should be taken with the use of chemicals on fish boards as this may adversely affect the product being measured, particularly live Coral Reef Fin Fish. A natural product may be more suitable.

3.9.9 Ordering replacement equipment

Replacement Seizure Tape, Notebooks, Notebook covers, FINS book covers and measuring devices allocated to a District or Officer are to be ordered by the District Manager/Officer.

3.9.10 Procedures for use of measuring equipment

Generally all measurements taken by Officers are to be taken to the nearest millimetre in the favour of the fisher.

Net mesh measuring

The method of measuring meshes of a net is defined somewhat in schedule 11, section 6 of the *Fisheries Regulations 2008* and has been amended slightly in recent years.

sch3(10)(1)(f)

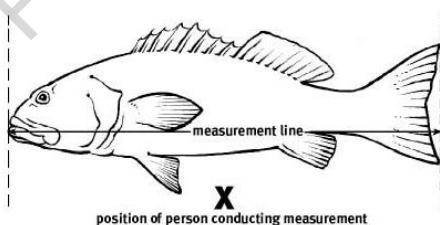
sch3(10)(1)(f)

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Measuring finfish

Officers are to measure all finfish in accordance with section 157 of the *Fisheries Regulation 2008*. Care should be taken when positioning the fish on a measuring board to ensure the measurement can be taken without the need to manipulate the fish in any way.

In the instance one caudal lobe of a finfish is longer than the other, the measurement shall be taken from the longest caudal lobe.



3.10 LOGBOOK REQUESTS (ORIGINAL LOGBOOK PAGES OR CERTIFIED COPIES OF LOGBOOK PAGES)

Logbook information is often required as evidence. However, a photocopy of the relevant logbook pages is sufficient for a brief of evidence. A request for copies of logbooks can be made to the Logbook Section via email. This request should define the parameters of the required information i.e. section and offence short title, vessel name, relevant period, fishery type.

Original logbooks will often be required for hearing. If original logbooks are required the Senior Compliance Officer can organise these. All transfers (mail) of original logbook records are to be by registered mail.

For all External Agencies i.e. MSQ, GBRMPA the request are to be forwarded to the Manager Logbooks.

CHAPTER 4

WARRANTS

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4 WARRANTS

4.1 INTRODUCTION

In the course of inquiries Inspectors may find it necessary and/or desirable to enter a place, a boat or vehicle and conduct searches and seize things. Inspectors must not enter, search or seize things unless authority to do so exists. This authority is outlined in [Chapter 1](#).

The common law protects a person's property and possessions from unwarranted interference, permitting an occupier of premises to keep anyone the occupier does not want to enter, out. There is a broad principle of law that a person's home is private and unless consent is given, no one can enter without becoming a trespasser.

However, the common law recognises the necessity to authorise entry to premises to prevent the commission of offences or alternatively to find evidence of the past commission of offences. Such authorisation has to be based on a reasonable foundation for permitting such entry.

There must be a balance of the need for an effective criminal justice system and the need to protect an individual from arbitrary invasions of his/her privacy and property. That balance is achieved in part by the provisions of the legislation which sets out those matters upon which the validity of a search warrant will depend.

A search warrant can be described as a document in writing, ordinarily given under the hand of a Magistrate or Justice of the Peace, authorising the person or persons to whom it is addressed, to search in some specified place, for property with respect to which an offence is suspected to have been committed.

Such a document may also confer on the person or persons executing it further powers such as the use of force to enter the place or the power to seize evidence.

4.2 WARRANTS UNDER THE *FISHERIES ACT 1994*

Warrants are covered under the *Fisheries Act 1994* (the Act), section 148 – 149. Section 148 provides for the application for the issue of a warrant to search a place or boat. The application for and the issue of a search warrant is controlled by the provisions of these sections and influenced by common law principles as discerned by authoritative decisions of Judges.

Section 148 provides, in effect:

An Inspector may apply to a Magistrate for a warrant for a place or boat;

The application must be sworn and state the grounds upon which the warrant is sought;

The Magistrate may refuse to consider the application until further information required by the magistrate is provided;

The Magistrate has discretion whether to issue a Warrant.

If the Magistrate determines to issue a Warrant, it may only be issued if the Magistrate is satisfied there are reasonable grounds for suspecting:

- that there is a thing or activity that may provide evidence of the commission of an offence against the Act; and
- that the evidence is, or may be within seven days thereafter, at the place or on the boat.

If a warrant is in fact issued, Section 148(5) prescribes the matters that must be stated in the warrant, namely:

- that the Inspector may, with necessary and reasonable help and force, enter the place or board the boat, and exercise the Inspector's powers under the Act;
- the evidence for which the warrant is issued;
- the hours of the day when entry may be made; and
- the day (within fourteen days after the warrant's issue) when the warrant ends.

It should be noted that the term "reasonable grounds for suspecting" is a prerequisite for the issue of a warrant. It should also be noted that the application for a search warrant must be sworn and state the grounds on which the warrant is sought.

The warrant is usually in the prescribed form and consists of two parts:

1. The application (see Chapter 4.3) – the information required to substantiate the issuing of the warrant, such as the details about the suspected offence, why the occupier is suspected of having committed the offence and the type of evidence sought.

-
2. The warrant itself (see Chapter [4.4](#)) – giving details about the premises (the address and type of premises), the name of the occupier if known and the date and time of the proposed search.

It is important to ensure that the process of obtaining and executing a warrant is done correctly. For more complex matters, Officers should liaise with an experienced investigator or the Senior Compliance Officer who will seek advice from In-house Legal prior to the warrant being sworn.

4.3 APPLICATION

An [Application for a warrant](#) should be conducted in two parts:

1. Affidavit - will list all relevant information that has led the Investigating Officer to the point of applying for the warrant. It will contain information such as complaints, previous encounters with the Person of Interest (POI), any authorities the POI may have.
2. Application - will list all facts / evidence to date and the purpose of the warrant.

A search warrant may be lawfully issued only when the Magistrate has sufficient factual material within an Application upon which the Magistrate can:

- Conclude objectively that there are reasonable grounds for suspecting that certain property exists and is in or will be within seven (7) days in the place or boat subject to the application; and
- Conclude that there are reasonable grounds for believing that the property will afford evidence as to the commission of the offence referred to in the complaint.

Within the complaint there must be clear identification of the place or boat that is to be searched. The items to be seized must also be identified however this does not limit the items that may be seized under the warrant.

The complaint must identify the primary facts and circumstances upon which the suspicion has arisen. It is not sufficient to set out allegations, assertions and/or conclusions, nor oral submissions or statutory declarations to ground the issue of a search warrant.

There must also be included in the complaint sufficient particulars of the offence alleged to have been committed or to which the evidence sought relates.

For the purposes of Section 148 of the Act and in order to satisfy a Magistrate there are reasonable grounds for suspecting, it is necessary to clearly set out the specific facts and circumstances. Those facts and circumstances may be either from the personal knowledge of the Investigating Officer or through reports or information conveyed by a third party.

Information conveyed by a third party would normally be inadmissible as hearsay in a court hearing. However, subject to certain tests, it may be relied upon to form the basis of reasonable suspicion for the purpose of an application for a search warrant.

In determining the weight that should be attached to the hearsay, the Magistrate may reasonably be entitled to consider the following matters, namely:

- How the informer obtained the information - i.e. was it personally or by personal observation or some other dependable way;
- The extent of detail of the information; and
- Any facts which suggest that the informer is inherently credible. He may have been shown to be reliable in the past, be a citizen of good standing or an eyewitness.

The Investigating Officer receiving the hearsay information should be satisfied with its reliability. This may be achieved by questioning the informant fully to ascertain the reliability of the source and the validity and freshness of the information.

Reliability may be tested against the admiralty system of intelligence classification (which is criteria developed as an objective assessment of the reliability of the source of information and the validity of the information itself). It is this criteria that is used when registering incidents in CAS i.e. Reliability/Accuracy/Priority. Checks should also be conducted where available to qualify the reliability of the informant and the cogency and validity of the information.

4.4 ACTUAL WARRANT

The warrant, when issued, will be directed to an Inspector, state that it was issued upon application made on oath or affirmation, identify the evidence sought and set out with precision the authority granted. It will also include the stipulation, restrictions and conditions with or upon which it is granted, refer to the statute under which the Magistrate was acting in granting the warrant and the period for which the warrant is valid.

It will be noted that the maximum time allowed for the life of a warrant is fourteen days.

It should be noted that the issuing of a warrant by a Magistrate does not preclude the warrant from later challenge in court by the defence.

4.5 WARRANT BY PHONE

Section 149 of the Act outlines when a warrant application may be made other than in person. This includes;

- In urgent circumstances, for example; the inspector is aware that evidence is currently being destroyed, or
- Other special circumstances, for example; the inspectors' remote location.

sch3(10)(1)(f)

A warrant application must be prepared as detailed above in section 4.3 before applying to the Magistrate for the warrant over the phone. It is recommended that contact is made with the court prior to making the phone application to allow the court to prepare a magistrate and enable them to review section 149 of the *Fisheries Act 1994*.

A phone call may then be made to the Magistrate and the prepared application may be read over the phone. The Magistrate may require further information and this should be noted. The Magistrate will then request an affidavit be made to swear the application.

If the application is approved the magistrate must then fax a copy of the signed warrant to the Inspector. If this is not possible the magistrate must tell the inspector;

- The terms of the warrant and,
- The date and time the warrant was signed and,
- The reasons for issuing the warrant.

The Inspector must then;

- Complete a form of warrant (**warrant form**) with the terms outlined by the Magistrates and
- Write on the 'warrant form' the name of the Magistrate and the date and time the Magistrate signed the warrant.

Please note that the 'warrant form' is the permission for the entry to the place and the exercise of powers at that place. Once the warrant has been executed, the 'warrant form' must be provided to the Magistrate along with the sworn application so that it can be attached to the original warrant issued by the Magistrate. sch3(10)(1)(f)

4.6 EXECUTION OF WARRANT

Neither Section 148 nor any other Section within the Act nor any provision in any other Act describes the obligations upon Inspectors as to the execution of a search warrant. However, a standard operating procedure has been developed.

A [Statement to Occupier](#) template has been developed to assist Officers in advising persons subject to the warrant of their rights and responsibilities.

Prior to executing a warrant, and conducting a search of the place or boat, subject to the warrant, and in accordance with the warrant, the following matters should be considered:

- Familiarity with the premises to be searched;
- A briefing of all who are to assist;
- Identification of the residence or tenants or occupiers believed to be in the place or boat;
- Identification of any possible dangers;
- The need for assistance, for instance the presence of QPS Officers;
- Planning the search;

- Gaining entry by obtaining co-operation of the resident or persons in occupation if possible; and
- The use of reasonable force only if necessary;

Remember to show the warrant to the occupier and read it aloud to the occupier.

Section 148(5)(a) states that an Inspector may with necessary and reasonable force enter the place or board the boat the subject of the warrant.

sch3(10)(1)(f)

Once entry is gained, a search should be conducted in accordance with the terms of the warrant and consideration given to the following matters:

- Taking notes of any conversations, actions taken and the date and time commenced and concluded in the Officer's official notebook;
- Using digital recording devices and video recording the search;
- Behaviour of Inspectors, i.e. professional and non-aggressive;
- Searching in a systematic manner;
- Recording of all items seized, the exact location from which it was seized and by whom seized. Seizure receipts must be given;
- Ensuring, where possible, the presence of the occupier of the place or boat;
- Sketches and/or plans and/or photographs of the location of the item or the item in situ may be of great assistance at a later time;
- Searching only those places authorised by the warrant;
- Minimising physical and emotional disturbance;
- Leaving the place or boat in the condition in which it was found (as is reasonably possible);

- Engaging the assistance of the number of Inspectors and persons required to assist to execute the warrant safely and effectively.

The above considerations are equally applicable to searches conducted pursuant to a warrant or with the consent of the occupier of the place or owner or person in charge of the boat.

