Western Australia

# Criminal Investigation Act 2006

Compare between:

[29 Sep 2020, 03-j0-01] and [01 Jul 2021, 03-k0-00]

Western Australia

# Criminal Investigation Act 2006

**An Act to provide powers for the investigation and prevention of offences and for related matters.**

# Part 1 — Preliminary

## 1. Short title

This is the *Criminal Investigation Act 2006*.

## 2. Commencement

(1) This Act comes into operation on a day fixed by proclamation.

(2) Different days may be fixed under subsection (1) for different provisions.

## 3. Terms used

(1) In this Act, unless the contrary intention appears —

***area associated with a dwelling*** means —

(a) if the dwelling is one of 2 or more dwellings in one building, the parts of the building and any area around the building that the occupiers of the dwellings use exclusively but in common with each other; or

(b) otherwise, the area around the dwelling that is used exclusively by the occupier, such as a driveway, garden or yard;

***arrest warrant*** means a warrant issued under another written law for the arrest of a person;

***basic search*** of a person, means a search that complies with section 63;

***disturb*** includes to damage, destroy, interfere with and remove;

***DPP*** means the Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act 1991*;

***dwelling*** means a place or a part of a place that is ordinarily used for human habitation and it does not matter that it is from time to time uninhabited;

***forensic examination***, in relation to a thing, has a meaning affected by section 21;

***forensic procedure*** has the meaning given to that term by section 73;

***frisk search*** a person, means to quickly and methodically run the hands over the outside of the person's clothing;

***impression*** includes a cast;

***legal practitioner*** means an Australian legal practitioner within the meaning of that term in the *Legal Profession Act 2008* section 3;

***mobile home*** means a vehicle —

(a) that is ordinarily used for human habitation; and

(b) that is permanently or semi-permanently stationary in a single location;

***occupier*** of a place, includes any person who appears to have the control or management of the place;

***offence*** means any offence under a written law;

***officer*** means a police officer or a public officer or both, as the case requires;

***official details*** —

(a) of a police officer — means the officer's surname and rank and, if the officer's official details are required to be stated on a document, the officer's registered number;

(b) of a public officer — means the officer's full name and official title;

***photograph*** includes a digital image and a moving visual record;

***place*** means any land, building, structure, tent or mobile home or a part of any land, building, structure, tent or mobile home;

***prescribed*** means prescribed by regulations made under this Act;

***private parts*** of a person, means the person's genital area, anal area, buttocks and, in the case of —

(a) a female; or

(b) a male undergoing a reassignment procedure, as that term is defined in the *Gender Reassignment Act 2000* section 3,

breasts;

***protected forensic area*** means a protected forensic area established in accordance with section 46;

***public officer*** means a person, other than a police officer, appointed under a written law to an office that is prescribed under section 9(1);

***public open area*** means —

(a) an area that is part of a road open to and used by the public; or

(b) an area of land —

(i) to which the public has access, whether on payment or not; and

(ii) on which there is no building, structure, tent or mobile home,

and it does not matter if the area is the whole or a part of a surveyed lot or of an unsurveyed piece of land, or, if the area is part of such a lot, there is a building, structure, tent or mobile home on some other part;

Example for this definition:

Under paragraph (b), an area of bush in a national park is a public open area but a building in the park is not.

***public place*** includes —

(a) a place to which the public, or any section of the public, has or is permitted to have access, whether on payment or not; and

(b) a place to which the public has