4.7 STANDARD PROCEDURE FOR SEARCH FOR AND SEIZURE OF EVIDENCE UNDER WARRANT

To provide some general guidance, the following procedures and recommended evidence collection techniques relate to search and seizure of evidence under warrant.

4.7.1 Designated roles

- **Case Officer**

The Case Officer (CO) is in charge of the operation and is responsible for briefing all personnel involved in the operation. The CO may be the Warrant Holder if only one place is being searched. If more than one place is being searched simultaneously, involving a number of teams, the CO should be responsible for overall coordination of the operation and assume a supervisory role. The CO will often be the Officer conducting the investigation giving rise to the search.

- **Warrant Holder**

The Warrant Holder is the person to whom the search warrant has been issued by the Magistrate. The Warrant Holder may be the Case Officer or Team Leader of the team assisting in the execution of the search warrant.

The Warrant Holder is responsible for executing the search warrant and controlling the overall warrant action, including allocating search areas. The Warrant Holder should, where practicable, be the only member of the team to converse with the occupier (i.e. owner, occupier, company representative, as the case may be)

If multiple warrants are being executed simultaneously, multiple warrant holders will be required.

- **Search Officers**

It is critical that the Search Officers (SO) carry out the search in a systematic approach and document their actions accurately, including any conversations held, places searched and evidence seized. Although it may be desirable to have an Officer allocated to every role involved in a search, it is recognised that resources often limit the ability to fulfil this and the search Officer may be responsible for searching, photographing and appropriately dealing with evidence seized during the execution of the warrant.

The SO is responsible for the recording of all items seized during the course of a warrant. The SO will have possession of appropriate recording materials such as cameras, an official notebook, a seizure receipt book and a [Field Evidence Seizure Kit](#). This kit includes Located Evidence Slips, a Field Sketch template and a Seized Evidence List.

Upon entering the warrant premises, the SO should:

A: Make relevant notes in their official notebook including:

- list of all persons present;
- time of entry to the premises;
- time search commences;
- time a significant item of evidence is located;
- photographs taken; and
- time search concludes.

B: Complete a Field Sketch

Searchers and designated search areas may be allocated by the Warrant Holder and the field sketch will assist in identifying these allocated areas.

When items of evidence are located, the SO is to ensure that the item has been formally identified in a predetermined manner, generally by attaching a consecutively numbered tag or sticker to the item and completing a Located Evidence Slip. This procedure is beneficial in the case were numerous items are seized during the search.

The SO will record the details of the item seized on the Seized Evidence List. These details must correspond to the Located Evidence Slip.

At the completion of the search, the SO will ask the occupier to complete the relevant section on the bottom of each page of the Seized Evidence List. The CO or SO will then complete and give the occupier a Seizure Receipt.

4.7.2 Documentary procedures

The success of any search and seizure action will be enhanced by the Officers involved proceeding in an ordered way, involving Officers performing designated roles (as above) and properly recording their activity.

The field evidence seizure kit has been designed to assist with recording activities the continuity of any seized evidence.

Separate forms are to be used for each activity (warrant) or premises.

Labels will also be required to identifier an item.

sch3(10)(1)(f)

- **Located Evidence Slip**

Located Evidence Slips are separate and will be completed by the SO on locating an item of evidence. The large white plastic identification tags currently used by QBFP to identify seized items can be used for this.

- **Field Sketch template**

Depending on the circumstances of the search, these will be completed by the SO. There is provision on the template to record completing Officer's details. Searchers who do not use one of these templates may make a Sketch of their immediate search area in their official notebook when appropriate.

- **Seized Evidence List**

The Seized Evidence List (SEL) is completed by the SO. There is provision for the signature of the occupier, confirming the content of the SEL. The SEL also provides, amongst other things, a description of the item seized, which Officer located the item and the specific location of the item seized.

At the completion of the search a seizure receipt will be completed detailing all the items on the SEL and issued to the occupier.

As with all seizures the items must be entered in the seized evidence register used by the District, see [Chapter 1](#) for more details.

CHAPTER 5

INTERVIEWING

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5 INTERVIEWING

5.1 INTRODUCTION

This chapter provides a background to interviewing witnesses and suspects during an investigation and explains the process of obtaining statements and conducting formal records of interview as a means of gathering evidence.

Interviewing, whether of a witness or a suspect of an alleged offence, is a critical skill in investigations. Interviewing is the process of listening and talking to people in order to find out what happened in an incident and record these findings as an accurate version of events.

Although many of the principles of an interview are the same, they can be separated into two different types – the *witness interview* (which in most cases translates into a statement) and the *suspect interview*, generally known as the record of interview.

Suspect Interview

Formal, structured
Afford natural justice and 'caution' when it has been established that an offence has been committed
Establish suspect's account of matter under inquiry
Voluntary
In own words of suspect
Copy supplied to suspect
Forms part of Brief of Evidence

Witness Interview

Formal, structured
'caution' is not administered
Assist proving elements of an alleged offence or to negate defences
eg: Botanist – ID Marine Plant
Eye Witness of incident
Voluntary
In own words of the witness
Copy supplied to witness
Forms part of Brief of Evidence

An interview with a suspect has many similarities with a witness interview. Both formats require thorough preparation and planning to identify the purpose of the interview and determine appropriate content and lines of questioning. A progressive evaluation of information received during the interview is also essential to maximise the amount and quality of information obtained. Obviously, the two formats may also possess differences in the level of formality, methods used to obtain and record information, and the rights of the interviewee for example, the witness does not need to be cautioned in the process of making a statement.

Interviews should be conducted in a structured and fair manner with an emphasis on portraying a professional image of the Inspector and the Department.

5.2 INTERVIEWING PREREQUISITES

- Investigator commands communication/listening/analysing skills;
- Investigator explains the purpose and content of interview; and
- Investigator has knowledge of what is required to be proved to establish that an offence has been committed.

The interview process may also:

- Identify the offence;
- Identify other suspects;
- Reveal further offences not already detected;
- Obtain adoption of documents or other potential exhibits; and
- Negate possible defences.

It is vitally important that Inspectors ensure that all interviews are conducted with fairness and equity and with the requirements of relevant legislation.

Interviews are used to obtain witness statements; this subject is covered in [Chapter 6](#).

5.3 INTERVIEWING OF SUSPECTS

The process starts when an Officer elects to speak to a person about a possible legislative breach. The manner by which an interview is recorded will depend on the situation and the resources available.

An Officer will introduce themselves to the person and produce their authority. The Officer will engage in a conversation to ascertain if an offence has occurred. This conversation should be recorded in some medium i.e. notebook (see [Chapter 3](#)) or digital recorder (see [Chapter 5.10](#)). See [Pointers for Interviewing Suspects](#) for additional information.

sch3(10)(1)(f)

If the Officer elects to conduct a further conversation with the person with the view of proceeding by way of prosecution brief, the Officer will inform the person that they wish to conduct an interview about the matter and will enquire whether the person is willing to participate in an interview. This interview will be recorded in an official notebook or by digital recording.

If the interview is electronically recorded, ensure that the conversation has in fact been recorded and the audio quality is acceptable. If the recording is to be used as evidence i.e. as the official record of interview, the person must be made aware that the conversation is going to be taped. The suspect has the right to obtain a copy of the recording and this should be provided as soon as practicable if requested.

If the interview is recorded in the official notebook, writing must be legible see [Chapter 3](#) for details. The suspect should be offered the opportunity to read the notes and sign the end of the record as being true and correct.

Alternatively the Investigating Officer can elect to interview the person at their office and record the conversation on a triple deck recorder.

When commencing an interview, an Inspector should explain to the suspect:

- The purpose of the interview including any allegation
- The form of the interview (Notebook/digital recording)

Approval does not need to be sought from the suspect with respect to how an interview will be structured. However, in the interest of procedural fairness, the Inspector should inform the suspect of the interview process.

A suspect cannot be forced to answer questions during an interview. Everyone is entitled to the right to silence and a suspect does not need to take part in an interview if he or she does not wish to do so.

Digital recorders are regularly used by Officers while speaking to persons about alleged breaches, however if the Officer intends to use the recording as primary evidence, the person must be advised that the conversation is being recorded.

Recording interviews with suspects by digital means has a number of advantages:

- Provides an impartial account of the interview;
- Captures the suspect's verbal demeanour;
- Displays fairness and equity;
- Improves interviews skills and techniques;
- Protects the Inspector against complaints; and
- Enhances the Inspector's credibility.

Before commencing an interview with a suspect, an Inspector should prepare for the interview by gathering as much evidence as possible in support of the commission of the offence. This evidence gathering may be the result of personal observations, the result of information obtained from witnesses, or a combination of both. A good Investigating Officer should be aware of all available means of information before commencing the interview process. It should be remembered that the Officer may have only one opportunity to interview a suspect over an alleged offence, e.g. – suspect may agree to a conversation in the field but decline offer to participate in a record of interview in a more formal setting.

Interviews should be managed so that the least number of people are present. If possible, the chosen venue should be one where the level of distraction will be minimal. If something happens that causes an interview to be interrupted, a note should be made of the suspension and resumption times.

An Inspector should conduct an interview with a suspect in the presence of a corroborating Officer.

The Investigating Officer will ask the majority of questions and manage the progress of the interview. The corroborator should keep track of the questions to ensure that each element of the offence is covered. Before the conclusion of an interview, the investigating Inspector should ask the corroborator if there are any further issues that need to be addressed.

Interviews of suspects for offences for which an infringement notice may be issued are usually recorded in a notebook/digital recorder or on reverse of the prosecution copy of the notice. These interviews should be recorded at the time of the conversation actually occurring or shortly after an interview has finished while the conversation is still fresh in the memory of the Inspector i.e. contemporaneously.

When investigating offences against Commonwealth legislation, Inspectors must comply with the provisions of Part 1C of the *Crimes Act 1914 (Cwlth)*. This part provides for mandatory recording of interviews, formal cautioning of suspects prior to interviewing, time restrictions on interviews and statutory rights of suspects.

5.4 FORMAT OF AN INTERVIEW

Each interview will vary according to circumstances and complexities of the matter under investigation. As stated some interviews will be conducted in the field and others in the station as a formal record of interview.

When recording interviews with digital recorders it may be helpful to use the [interview pro forma](#).

5.4.1 Introduction

Procedural fairness requires that Inspectors should:

- Introduce themselves and produce ID when they intend to interview a suspect
- Explain the reason for the interview including any allegation
- Explain the process of the interview

An introduction to a suspect might be something like:

- My name is Inspector Black and this is Inspector White, this is my identification as an Inspector. I'm making enquires in relation to some damaged mangrove trees on the property. I'd like to ask you some questions about the damaged mangrove trees. I intend to record our conversation with a digital recorder. Do you understand?

- My name is Inspector White and this is Inspector Black, this is my identification as an Inspector. I'm making inquiries in relation to a marine incident that occurred in the Town Reach of the Brisbane River on 25 September 2007. I'd like to ask you some questions about this incident. I intend to record our conversation in my notebook. Do you understand?

5.4.2 Allegation

Inspectors should formulate an allegation, which should be put to the suspect. The allegation defines the matter under investigation.

An allegation might be something like:

- As I've previously mentioned, I'm making inquiries in relation to damaged mangrove trees. I suspect that you may be a person involved in the damaged mangrove trees. Do you understand what I've just said to you? What can you tell me about the matter?
- I've measured these male mud crabs in your presence and they were all less than 15 centimetres across the carapace. There were found in your possession. What can you tell me about the matter?

For simple investigations, an Inspector may combine the introduction and the allegation into one single opening statement.

- My name is Inspector Black and this is Inspector White. You've just told me that you don't hold a license to drive a boat. I have conducted some searches that indicate that you do not hold a current marine license. I'd like to ask you some questions about this. I intend to record our conversation in my notebook. Do you understand?

5.4.3 Personal particulars

The personal particulars of the suspect are sometimes termed the suspect's antecedents.

Generally, these particulars should be obtained at the earliest available opportunity.

It is an offence under Section 171 of the *Fisheries Act 1994* for a person not to provide their name and address if that person is found offending or there is reasonable grounds to suspect that person has committed an offence against the Act. See [Chapter 1](#)

Questions might include:

- What is your name?
- What is your address?
- What is your date of birth?
- Where were you born?
- What is your occupation?
- Who is your employer?
- What is your position in the company? (If applicable)
- Do you hold any delegations or authorities in your business?
- Where do you work?
- How long have you worked there?
- What level of education did you reach?
- How well do you understand the English language?
- Can you understand what I'm saying?
- Can you read and write the English language?

5.4.4 Applying natural justice

Before the interview continues further the Investigating Officer should advise the suspect of their rights and issue an official caution (see [5.7](#)). The suspect should be asked if legal representation is sought or if they would like a friend or relative to be present.

5.4.5 Reference to prior events and conversations

If applicable, Inspectors should make reference to events and conversations that occurred prior to the formal interview process.

sch3(10)(1)(f)

sch3(10)(1)(f)

5.4.6 Body

The body of the interview is the substance of the interview. This is where the suspect is invited to provide:

- an account of an incident
- an explanation for their actions
- an explanation for exhibits that might be introduced.

As stated earlier, it is essential that the Investigating Officer knows the elements of the offence, which they are investigating. The interview should cover these elements and explain points of issue. If a suspect makes denials or appears to be untruthful, the Inspector should attempt to clarify these matters or corroborate the suspect's claim.

5.5 TYPES OF QUESTIONS

Different types of questions can be used during an interview.

sch3(10)(1)(f)

sch3(10)(1)(f)

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[redacted] They should tell the suspect what was seen or done, and then invite the suspect to answer the allegation. [redacted]

sch3(10)(1)(f)

5.6 NEGATING DEFENCES

Negating defences is as crucial as proving the elements of the offence and establish that the suspect's actions were unlawful.



5.7 CAUTION

sch3(10)(1)(f)

There are two cautions that can be used by QBFP Officers, one for State offences and the other for Commonwealth offences. The wording of the cautions is similar though the intent is the same - they convey to a suspect of his or her right to silence.

The wording of the formal caution to be used for State matters is taken from the *Police Powers and Responsibilities Regulation 2000* and is as follows:

'Before I ask you any questions I must tell you that you have the right to remain silent. This means you do not have to say anything, answer any question or make any statement unless you wish to do so. However, if you do say something or make a statement, it may later be used as evidence.'

Do you understand?'

If an Inspector decides to administer the formal caution, they must be sure to obtain an acknowledgment from the suspect, which indicates that the suspect actually understands the effect of the caution.

5.8 CLOSING QUESTIONS

Inspectors should provide the suspect with an opportunity to state anything further in relation to the same matter under investigation. In some instances the suspect will indicate remorse for their actions. Inspectors should also attempt to establish that the suspect participated in the interview of his or her own free will, was not coerced into participation, and was satisfied with his or her treatment.

Closing questions might include:

- Is there anything further that you would like to tell me about this matter?
- Have you answered my questions of your own free will?
- Was any threat made to you so that you would answer my questions?
- Was any promise given to you so that you would answer my questions?
- Was any inducement offered to you so that you would answer my questions?
- Are you satisfied with the way in which I've treated you?

5.9 ADOPTION OF HAND WRITTEN INTERVIEW

If using an official notebook, the Inspector should attempt to have the suspect read and adopt the notes of the conversation and any associated events.

sch3(10)(1)(f)

5.10 USE OF DIGITAL RECORDING DEVICES

It is acknowledged that the use of digital video or voice recordings can provide protection for Officers against vexatious complaints and ensures a more accurate record of interviews and corroboration with conversation recorded in the Officer's notebook.

Under Section 43 of the *Invasion of Privacy Act 1971* (IPA) a person is not guilty of an offence under this Act if the person using the device is a party to the conversation [S43 (2) (a)].

Section 45 of the IPA does not prohibit the use of this recording once it has been made due to the proviso in S45 (2) (b).

The *Information Privacy Act* governs how the Department gathers, uses and discloses personal information. The Department is required to comply with this Act.

5.10.1 General use in the field

The QBFP Officer recording the interview/conversation must be “a party to” the interview/conversation.

All uniformed QBFP Officers and QBFP Investigators are required to record all ‘in-person’ client conversations while on duty using a body worn video (BWV) device for field interactions. All client interactions in the office must also be recorded; an Officer may elect to use a digital voice recorder (DVR) instead of a BWV for interactions in the office. Corroborating Officers not involved in, but still a party to the conversation are also required to record the interaction. Recorders are to be activated (turned on) prior to the commencement of any interaction. The recorded interactions are to be uploaded as soon as practicable with normal procedure resulting in uploading each day. Initial purchase cost of BWV will be a head office cost with any replacement costs the responsibility of the district.

An interaction should be regarded as distinct to any formal interview conducted with offenders with a view to taking prosecution action.

5.10.2 When recording interviews

If the QBFP Officer intends to rely on a recording as evidence it is advisable that this should be used in conjunction with an official notebook. This allows for its greater reliability and admissibility by the Courts. A caution should be issued if the Officer reasonably suspects the interviewee may have committed an offence. [sch3(10)(1)(f)]

Sometimes it may be preferable that digitally recorded interviews are transcribed. A synopsis of interview will suffice in most instances.

The preferred method for recording interviews is on a digital triple deck recorder.

5.10.3 Downloading and Storage

A critical Privacy consideration when recording interactions is to ensure that they are stored in a secure manner. []

TRIPLE DECK RECORDERS

If a triple deck recorder is used, the Investigating Officer should be able to immediately provide the interviewee with a copy of the recording. It should be verified that the audio has recorded correctly by playing back to ensure all voices are recorded.

One copy is for the interviewee, one to be included in the brief of evidence and the other must be secured to provide evidence (if necessary) that the recording has not been tampered with. A [master tape register](#) can be used for recording the storage of recordings.

A [tape identifying sticker](#) is available for identifying discs used. The interviewee should be asked to sign a receipt for the recording, however even if they refuse to sign the copy must be provided.

It is a manufacturer's requirement that digital triple deck recorders are serviced every twelve months. It is the Districts responsibility to ensure triple deck recorders are kept and maintained in accordance with manufacturers' specifications.

5.11 SPECIAL CONSIDERATIONS

5.11.1 Aboriginals and Torres Strait Islanders

For best practice purposes s420 of the *Police Powers and Responsibilities Act 2000* should be considered when proposing to interview a person who identifies as an Aboriginal or Torres Strait Islander. Firstly, with regard to the person's level of education and understanding, if it is reasonably suspected that the

person is at a disadvantage in comparison with other members of the Australian community generally, the Investigating Officer should allow the suspect to contact a legal practitioner, for eg. Aboriginal legal services.

Secondly, Aboriginals and Torres Strait Islanders must be provided with access to a support person. Questioning must not commence unless the person has been allowed to confer with a support person in private (where possible). The support person must also be present during the interview. It should be noted that a person can expressly and voluntarily waive the right to a support person. However, this waiver must be recorded either in written or electronic form.

It should be noted that Part 1C of the *Crimes Act 1914* (Cwlth) provides that Aboriginal persons or Torres Strait Islanders should not be interviewed for period of longer than 2 hours in each 48 hour period. For both State and Commonwealth matters this time frame must be adhered to.

5.11.2 Interviewing person under 17 years of age (State legislation)

Children under 17 years of age must be offered a support person. Similar to above, questioning must not commence unless the child has been allowed to confer with a support person in private (where possible). The support person must also be present during the interview.

A suitable support person for a child includes the following:

- A parent or guardian;
- An adult friend or relative acceptable to the child;
- A legal practitioner acting for the child; or
- In the absence of any of the above, a Justice of the Peace.

sch3(10)(1)(f)

5.11.3 Interviewing persons under 18 years of age (Commonwealth legislation)

QBFP Officers must comply with the provisions of section 23K of Part 1C of the *Crimes Act 1914* (cwth) when conducting interviews with suspects under the age of 18 years in relation to offences against Commonwealth legislation. Again, if an Officer believes on reasonable grounds that the suspect for an offence is under the age of 18 the Officer must not interview the suspect unless

an interview friend is present. An interview friend includes those persons listed above.

5.11.4 Language barriers

If it becomes apparent that a person may have difficulty with English and requires an interpreter then the interviewing Officer must arrange for the presence of an interpreter. Questioning must be deferred until an interpreter is present.

An interpreter should meet the following conditions:

- Be accredited where possible. Failure to use an accredited interpreter may result in the interview being held inadmissible by a Court.
- Independent of the matter under investigation;
- Aware of the obligation to translate the exact words used by the investigator and the interviewee; and
- Must not impede or distort the communication.

All conversations with the interviewee involving the use of an interpreter must be recorded in accordance with normal procedure.

CHAPTER 6

STATEMENTS

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6 STATEMENTS

6.1 INTRODUCTION

As part of the evidence gathering process, Officers may be required to obtain statements from witnesses to an offence or to compile a statement themselves detailing the chronological order to their investigation.

A witness statement should accurately reflect what the person being interviewed wants to say and commit them to a signed version of events. Formal statements are designed so that they can be used as evidence in a court of law.

A statement may also:

- Reduce or eliminate the number of times the witness is required to attend court to give oral evidence in the witness box.
- Help witnesses at a later date to refresh their memory about a particular matter.
- Provide information for management to help them make decisions about how to deal with the offence/complaint.
- Be used by police, prosecutors or other investigators that the matter has been referred to.
- Be used against the witness by the offender/person or his or her legal representatives. This may occur where the witness has made other statements which contradict all or part of the statement; or where the witness, in oral evidence before the court, gives evidence additional to that which is contained in the statement, leading to the suggestion that new evidence is untrue and of recent invention.

The court may not allow evidence additional to the statement to be given. It is therefore essential that all relevant evidence is included in the statement.

6.2 WHAT IS A STATEMENT

A witness statement may be defined as the oral testimony of a witness which has been reduced to written form. Statements are required by the Investigating Officer and their corroborating Officer outlining their involvement in each alleged offence. A written statement from the corroborating Officer supports the presumption that the evidence has been obtained independently and objectively.

As part of the evidence gathering process, Inspectors may be required to obtain statements from potential witnesses to an offence. A witness is a person who has some knowledge of the matter being investigated. Witnesses may be actual eyewitnesses to the incident or another relevant person. It is the investigator's responsibility to identify any witnesses and obtain relevant information from them.

The statement should be a comprehensive record of what the witness saw, heard, did, touched or smelt.

A witness to an offence could include a person who:

- actually witnesses the commission of an offence;
- can help establish one or more elements of an offence;
- can provide evidence essential to the prosecution case; or
- is an expert in a particular field.

The purpose of a witness statement is to support an investigation by recording the version of an event as related by a witness.

If the Inspector has not witnessed the commission of an offence, the statement of a witness can be essential to an investigation, in a sense to complete the pieces of a jigsaw (prove elements of offences, negate testimony of the suspect).

Statements should only contain information that is relevant to the offence under investigation.

Remember that an investigation is a search for the facts. Often the witness who provides a statement does not have a complete knowledge of the circumstances of the matter under investigation.

It is not necessary for a statement to address every element of an offence.

Sometimes a statement may include information which suggests that the potential witness has no knowledge of the offence at all. In this instance, the statement could be used to discredit the evidence of the witness if that person is subsequently called at a trial as a witness for the defence.

Statements should be obtained from witnesses at the earliest opportunity while events are still fresh in their memory. Inspectors may draft statements in their official notebook, in an exercise pad, or directly into the computerised form.

However, regardless of the method that might be used, the completed statement must be typed.

A statement must reflect the oral testimony of the witness. If the witness talks in a particular way, this is the way in which the statement should be written. Inspectors should control to a large extent the format of the statement. However, they must not write statements for witnesses in their own words. It must also be remembered that a witness cannot be forced to make a statement. All statements must be obtained voluntarily.

6.2.1 Format of Statement

Similar to interviews, every statement will vary according to the circumstance of the investigation. However Inspectors must ensure that statements are obtained in such a manner that all relevant information is included.

The following format should be used as a guide when obtaining a statement from a witness. This format is reflected in the template for [Statement of Witness](#). There is a slightly different template for [Inspector's statements](#).

6.2.2 Header

At the top of the statement should be the header. The header contains:

- the words Queensland Boating and Fisheries Patrol and the QBFP logo;
- date the statement was prepared;
- name of the witness;
- date of birth of the witness;
- age of the witness;
- occupation of the witness; and
- the details of the Inspector taking the statement.

The address and telephone number of a witness should not be given to a defendant's counsel. It is sufficient for an Inspector to state that the witness's address and telephone number are known to the Inspector.

6.2.3 Introduction

The opening paragraphs of the statement should introduce the witness and describe his or her employment details. For an *expert witness*, the introduction must also include information that supports the credibility of the witness before the court. The Inspector must ensure that qualifications, experience, or both, are included in the introduction to the statement. If they do not, observations or opinions that the expert witness can make or express could exclude from evidence that the witness can give.

For example, if the matter under investigation relates to damage of marine plants, and the expert witness holds the degree of Bachelor of Science, it is crucial that the qualification and the experience of the witness are fully explained in the introduction of the statement.

6.2.4 Preamble

The preamble of the statement should include facts obtained from the witness that lead to the main body of the statement. For example, the preamble might describe:

- Where the witness was;
- When the witness was there;
- What the witness was doing; and
- Who the witness was with.

6.2.5 Body

The body of the statement is the main part of the statement. It should record in a logical sequence, all relevant information that the witness can give in relation to the offence.

To assist with this process, Inspectors should ask witnesses open questions about their knowledge of the offence. The answers to these questions will provide the basis for the body of the statement.

To be successful in obtaining the relevant information Inspectors must know the elements of the offence to which the statement relates and the value that statement has towards proving an element of the offence under investigation

No two investigations are the same and statements from witnesses will address many different issues. However, issues that may be covered by a witness in a statement might include:

- time, date and place of events;
- location of the witness at the time of these events;
- reason why the witness was at the location of a particular event;
- any events that occurred prior to the commission of the offence;
- description of the event under investigation;
- full description of the suspect;
- description of the suspect's actions;
- description of anything that happened as a result of an event;
- any conversations between the witness and the suspect;
- description of any other person who was present at the time of any event;
- description of any vessels or vehicle etc.; and
- other issues relevant to the investigation or which can provide for further avenues of inquiry.

Statements are not structured like interviews which record the investigator's questions and the suspect's answers.

Statements from a witness should be a narrative prepared in the first person past tense.

If a witness cannot recall the exact words of the conversation with a suspect, the conversation should be introduced with the words 'I said something like... and he said something like...', or 'I said words to the effect of... and he said words to the effect of...'.

When preparing a statement, whether for a witness or even for him/herself, the Inspector must always adhere to the rules of evidence with respect to hearsay opinion and character. Where 'hearsay' or other evidence believed to be inadmissible needs to be included to provide a link or explanation for certain actions, that information should be included in (*brackets and italics*). See [6.10](#) for further information.

Do not use the words ‘defendant’, ‘offender’ or ‘accused’ in the statement. Use the names of person as the witness uses them with an explanation (i.e. the full name or description) the first time it appears.

Statements must be typed with at least one and a half line spacing.

6.2.6 Conclusion

The conclusion of the statement should address any points previously covered. This might include clarification on an issue raised within the body of the statement.

6.2.7 Jurat

A Justice of the Peace is **not** required to witness the making of a statement under the provisions of the *Justices Act 1886* though the witness is required to sign the Jurat.

A Jurat is a certificate at the end of a statement, which indicates the circumstances under which a statement was made, and the person signing it attests to the accuracy of the contents of the statement.

In Queensland, the *Justices Act 1886* provides for the following Jurat at the end of a statement:

I acknowledge by virtue of Section 110A(6C)(c) of the Justices Act 1886 that:

1. This written statement made by me dated..../.... /.... and contained in the pages numbered 1 to ... is true to the best of my knowledge and belief, and
2. I make this statement knowing that, if it were admitted as evidence, I may be liable to prosecution for stating in it anything that I know is false.

Signature.....

...

Signed at.....this.....day20__

6.2.8 Signature

The witness should read over the statement to ensure that it records an accurate account of his or her knowledge of the offence. Once satisfied with the contents, the witness should sign the statement beneath the final paragraph. The investigating Inspector should also sign the statement as a witness to the signature of the witness.

If the statement consists of a number of pages, the witness should sign each page of the statement.

The original copy of the statement is to be held by the investigator. The witness should be given a copy of the statement so that they can refer to it should they be required for court.

6.3 UNSIGNED STATEMENT

If a witness is prepared to speak to you about a matter, but is not willing to provide a formal statement, you should take detailed notes for further reference. If the person agrees, ask them to sign the notes to acknowledge that they are accurate.

Try to write the notes while you are speaking to the person or as soon as possible afterwards. The date and time of the conversation should be recorded, as well as the date and time that the notes were written up.

There may be occasions that a witness refuses to sign a statement. The investigator should record all the information that the witness has supplied and document the time/date of signature refusal.

sch3(10)(1)(f)

6.4 ADDENDUM STATEMENT

There are occasions when a witness wishes to change or add to a statement. This can occur for a variety of reason, for example – the witness wants to put more information in the statement, remembers further details, or realises they have made a mistake. Once the statement is signed any subsequent changes should be made in the form of an addendum statement. Both the original statement and the addendum statement is documentary evidence. The addendum statement simply explains the changes or additions to the original statement. The introductory paragraph should link it to the original statement. For example:

This is an addendum statement to a statement, which I signed and dated on (date) in relation to (description of incident).

The addendum statement must be clearly labelled as an addendum statement.

**Do not re-do the original statement when incorporating changes,
always use an addendum statement.**

6.5 NEGATIVE OR ‘TIED’ STATEMENTS

A negative or tied statement is a statement outlining the limit or lack of knowledge a person has about an incident. If a person indicates that they are unable to assist in an investigation it may be appropriate to obtain a statement from them

sch3(10)(1)(f)

6.6 ANNEXURES AND EXHIBITS

When preparing statements you should include, as annexures, a copy of any documents referred to in the statement. A witness may be shown a document or thing and they may be asked to identify it or explain it if the document or thing should be referred to in the following manner:

I NOW PRODUCE THE (Description of the document or thing) SHOWN TO ME BY.... ; OR CREATED BY ME IN THE COURSE OF MY DUTIES; OR HANDED TO BY...ON ETC.)

A copy of the annexure should be clearly marked, usually at the top of the page, Annexure ‘...’. **Never mark the original document.**

Sometimes a witness may have made contemporaneous notes of an incident. If those notes are referred to in the statement they will be produced by the witness.

If a statement makes reference to a potential exhibit, the continuity of possession of the potential exhibit must be explained. For example, if the witness delivered an exhibit to someone else, the statement should record the delivery, together with a full description of the exhibit.

If an Officer delivers an exhibit to a witness for the purpose of analysis reference should be made of the exhibit number and when it was received from the Officer and returned.

6.7 CHILDREN

When obtaining a statement from a child, that is, A person under the age of 17 years (State matter), or a person under the age of 18 years (Commonwealth matter), the Officer should obtain permission from the parent, guardian or a responsible adult, see [Chapter 5.12.2 and 5.12.3](#). The Officer should also endeavour to have that person present during the process. In circumstance involving serious matters, the Officer should consider requesting assistance from QPS (Juvenile Aid Bureau)

Where an Officer obtains a statement from a child, the parent or guardian or responsible adult should be asked to co-sign the statement if they were present when the statement was taken.

6.8 HOSTILE WITNESSES

Where a witness becomes hostile, seeks to be uncooperative, or it is anticipated that they will be hostile; two Officers should speak with the witness. Where possible, a female witness, particularly a hostile female witness, should be spoken to in the presence of a female Officer.

6.9 INTERPRETERS

If the witness speaks little or no English, or is deaf, then the statement should be taken using an interpreter. Except in cases of emergency, you should not ask a relation or friend of the witness to interpret.

A statement will have to be taken from the interpreter stating his or her qualification and reciting the fact that they translated from the other language into the English language and from English language into the other language

6.10 HEARSAY AND OPINION

6.10.1 A brief explanation

The laws of evidence make provision for the type of evidence which a witness can give in court and the manner in which it can be given. Thus, when taking a statement from a witness, you should try to comply with those laws so that inadmissible material is not included in the statement.

6.10.2 Hearsay

Hearsay is not usually admissible as evidence in criminal proceedings. What is hearsay? In its simplest terms, it is what someone else has been heard to say about an event. The fact that the person made such a statement is not admissible in evidence if the purpose of the evidence is to prove the existence of the event contained in the statement. An example of this form of hearsay would be as follows:

John is the witness.

Peter is the suspect.

John's statement contains the following:

"I told my mate Steve that I saw Peter harpoon Mingaloo."

That statement is inadmissible if the purpose of it is to prove that Peter harpooned Mingaloo. Generally the Court will not be interested in what John told other people. The Court wants to hear from John what he witnessed for example,

"I looked over the transom and I saw Peter hurl a two metre harpoon into the back of a white whale."

That statement would be admissible in a charge of killing a protected animal.

A more obvious example of hearsay, using the same scenario, would be a statement from Steve to the following effect:

"My mate John told me that he saw Peter harpoon Mingaloo."

The statement would be inadmissible if its sole purpose was to prove that Peter killed a protected animal. The fact that a witness (John) tells other people (Steve) what he saw does not make it any more true or reliable. Steve's evidence would be inadmissible.

The most common exception to the hearsay rule is statements made by the suspect to another person. These may take the form of admissions of improper conduct, admissions of certain facts, full or partial confessions. These statements are generally admissible against the person on the basis that people do not make statements against their own interest unless such statements are true. An important assumption included in that general rule is that the person making the statement made it freely and voluntarily and not through trick or inducement. If that is not the case, then as a general rule the evidence will not be admissible.

sch3(10)(1)(f)



6.10.3 Opinion

As a general rule, a witness should not include expressions of opinion about something or someone in his or her statement, unless the witness is an expert who is requested to provide an expert opinion on an issue. There are exceptions

Evidence of an opinion may be admissible if it is based on what a person saw, heard or perceived about a matter, and the opinion is necessary to obtain an adequate understanding of the witness's perception of the matter.

For example, it may be appropriate to say "he looked angry" however, the reasons why the witness comes to that view should precede the opinion for example, "he was stamping his feet, banging the desk with his fists and was red in the face. He looked angry."

In other cases, a witness may be able to express an opinion about something even though he or she is not an expert, but through life experience has acquired considerable practical experience about the issue. For example, a person who has many years driving experience might be allowed to express a view on the speed at which a vehicle was alleged to have been travelling.

sch3(10)(1)(f)

6.11 OBTAINING INDUCED STATEMENTS FROM ACCOMPLICES

An induced statement is a self-incriminating statement that is made by an accomplice on the belief that the statement will not be used as evidence against the accomplice.

sch3(10)(1)(f)

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CHAPTER 7

BRIEFS OF EVIDENCE

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7 BRIEFS OF EVIDENCE

7.1 INTRODUCTION

The Brief of Evidence is one of the most important facets of work performed by QBFP Officers. The 'Brief' is the summation of an investigation or inquiry presented to management within the Department and it may later be subjected to scrutiny by judicial review.

The Brief of Evidence is used by In-house Legal to make an informed decision whether or not to institute proceedings. It could also be considered an indication of a QBFP Officer's quality of work, professionalism and ability.

Briefs of evidence can now be submitted in a shortened format (summary brief) or complete format (full brief of evidence). Regardless of the format, a full brief is required if an accused elects to have matter contested in court, allowing In-house Legal access to full disclosure of the alleged incident/s and evidence.

7.2 WHAT IS A BRIEF OF EVIDENCE

The Brief of Evidence should detail:

- All known facts;
- The probable offence/s;
- The identity of the offender/s;
- All available (admissible) evidence which may include the following:
 - Witness statements (see [Chapter 6](#))
 - Exhibits (see [Chapter 3](#))
 - Records of Interview (see [Chapter 5](#))
- The method used to commit the offence (*Modus Operandi*).

The brief should detail sufficient information that In-house Legal can determine whether a prosecution should be launched.

sch3(10)(1)(f)

7.3 WHEN SHOULD A BRIEF OF EVIDENCE BE COMPILED

- For all matters investigated under the fisheries and marine legislation that warrants prosecution action.
- When the recipient of an infringement notice elects to have the matter heard by a magistrate.
- When the matter under investigation is an offence under commonwealth legislation.
- If the District Manager/Officer or Senior Compliance Officer directs that a brief of evidence should be compiled.

7.4 WHAT SHOULD BE INCLUDED IN A FULL BRIEF OF EVIDENCE

- 7.4.1 Brief of Evidence Cover Sheet
- 7.4.2 Index to Brief
- 7.4.3 Brief of Evidence checklist
- 7.4.4 Statement of Facts
- 7.4.5 Observations to Prosecutor
- 7.4.6 Witness/Exhibit List

-
- 7.4.7 Statements (investigators, corroborators, expert or ordinary witnesses)
 - 7.4.8 Copies of recordings and interviews.
 - 7.4.9 Copies of exhibits or photographs
 - 7.4.10 Other relevant attachments
 - 7.4.11 CDPP Certificate of potentially disclosable material (commonwealth matters only).

Refer to the attached [Brief of Evidence](#), for an example of a complete Brief.

7.4.1 Brief of evidence cover sheet

There is a departmental [brief cover sheet](#). This sheet should be completed and attached to the front of the brief. Some of the particulars that can be recorded on the sheet are:

- Name and registered number of the Investigating Officer.
- Personal particulars of the alleged offender.
- Location of the alleged offence/s including the Magistrates Court district.
- Details of vessels and licences held.
- Any special instructions for example, a recommendation for an official caution, co-joint defendants etc. The information provided in this area should be short.
- Details of the alleged offence/s including the statute, section and short title.
- Details of seized fisheries resources or things.
- Details of measuring devices etc.

7.4.2 Index to Brief

There is a template for the [Index to Brief](#). This form briefly outlines the contents of the brief and includes:

- Defendant name, address, date of birth and occupation;
- Offence details;
- Brief Layout (Index);
- Statements attached; and
- Exhibits.

7.4.3 Brief of Evidence check list

The Brief of Evidence [check list](#) is completed by the Investigating Officer's supervisor when reviewing the brief. This is completed to acknowledge that the contents of the brief and the conduct of the investigation have been in accordance with agreed procedures.

7.4.4 Statement of facts

This will be a third person narrative of the facts of the alleged offence, for example, “*...Officers saw the defendant remove four mud crabs from the pot. Officers approached the Defendant and they saw...*”.

The Statement of Facts should logically explain the commission of the alleged offence and successfully connect investigators, suspects and witnesses with events, conversations and exhibits. It should provide as much detail as possible and include all relevant information relating to the proposed charges. The Statement of Facts can be half a page or run to a number of pages depending on the complexity of the matter.

It is a chronology of the alleged facts of the offence that constitute the physical elements of the offence, for example, “*...On Thursday 16 January 2029 Queensland Boating and Fisheries Patrol Officers were conducting a routine patrol on the Barron River at Redlynch, Cairns. About 1600 hours the Officers saw the Defendant, a man about thirty five years old with a shaved head wearing a bright iridescent green lycra fishing suit...*”, Elements such as time, date, place and description/identity are provided.

A synopsis of interview/s can be included at the end of the Statement of Facts. This highlights the relevant admissions or statements made during the record of interview with the defendant.

The purpose of a Statement of Facts is to give departmental Officers, other Inspectors and other interested parties a good overall appreciation of a case. Departmental Legal Officers examine the statement of facts during the adjudication process in order to decide whether or not proceedings for an offence should be commenced.

When a defendant pleads guilty to an offence, the prosecuting Officer may use the Statement of Facts to present the matter before the Magistrate's Court.

7.4.5 Observations to Prosecutor

The [Observations to Prosecutor](#) may include information which could be of assistance, for instance, to assist the decision maker with determining any public interest considerations.

sch3(10)(1)(f)

7.4.6 Witness/exhibit list

The [witness and exhibit list](#) identifies the witnesses involved in the case and the associated evidence (exhibit/s). The list also assists in showing what elements of the offence the exhibit seeks to prove.

Investigating Officers should be mindful of the following:

- Witnesses should be listed in the order in which their statements are placed in the brief.
- A witness ‘proves’ a document or other exhibit when they are able to produce a document or other exhibit in a hearing so that it is admitted into evidence.
- Exhibits should be listed in the order in which they are mentioned in the relevant witness statement proving the exhibit.

7.4.7 Statements (see Chapter 6)

Statements should only be included if they are relevant to the case. Original statements should be retained at all times by the Investigating Officer.

Statements should be presented in a logical and common sense way. This may be in the order in which the story of the offence unfolds, alphabetically or lumped together in categories, for example, the offence may involve illegal sales of fish to many buyers. The brief may have statements of the buyers all in one section.

Inspectors should be aware that any statements including those in draft form (unsigned) that are provided with the brief of evidence are likely to be disclosable to defence. Any concerns during the drafting process should be directed to the Senior Compliance Officer.

7.4.8 Transcript/s of recorded records of interview and copies of the recordings

A synopsis of the interview must be provided with the brief detailing the time of the recording where any requirements are made by the investigating Officer and/or any admissions are made by the alleged offender. A copy of the recording of any interviews and conversations must be provided with the original recordings or CDs being retained by the Investigating Officer.

A transcript of the interview is preferred but is not required with the brief of evidence unless it is known that the matter will be defended or is complex in nature and the transcript is required for reference. If a transcript is prepared it should be included in the brief.

In-house Legal may make a request for a transcript, if this occurs one must be provided as soon as possible. A transcription service may be used and costed to the district.

7.4.9 Copies of exhibits or photographs (see Chapter 3)

Again original exhibits or photographs should be retained by the Investigating Officer. Continuity and security are of paramount importance. Exhibits should be stored securely to rule out any accusations of tampering, manufacturing or creating evidence. Investigating Officers should be aware that badly secured or non -auditable storage of exhibits could affect their admissibility.

Copies should be attached to the brief that is sent for outside adjudication. Bulky exhibits or perishable exhibits should be photographed and the photograph attached to the brief.

7.4.10 Other relevant attachments

Other relevant documents can be attached to the brief of evidence. These will be introduced into evidence by the Investigating Officer his corroborator or one of the witnesses. Copies of warrants, certificates, receipts, dockets, and computer records have to be introduced into evidence by one or more of the witnesses.

7.5 SUMMARY BRIEFS

A summary brief is a shortened version of the full brief of evidence, containing a statement of facts that thoroughly outlines the prosecution case. In most cases summary briefs will be prepared in the first instance if a fisheries matter is serious enough to warrant prosecution action.

sch3(10)(1)(f)

In either format, the statement of facts and submissions presented to the court remain the same. The difference between the summary brief and the full brief is that statements are generally not required to accompany the summary brief. The documentation that is required to accompany a summary brief would be photographs, certificates (eg certification of measuring devices, formal identification of fishery resources, marine plants), recordings and seizure receipts.

7.6 LODGEMENT OF BRIEFS

When dealing with multiple defendants, there should be separate brief cover sheets for each defendant. As the majority of the material will be identical for each defendant the remaining information only needs to be supplied once.

Once the brief has been checked by the Supervising Officer and the Brief Checklist completed and signed, the brief should be saved in the district files

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7.7 CDPP DISCLOSURE POLICY

The [Commonwealth Director of Public Prosecutions Disclosure Policy 1998](#) requires the CDPP to disclose to the defence ‘potentially disclosable material’ which is material that may:

- Provide all inculpatory evidence (place the blame upon the defendant);
- Provide all exculpatory evidence (take the blame away from the defendant);
- Be relevant to the credibility or reliability of a person who is likely to be called as a prosecution witness; or
- Be adverse to the credit or credibility of the defendant.

Ordinarily, most of that material is included in the brief. However, in certain circumstances, some potentially disclosable material may not be included in the brief because, for example, the investigator thinks that the CDPP is unlikely to rely on it in the prosecution. To cover this contingency, the CDPP requires that a [Certificate of Potentially Disclosable Material](#) be provided.

Any potentially disclosable material not already included in the brief should either be attached to the certificate or listed in an attachment to it.

7.8 MSQ PROSECUTION MATTERS

QBFP Officers have the following responsibilities with regard to MSQ matters delivered on behalf of this agency:

- Completion of investigation reports, which are to be submitted to the Maritime Safety Queensland (MSQ) compliance unit. Records of postage etc. when reports are sent should be kept;
- Any further information requested or a follow up investigation undertaken;
- Marine Infringement Notices;
- Provide evidence in defended matters; and
- Advise MSQ when the statute of limitations is imminent.

It should also be noted that:

- If there are questions regarding progress on a matter after the investigation is completed (from outside QBFP – QBFP is finished with the matter) the enquiry is to be referred to MSQ.
- Where QBFP acts as prosecutor on behalf of MSQ and the matter is from outside the District where the investigation was commenced a copy of the result should be forwarded to the initiating/investigating District.
- Results of marine prosecutions should be listed in the MSQ quarterly performance report.
- Where there is an investigation defect in a report that prohibits further consideration of prosecution action, if appropriate MSQ will advise the relevant District Manager/Officer involved, or the QBFP in general of the issue (particularly where Marine Incidents are involved).
- Apart from the situations listed above, QBFP is not responsible for reporting maritime court results.

CHAPTER 8

PROSECUTION PROCESS

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8 PROSECUTION PROCESS

8.1 INTRODUCTION

Most offences detected by QBFP are dealt with by infringement notice (FINs, MINs or Cautionary FINs and MINs). On occasions, due to the serious nature of an offence, prosecution action is warranted.

Queensland Fisheries prosecutions are initiated via a complaint and summons (C&S). The complaint is the allegation against the defendant. Essentially, it is a statement of the relevant offence provision with some basic details and formalities included. The summons is the document accompanying the complaint and which commands the defendant's appearance before the Court.

Once a matter is filed with a court a summons must be issued to bring the defendant before the court so that the complaint may be heard. The date the matter is first listed to be heard before the court is known as the "first mention date".

Refer to the attached [Complaint and Summons](#) for an example of completed documents.

8.2 PREPARING A C&S FOR SERVICE

The C&S is drafted by In-house Legal and emailed to the Investigating Officer with a copy to the District Officer/Manager and the Senior Compliance Officer. At the very latest the C&S should be received via email within 2 weeks of the statute of limitations date. If a C&S has not been received by this time the Senior Compliance Officer should be contacted.

It is the responsibility of the Investigating Officer or the Court Officer to check the C&S for accuracy, for example, check that defendants name and address are the same as recorded on the brief and that the charge is correct. Any discrepancies identified that need to be rectified are to be brought to the attention of In-house Legal via email, with a cc to the Senior Compliance Officer, who will make changes as appropriate.

Once the C&S is ready a court date and time is assigned by referring to the call over dates issued by the relevant Magistrates Court. A minimum of 21 days from when summons is issued should be allowed for postal service and 7 days for personal service. Also the court date chose should not conflict with matters set down for a different court or other station commitments.

Prepare three C&S, two with completed [oath of service](#) and one with a [plea advice](#) form for registered mail. Alternatively, the third copy (district file copy) may be a full photocopy of the court copy.

Take the C&S to a Justice of the Peace (A Commissioner for Declarations is unacceptable) to be signed by the complainant and witnessed by the Justice of the Peace. The Justice of the peace will also sign the summons commanding the defendant appear.

No Justice of the Peace remotely associated with the Department or any enforcement agency is to be used.

The various copies of the C&S are to be completed as per [Figure 1](#).

Figure 1

1 st copy	completed complaint and summons	Defendant's copy
2 nd copy	completed complaint and summons and oath of service	Court copy
3 rd copy	completed complaint and summons and oath of service	File copy (may be a photocopy)

8.3 NOTICE OF PREVIOUS CONVICTIONS

A Notice of Previous Convictions may also accompany the C&S. In-house Legal will prepare these documents. This is used to notify the Court of the previous convictions of the defendant. It is served on the defendant at the same time as the C&S to ensure that the defendant is aware of this intent.

Complete Notice of Previous as per [Figure 2](#).

Figure 2

1 st copy	completed notice	Defendant's Copy
2 nd copy	completed notice and oath of service	<i>Court copy (Do not send with C&S, hand to Magistrate after submitting Facts)</i>
3 rd copy	completed notice and oath of service	File copy

NOTE:

Only the complainant has to sign the front of the Notice of Previous.

Do not leave any copies of the Notice of Previous Convictions at the Court House

8.4 HOW TO SERVE THE SUMMONS

8.4.1 The first copy of the C&S

The 1st copy plus the plea advice form and Notice of Previous Convictions (if applicable) are to be served on the defendant

sch3(10)(1)(f)

8.4.2 Oath of Service

The 2nd and 3rd copy is to have the completed Oath of Service attached.

Oath of Service of the Summons and Notice of Previous must be sworn before a JP within three (3) days after service on the defendant

When completed, the 2nd copy of the summons is left with or sent to the relevant court house with a covering letter indicating contents.

The 3rd copy is to be retained in the District file.

Do not lodge Notice of Previous with the court until mention / hearing day.

8.5 ADVICE OF HEARING/MENTION

When a mention date is set and the above procedures have been carried out CAS must be updated with the court details and In-house Legal advised.

The signed and served C&S must be scanned and emailed to the adjudicating Legal Officer with a cc to the Senior Compliance Officer.

In the event of a change to the court date, adjournment, hearing date set etc. CAS must be updated and advice forwarded via email to the Legal Officer with a cc to the Senior Compliance Officer.

8.6 RETURN OF COMPLAINT AND SUMMONS

If a mention date is nominated and the registered mail copy of the C&S is returned unclaimed to the complainant prior to this date, the complainant, or Officer appearing on behalf of the complainant, must advise the Magistrate that, while service was effected by registered mail, the service copy of the C&S was returned unclaimed.

The Magistrate may elect to hear the matter under s.142 (A) of the *Justices Act 1886* or make some other decision, e.g. adjourn the matter to the next mention day. If the matter is adjourned, Officers should then attempt personal service or postal service if a new or different address is known.

8.7 THE PROSECUTION PROCESS

QBFP Officers will attend court on the first mention date. There are 7 possible scenarios that could arise at the first mention:

- The defendant appears and pleads guilty;
- The defendant appears and requests an adjournment;
- The defendant appears, pleads not guilty and asks that the matter be set for hearing;
- The defendant does not appear but pleads guilty in writing;
- The defendant does not appear but pleads not guilty in writing and requests a hearing date;
- The defendant does not appear but requests an adjournment in writing; and
- The defendant fails to appear.

Essentially then, there are 3 broad scenarios that the Officer must be ready to handle on the first mention date:

Plea of guilty;

Request for an adjournment; or

Request for a hearing date.

These should be dealt with as follows:

8.7.1 Plea of Guilty

If the defendant pleads guilty the Officer will be required to present the facts of the case to the court and make a submission on sentence.

The Statement of Facts is part of the Brief of Evidence (see [Chapter 7](#)). These can be read out in court. Alternatively In-house Legal may provide written court submissions for the Officer to present. The court needs to hear a sufficient outline of the facts to make it clear to the court that each of the elements of the offence has been satisfied and that any obvious defences/exemptions have been negated. The Magistrate will ask the defendant or their representative if they agree with the facts as presented. If the defendant or the legal representative disputes the facts a number of possible courses of action arise:

- Severe disputes - the Magistrate may vacate the defendant's plea and set the matter for hearing.
- Disputes that only affect sentence - the Magistrate may require the prosecutor to present evidence on the point in question. This may require that the matter be adjourned to allow the prosecution to produce the relevant witness or witnesses.
- Relatively minor disputes - the Magistrate may either attempt to reconcile the facts by discussing with both parties or even just disregarding the discrepancy.

In most cases the defendant or their representative will agree with the facts and then make a submission about the circumstances of the case from the defendant's perspective, raising any mitigating factors. The defendant or their representative will usually make a submission on penalty.

The Officer also makes a submission on penalty. The timing of the submission may vary depending upon the Magistrate. This submission may be requested immediately after hearing the facts or the Magistrate may wait until after hearing the defendant's submissions.

Therefore the Investigating Officer must be prepared with a comparative statement to give the Magistrate an idea of an appropriate penalty. This information can be obtained from CAS or may be supplied by In-house Legal.

8.7.2 Adjournments

Either the defendant or the prosecutor may apply to the court for an adjournment for a number of reasons. The first adjournment is usually granted as a matter of course. However, the courts will not tolerate endless adjournments. Wherever possible the State, as the model litigant, should endeavour to be ready to proceed at the first and any subsequent hearing dates.

8.7.3 Transfer to another court district

Section 139(1) of the Justices Act states that a matter must be first heard in the magistrates court district where the offence occurred. Under Section 139(2), the matter can then be adjourned to another magistrate's court district by the court itself or on the request of either party (i.e. the complainant or the defendant).

sch3(10)(1)(f)

sch3(10)(1)(f)

8.7.4 Plea of not guilty

A plea of not guilty generally indicates that the defendant refutes the allegation and intends to contest the matter. The court will assign a date (or dates) for the hearing of the matter.

8.8 SUMMONS OF A WITNESS

The issue of a Summons of a witness to attend a hearing to give evidence in a matter will be decided and performed by the Legal Officer within the In-house Legal Section who has been briefed with the file.

The procedure to be adopted involving QBFP consultation is as follows:

- In-house Legal Officers will decide and/or consult with the Investigating Officer what witness is required to give their evidence in the matter. The Investigating Officer and or District Officer/Manager should indicate to the Legal Officer when they are aware that a matter is to be defended.
- The Legal Officer will arrange preparation of the Summons document for the witness

Procedures taken to serve a Summons on a witness is to be in the same way, and within the same time, as a summons to a defendant, detailed in section 8.4.

Generally, most witnesses will be cooperative and there should not be a problem contacting them about the matter.

A Notice to Witness will be included in the Summons to comply with section 79 of the *Justices Act 1886*. This notice will advise that long distance travel and accommodation will be arranged by QBFP. It will also notify the Witness of their entitlement to allowances which will be paid by QBFP.

Attached to the Summons or delivered separately should be the following forms for completion by the witness:

- A 'Statement by a Supplier' AND
- A 'Vendor Master Data Maintenance' AND
- A 'Declaration in Support of Claim for Expenses'

Please refer to the 'Guidelines for the summons of a Witness and expense claims' Policy for current forms and procedures.

8.9 NOTIFICATION OF COURT RESULTS

The prosecuting Officer must accurately note all relevant comments, fines and orders as the Magistrate hands down the decision.

CAS must be updated with the court results and the file closed. In addition, In-house Legal must be notified via email with a cc to Senior Compliance Officer.

CHAPTER 9

INVESTIGATION MANAGEMENT

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9 INVESTIGATION MANAGEMENT

9.1 INTRODUCTION

An investigation is:

A thorough, logical gathering of information and the objective, unbiased assessment of that information to reach a valid conclusion.

An investigation should identify:

- Any breaches of legislation and causes of an incident.
- The persons or entities responsible for the breach.
- Any aggravating or mitigating circumstances relating to the commission of the offence.

This chapter outlines the procedures to be adopted by QBFP Officers when undertaking an investigation into possible breaches of legislation. This includes the prioritisation of investigations, ethical and professional management of investigations and the methodologies and support mechanisms used during an investigation.

9.2 ACCOUNTABILITY

QBFP Officers are accountable for the way in which they conduct investigations and for the timelines within which they complete investigations. Officers need to be able to demonstrate that they have investigated matters thoroughly and in a transparent and ethical manner.

It should be remembered that any actions or decisions taken during and after an investigation may come under scrutiny from the Minister, members of the public, senior management and could be subject to judicial review. Therefore, Investigating Officers must at times expect to explain and, if necessary, defend their actions and decisions. This may include the time taken to complete an investigation.

9.3 WHAT IS INVESTIGATED

Allegations of non-compliance with relevant legislation are investigated by QBFP Officers. These allegations are received from various sources including: the Vessel Monitoring System Unit (VMS), the Quota Monitoring Unit (QMU), Licensing, Fishwatch Complaints Hotline and Intelligence information. QBFP Officers also identify matters of non-compliance during their operational field work. All these allegations are recorded directly into the Compliance Activity System (CAS) as “incidents”.

The District Officer/Manager conducts a preliminary assessment on each incident considering aspects such as the reliability of the information to decide whether further investigation is warranted. If a decision is made that no further action is to be taken at the time, notes supporting this decision are recorded in CAS and the file closed.

If further investigation is warranted then the District Officer/Manager prioritises the investigation in accordance with the factors listed below and assigns the investigation to an Officer.

9.4 PRIORITISATION

sch3(10)(1)(f)

9.5 INVESTIGATION TIMEFRAMES

Once an incident is allocated for investigation it should be completed within 2 months

The two month timeframe begins as soon as the matter is assigned to an Investigating Officer. As the matter will be recorded in CAS, it will remain open until the investigation is completed to the satisfaction of the District Officer/Manager and the matter is finalised. It is the responsibility of the District Officer/Manager to ensure that the investigation is being conducted in a timely manner and that this timeframe is met.

In extenuating circumstances, further time may be required.

9.5.1 Start of Offence Proceedings

Section 220 of the *Fisheries Act 1994* (the Act) states:

A proceeding for an offence against this Act may be started within –

- (a) *1 year after the offence is committed; or*
- (b) *1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.*

The start of offence proceedings is taken to mean the date on which the complaint against an alleged offender/s is sworn before a Justice of the Peace for the state of Queensland. When a QBFP Officer identifies the offence, proceedings must occur within 1 year of the offence. However, in some cases the offence does not come to the attention of the Investigating Officer for some time after it has been committed, for instance, log books offences. Section 220(b) limits the start of proceedings to commence within one year of the complainant becoming aware of the offence, but within 2 years of the offence.

9.6 CASE MANAGEMENT AND ACTIVITY REPORTING

The standards expected of QBFP Officers with respect to case management and activity reporting are outlined below.

Officers involved in a particular investigation should record all activities that are undertaken. The method of recording activities during an investigation should be kept consistent throughout. The recording of such activity may be in various forms including:

- Official note book entries (see [Chapter 3](#));
- running sheets, these can be kept on CAS (see [Chapter 9.7.1](#));
- operation plans (see [Chapter 9.7.3](#));
- e-mail;

- investigation plans (see [Chapter 9.7.4](#));
- evidence matrix (see [Chapter 9.7.5](#) and [Chapter 3.2.3](#)); and
- photographic, video or electronic records (see [Chapter 3](#)).

The use of CAS as the sole recording system is sufficient for straight forward investigations, for example, those that will not require prosecution action. For other, more complex investigations, an individual file should be created. This includes a file for each subject of an investigation (as in the case of co-offenders). Each file should correspond to an appropriate entry in CAS.

All correspondence relevant to an investigation should be attached to the appropriate file. Original exhibits should not be stored on file, but should be retained in a secure exhibit facility.

A draft of a document should not be retained on a file unless the draft has some significance (e.g. to show the history of the development of a particular document e.g. different versions of an evidence matrix).

With respect to matters concerning Commonwealth legislation, the file management system should be maintained in accordance with the *Archives Act 1983* (Cwlth), i.e.:

- files should have the same classification as the document of highest classification on the file (normally In Confidence or Protected);
- transfers of files should be documented on their covers; and
- all folios on the file should be numbered.

9.6.1 File storage

With respect to State matters, records should be maintained for a period of 7 years after the last action on the file, in accordance with advice from Queensland State Archives.

On the 1st July 2009 the *Right to Information Act 2009* (RTI) and *Information Privacy Act 2009* (IP) came into force:

“The RTI Act gives the public a right of access to information held by government unless, on balance, it is contrary to the public interest to provide the information”

“The IP Act provides safeguards for the handling of personal information in the public sector environment and enables access to and amendment of personal information”

With respect to Commonwealth matters, records used to support particular compliance activities (or matters not progressed to criminal proceedings) should be maintained for a period of 6 years after the case has been finalised, in accordance with the *Archives Act 1983* (Cwlth).

With respect to Commonwealth matters, records used to support successful proceedings should be maintained for a period of 20 years, in accordance with the *Archives Act 1983* (Cwlth).

A record of all files disposed of must be held at the District in a way that it is easily located.

Districts with prosecution files which are eligible for destruction should contact the Manager QBFP via email and gain approval before any disposal of files is undertaken.

9.7 INVESTIGATIVE AIDS

A number of aids are available to assist Investigating Officers in the management of complex investigations.

9.7.1 Running sheets

Investigating Officers should complete running sheets when undertaking complex, contentious or sensitive investigations. The following issues are to be considered:

- It is essential that Officers maintain thorough, accurate and transparent records of their day-to-day and case-specific activities.
- A running sheet should record all activities and related actions that occur during the course of an investigation.
- Running sheets should be produced via electronic means. For less complex matters entries made into CAS incidents will be sufficient.
- The Investigating Officer should produce and attach a hard copy of the running sheet to an appropriate file at the completion of the investigation.
-

9.7.2 Critical decisions

Where an Officer makes a critical decision concerning the course of an investigation, that decision must be recommended and presented to the District Officer/Manager for approval. This can be done via email with a copy of the recommendation and reply kept on file. Where appropriate a notation should also be made in the CAS incident.

The record should include the following information:

- the proposed decision, including any decision to refer the matter to another agency;
- a brief reason for the proposed decision;
- the material used or relied upon to form the basis of the proposed decision;
- the action to be taken, if any;
- the identity of the person (or agency) to undertake any further action;
- the name and position of the Officer making the proposed decision; and
- the date of the proposed decision.

The record should:

- ensure that the decision-making process is a deliberate one;
- document the details and the reasons for each recommendation;
- provide a formal basis for reviewing decisions made during the course of an investigation;
- allow for a case to be transferred from one Investigating Officer to another Investigating Officer, with minimal continuity problems; and
- provide an accountable and evidentiary document which justifies any decision that is subsequently made.

Recommendations that should be recorded are those that have a major effect on the course of an investigation, for example:

- referral to another agency;
- recommendation in relation to the issue of a caution or an advisory letter;

- recommendation in relation to administrative action;
- search warrant action;
- termination of the investigation; and
- use of significant resources requiring senior management approval (e.g. travel, deployment of additional Officers).

In the case of matters which subsequently fall outside the jurisdiction of QBFP, the referral of the matter to another agency for investigation should be done as soon as practicable after the decision to refer the matter is made. The referral documentation should include all material considered by the Officer making the decision, including the critical decision record.

In the case of matters considered serious or politically sensitive, the matter must be raised with the Manager QBFP.

All matters detailed for investigation are to be completed in a timely manner, with recommendations made and approved. CAS is to be updated to record the outcome of the investigation. If the investigation results in a Brief of Evidence or Summary Court Brief the incident record in CAS should be closed as soon as the file number for the brief is received from the Senior Compliance Officer. The matter can then be tracked through the CAS record of the prosecution action.

9.7.3 Operation plans

Prior to undertaking significant operational events during an investigation (e.g. execution of a search warrant), the Investigating Officer must brief the other Officers involved about their roles and any specific considerations. A record must be kept of the date of the briefing, the content of the briefing and the Officers who attended the briefing.

Where an Officer believes that it's necessary to utilise resources for a significant task, an operation plan should be prepared. Operation Plan templates are located on the QBFP home page under the Surveillance and Investigations Unit

The purpose of an operation plan is to:

- provide the basis for a briefing for the Officers involved in the event
- provide a written record of the briefing
- address resource requirements to undertake the event
- clarify the command and communication structure for significant events.

-

Officers should prepare operation plans, using a format such as **SMEA**:

Situation: a summary that describes the tactical situation, threat or risk assessments, details of the suspect, description of the location, etc.

Mission: a concise statement that clearly describes the objective of the operation.

Execution: a general outline of the means by which the mission of the operation should be achieved that may include:

- operational command structure
- deployment of Officers
- general instructions (legislation and powers, exhibit handling, trouble areas, public relations, media support services, workplace health and safety requirements, etc.)

Administration and logistics: an outline of administration and logistics issues that may include:

- personnel issues (briefings, debriefings, overtime and HR management)
- dress requirements (uniform, identity cards)
- welfare issues (accommodation, meals and refreshments, toilet facilities)
- equipment requirements
- transport requirements (vehicles, vessels, aircraft, fuels, maintenance)
- seizures
- case and prosecution management (interviews, statements and briefs)

Communications: an outline of communication that may include:

- methods (radio, telephone)
- operating channels (call signs and phone numbers)
- distribution of the operation plan

-
- appendices

A debriefing session involving all participant Officers should be held as soon as practicable after the conclusion of the operation.

The purpose of the debriefing is to:

- inform the participant Officers of the result of the operation
- ensure that best standards of practice are maintained or improved
- identify any problems encountered and suggest strategies that may be used to overcome similar problems in future
- enable any intelligence gained to be shared among participant Officers
- enable an initial assessment of the intelligence
- recognise the efforts of the participant Officers

9.7.4 Investigation plans

An investigation deemed as being complex may require Investigating Officers to submit an investigation plan. The primary function of an investigation plan is to ensure that the best possible outcome of the investigation is achieved. In addition, this plan will serve to justify expenses that may be incurred in the course of the investigation.

The Plan should be discussed with one or all of the following Officers: the District Officer/Manager; Manager Investigations; the Senior Compliance Officer; and In-house Legal.

The investigation plan should be structured to address the following issues:

Planning

- Description of the suspected offence or the allegation
- Identity of suspect/s and other parties involved
- Specific problems with particular activities or allegations
- Aim of the investigation
- Avenues of inquiry
- Tasks to be undertaken

- Human, material and financial resource distribution associated with those tasks
- Strategic and operational methods that should be used to achieve the aim of the investigation
- Priority of the identified tasks
- Organisation and implementation of the tasks

Operational control

- Allocation of specific tasks to individual Officers or sub-team of the investigation team
- Tactical timings for tasks (i.e. when tasks should be commenced and completed)
- Deadlines for the identified milestones of the investigation

Review

- Review of investigation management and the status of the investigation
- Review of personal development of individual Officers at strategic times during the course of the investigation to ensure that the investigation is still focused on its objectives
- Conducting review process at any stage of the investigation with awareness that the objectives and the process of the investigation may require refinement, redefining or termination.

9.7.5 Evidence matrix (see Chapter 3)

Investigating Officers should consider the use of an evidence matrix when undertaking investigations into serious, complex, contentious or sensitive matters and include in an investigation plan.

An evidence matrix facilitates orderly planning of an investigation and provides a sound means for clearly identifying an investigation's objectives, required proofs and avenues of inquiry.

An example of an evidence matrix can be found in [Chapter 3](#).

9.8 INVESTIGATIVE OUTCOMES

At the end of an investigation the Officer makes a recommendation regarding the most appropriate course of action. These include the following:

- No Further Action
- Educational /Advisory action
- Infringement Notice (see [FINS manual](#))
- Caution Infringement Notice (see [FINS manual](#))
- Recommendation of Formal caution
- Brief of Evidence/Summary Court Brief
- Referral of matter to another agency

9.8.1 No Further Action

In some cases an investigation will not progress to a significant result and it will be appropriate to take no further action on the matter. Naturally there must be a clear reason recorded for this decision.

sch3(10)(1)(f)

9.8.2 Educational/Advisory Action

This action is most appropriate where, after a suitable level of investigation, it remains unclear who committed the offence, for example, marine habitat damage conducted on foreshore with no likelihood of locating offenders. Officers may elect to take a proactive approach and mail out letters to householders in the immediate area advising them of the offence provisions for damaging or destroying marine plants. Alternatively they may approach local council for signage to be erected on foreshores outlining penalties for habitat damage.

This type of action, while not as obvious an outcome as say prosecution action, can have a desirable effect and is considered a legitimate enforcement tool.

9.8.3 Official cautions

Investigating Officers may determine that the most appropriate outcome for an investigation is an official caution

9.8.4 Improper considerations

A decision whether or not to prosecute must clearly not be influenced by:

- the race, religion, sex, national origin or political associations, activities or beliefs of the alleged offender or any other person involved;
- personal feelings concerning the alleged offender or their legal representative; or
- the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution decision.

9.9 ETHICAL BEHAVIOUR

Procedures adopted and applied by Officers of QBFP in the investigation of alleged offences must be in accordance with the *Code of Conduct*, the *Public Service Act 1996*, the *Public Sector Ethics Act 1994* and, where applicable, Commonwealth legislation and policy on official conduct for Commonwealth public servants.

As such, an Officer of the QBFP should:

- 1 Perform their duties with professionalism and integrity, and effectively serve the State or Commonwealth Governments.

-
- 2 Observe fairness and equity in dealing with members of the public and other public servants.
 - 3 Avoid any real or possible conflict of interest, and avoid situations in which their private interests, whether pecuniary or otherwise, conflict, or could reasonably be perceived to conflict, with their public duty.
 - 4 Perform the duties of their office impartially, without fear, favour, affection, malice or ill will.

Refer also to the current Code of Conduct for Queensland Public Service located on intranet under policies and procedures

9.10 DEALING WITH THE MEDIA

When dealing with the media, Officers should acquaint themselves with the current Departmental Media guidelines and act accordingly.

9.11 A SUMMARY – INVESTIGATION MANAGEMENT

With respect to investigation management, Officers should be aware of the following:

- Investigations must be conducted in a lawful, timely, professional and ethical manner.
- The investigation process must be able to withstand administrative, operational and judicial review.
- Investigation planning should recognise the realities of resource allocations and time constraints, i.e. prosecution to commence within twelve months and within six months in seizure cases where forfeiture is an issue.
- Incidents are prioritised prior to being detailed for investigation.
- The system used to manage investigations should allow flexibility (i.e. the scope of the investigation may change).
- Where appropriate, there must be formal recording of critical decisions made during the course of an investigation.
- All investigations are to be completed within two months of commencement unless approval is received to extend the timeframe.

-
- CAS to be updated by Investigating Officer/court Officer of matters that proceed to court ie remand dates/hearing dates/result of court action.
 - All incidents are to be closed at the end of the investigation.

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CHAPTER 10

KEY ROLES

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10 KEY ROLES

10.1 IN-HOUSE LEGAL

The Department has a Corporate Legal team that is involved in the legal work of Fisheries. Part of the work the team does on behalf of Fisheries is the prosecution of fisheries offences.

The Department has determined that prosecutions will be dealt with in a certain manner and that decisions are made within a framework outlined in the [Department's Prosecution Policy](#).

The In-house Legal team review Briefs of Evidence and issue Complaint and Summons as appropriate. They also take the lead in defended matters.

The In-house Legal team will assist Officers with the preparation of Investigation plans to identify possible legal issues and provide advice if required. In-house Legal will also provide advice if it is determined that a matter will not progress to prosecution. This advice will be provided through the Senior Compliance Officer.

Most legal enquiries should be channelled through the Senior Compliance Officer. However, Legal Officers may contact the relevant District staff if they believe the Investigating Officer can provide additional information or rectify errors of fact. Any email correspondence will be addressed to the relevant Officer with a CC to the relevant District Manager/Officer and the Senior Compliance Officer.

Legal Advice Requests

All Legal Advice Requests are to be signed by the Manager QBFP and be progressed through Senior Compliance Officer.

10.2 SENIOR COMPLIANCE OFFICER (SCO)

The Senior Compliance Officer reports to the Manager QBFP.

The purpose of the position is to provide advice on Compliance policy, enforcement procedures and legislative support to QBFP and other units within Fisheries. The SCO regularly liaises with Quota Monitoring Unit (QMU), Vessel Monitoring Unit (VMS), Logbooks, Licensing and, in particular, In-house Legal. The SCO provides advice and liaises with In-house Legal regarding fisheries legislation, prosecution matters and evidentiary requirements, and forms a conduit for communication between QBFP and In-house Legal.

The SCO conducts a review process on all briefs of evidence prior to being submitted to In-house Legal. The SCO assesses the level of evidence gathered, ensures investigation procedures have been followed, forms an opinion as to whether a *prima facie* case has been established and that prosecution is within the guidelines of the Prosecution Policy.

The SCO can also assist QBFP districts in facilitating investigations into serious and complex breaches of fisheries legislation.

Outcomes of investigations and prosecutions are reported by the SCO to the Manager QBFP, including matters that have been withdrawn or not proceeded with by In-house Legal and defended matters lost by the Department. These results can provide a basis for education and training for QBFP and other department staff in relation to investigation and enforcement techniques and procedures.

The SCO assists in the drafting of ministerial correspondence requiring legislative interpretation and maintains a compilation of legal advice and court decisions.

The SCO is responsible for the management of the Fisheries Infringement Notice (FINs) system including the maintenance of the FINs manual. The position also holds the appropriate delegation under the *State Penalties Enforcement Act 1999* to conduct reviews on queried/questioned FINs with a view of possible withdrawal.

The SCO also holds the appropriate delegation for dealing with seized items and requests for forfeiture and disposal are to be forwarded to the SCO.

10.3 ROLE OF THE SURVEILLANCE AND INVESTIGATIONS UNIT (SIU)

10.3.1 Main duties

The primary purpose of this unit is to conduct and coordinate complex fisheries and marine resource offences involving both surveillance and or investigations and further to support QBFP Officers with other investigations.

It should be noted that investigations can be conducted by QBFP field staff. It is important for these Officers to maintain/gain investigative skills. Investigator positions were created to lift the burden of managing and or conducting lengthy/complex investigations from Field Officers and allowing Field Officers to continue patrol duties.

Officers of the SIU will maintain close links with other QBFP Officers

Investigators and Senior Response Officers conduct more complex investigations which may involve the following:

- multiple offenders/witnesses and or companies
- Investigations requirement static and electronic Surveillance
- Habitat (massive destruction, corporations etc.);
- Marketing (including Abalone) – chain offences (multiple marketers/offenders or persons);
- Complex matters involving logbooks, quota (all) and multiple VMS incursions particularly involving suspected fishing;
- False, misleading or incomplete documents;
- Obstruction of Inspectors;
- Impersonation of Inspectors;
- Alleged offences involving execution of multiple warrants; or
- Marine Incident Investigations (complex).

They also assist in the collection of information, assist in the Intelligence function and address problem areas of fisheries and boating enforcement

10.3.2 Other Duties

- The primary role of Investigators is as outlined above, however with approval from the Manager SIU, they may also undertake other duties.
- Officers of the S&I unit do not participate in general patrols

10.3.3 Service Areas of Surveillance and Investigations Unit

The members of the SIU perform a statewide function.

10.3.4 Additional Information

- Officers of the Surveillance and Investigation Unit will routinely conduct their duties Monday to Friday. If there is a need to function outside these parameters it will be a matter for the Manager SIU.
- All Officers of the S&I unit wear plain clothing.

- Relieving in higher positions by Officers of the S&I Unit is considered on a case-by-case basis. Generally however, relieving in higher positions will be available to those best equipped to perform the relevant duties.

Investigators are not routinely eligible for transfer at level to other QBFP TO4 positions via the internal expression of interest process. Likewise other QBFP TO4s are not routinely eligible to transfer into Investigator positions via this process. All Officers are eligible for appointment to equivalent or higher positions via merit selection processes.

10.3.5 Surveillance and Investigations Unit (SIU) Services

SIU investigations are ones that cannot be undertaken by QBFP Officers at the local level, for a number of reasons; logistical and time constraints, complexity, equipment required, investigation spanning over a number of Districts and/or Clusters, level of expertise or agencies/organisations involved.

SIU may also undertake investigations emanating from the general public, client groups, QBFP hotline, intra-departmental sources or other government agencies as directed by Manager (QBFP) and may also be called upon to assist local staff without taking charge of the investigation.

sch3(10)(1)(f)

How to request the SIU

District Officer/Manager contacts Manager (SIU) either over the phone or via email to discuss the investigation. If supported the Manager will request one of the following:

- Information report, insert what your request is at the bottom of the IR as a foot note
- Allocate CAS complaint to Manager (SIU) for further allocation to a member of the SIU. Ensuring the action page is up to date with previous activities undertaken by district staff.
- One of the above is the actual request.

The allocation of activities or investigations to members of the SIU is not to be undertaken by District Manager / Officers or field staff.

10.4 THE INTELLIGENCE FUNCTION

All members of the SIU unit assist with the Qld Boating and Fisheries Patrol intelligence function.

Liaison with other units within Fisheries Queensland and the Queensland Boating and Fisheries Patrol is essential for information sharing on identified anomalies and discrepancies in compliance of policy/legislative issues.

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The Manager SIU is also a key contact for other Government agencies requesting information under S217A of the *Fisheries Act 1994*. In this case, the Manager SIU is responsible for collating all material and preparing the submission for consideration and decision by the Director General.

10.5 QBFP COURT OFFICER

Districts may select a QBFP Officer to oversee the district's Court responsibilities. Generally the Court Officer role is undertaken on a rotational basis, in accordance with District requirements.

After a brief of evidence/summary brief is prepared by the Investigating Officer and checked by a supervisor the brief is handed to the Court Officer.

Responsibilities of the Court Officer are as follows:

10.5.1 Duties Pre court

- Register briefs of evidence and summary briefs and maintain the district court register and/or seizure register.
- Send the copy of the brief of evidence/summary brief to the Senior Compliance Officer and retain the original on the district files.
- On receipt of the complaint and summons and notice of previous convictions (if applicable) from In-house Legal, check the documents for accuracy.
- Make and serve the C&S and notice of previous as per [Chapter 8.2](#).
- Prior to the court date, check the summary of facts for correctness and appropriateness for submission to the court.

- At least one week prior to the court date, ensure that a list of comparatives has been prepared and any other relevant submissions are available, for example, recognisance orders, hand

up statements and requests for forfeiture. This is to be done in consultation with the Senior Compliance Officer and In-house Legal.

- Check availability of witnesses prior to attending a mention date. This is to ensure that if the matter is to be listed for hearing, an appropriate date can be selected.
- Attend court on mention dates and be prepared to prosecute matters in the event of a guilty plea, or set a hearing date for defended matters.

10.5.2 Duties at a Hearing

Although the In-house Legal takes the lead with defended matters it is important that the Court Officer also takes responsibility for court preparation. This needs to be done in a timely manner as follows:

- Make contact with all witnesses and confirm availability.
- Liaise with the Senior Compliance Officer and In-house Legal in relation to the issuing of summonses for non-departmental employees.
- Obtain evidentiary certificates for any licences held and original logbook returns (if applicable). This should be done in consultation with the Senior Compliance Officer.
- Ensure all evidence required is secure and available for the hearing. This includes notebook notes, photographs and seized exhibits.
- Within two weeks of the hearing date contact should be made by In-house Legal to ensure preparations are complete. Contact the Senior Compliance Officer if this has not occurred within this timeframe.
- Arrange witness expenses and ensure the appropriate forms are completed.

10.5.3 Duties after Court

After a matter is finalised in Court the following must duties must be performed as appropriate.

- Notify the appropriate persons involved in the matter via email including Field Officer, Investigators, In-house Legal and the Senior Compliance Officer.
- Update the details on CAS and close the file.

- Follow up on any orders made by the court, for example, suspension of licence.
- Consider the appropriateness of media exposure (in accordance with DAFF media protocols).

10.5.4 Other responsibilities

- Prepare lists of seized things for disposal and seek approval from the Chief Executive via the Senior Compliance Officer.
- Once approval is received, dispose of seized things by destroying and dumping at the appropriate waste facility, and notify the Chief Executive via the Senior Compliance Officer when completed.
- Maintain district files on briefs of evidence and pending court matters.
- Maintain district registers including -
 - Seized equipment register
 - Court register/diary
 - CAS

Chapter	Section	Nature of amendment	Date of amendment
All	Numerous	Update reference to department names due to MOG changes. Also changes to reflect QBFP restructure	
All	Numerous	Minor inconsequential amendments to grammar, terminology and punctuation.	
All	Numerous	Update references to legislation to reflect current regulations and management plans in force.	
All	All	Update links to current forms	09/2015
1	All	Update legislation references	09/2015
1	1.11	Insert new section regarding power to stop persons. Re-number sections accordingly (enforcement directive 3.12A)	
1	1.9.3	Delete section and reference to power of entry to places as a condition of a buyers licence. No longer relevant due to Safe Food Scheme.	
1	1.9.4	Insert new section on powers of entry to airports and commonwealth lands (legal advice 30.7.2010)	
1	1.12.3	sch3(10)(1)(f)	
1	1.13	Insert new section regarding requesting assistance of Police Officers under PPRA	
2	2.5.5	Insert new section regarding double jeopardy and fish regulated in multiple ways. (legal advice 12.10.2010)	
2	2.6.2	Update section due to noxious fish moving to <i>Biosecurity Act 2014</i>	11/2016
2	2.6.3	Update section to include restoration options for marine plant damage	11/2016
2	2.6.4	Insert new section on how to deal with obstruction offences (admin directive 1.13)	
2	2.7.2	Delete section relating to section 219A of the Act – Executive Officers responsibilities to comply with Act. This was deleted from Act Nov 2013	
3	3.4.2	Update section to include the use of CCTV.	09/2015
3	3.6	Insert additional procedure for the correct downloading and storage of digital photographs as per advice received from In-house Legal.	
3	3.7	Insert new section relating to QBFP General Fisheries Permit Renumber subsequent sections accordingly.	09/2015

Chapter	Section	Nature of amendment	Date of amendment
3	3.8	Update to include new procedures for electronic evidence collection. Renumber subsequent sections accordingly.	09/2015
3	3.8	Update; Report to be provided on USB stick. Guidelines provided for storing/keeping data. sch3(10)(1)(f)	12/2015
3	3.8.1		04/2016
3	3.8.11	Insert new section on procedures for using measuring equipment.	
3	3.10	Update section to allow for new re-certification procedures (5 yearly) and care and maintenance guidelines	09/2015
4	4.5	Insert section relating to applying for a warrant by phone	09/2015
5	Numerous	Updated to reflect use of digital recorders and digital triple decks. Tapes no longer used	
5	5.10.1	Amended to now reflect requirement of Officers to record all conversations with members of the public (admin directive 2.11)	
5	5.10.2	Minor amendments to reflect current practices when recording interviews	
5	5.10.3	New procedure for storage of digital voice recordings to satisfy requirements under <i>Information Privacy Act 2009</i> (admin directive 2.11)	
5	5.11	Insert requirement to service Triple deck recorders every 12 months as per manufacturers specifications	
7	7.4.8	Update section to reflect new requirements for synopsis to have times of admissions within recording detailed.	11/2016
7	7.5	Insert new section relating to summary briefs for simple matters. Renumber subsequent sections accordingly.	
7	7.6	Title changed and new procedure for submitting briefs electronically included	12/2015
7	7.6	Updated procedure for submitting briefs electronically	11/2016
8	8.8	Insert new section relating to the summonsing of a witness	09/2015
10	10.3	Rewrite from "role of investigators" to "role of Investigation and Surveillance Unit".	

Chapter	Section	Nature of amendment	Date of amendment
10	10.3.5	New section on response unit function and how to utilise their services.	
10	10.3.5	Section updated with new procedures to request the Surveillance and Investigations unit	
10	10.4	Rewrite of section 10.6 relating to intelligence function within the S&IU and renumber to 10.4	
10	10.5	Renumber court Officer role from 10.4 to 10.5	

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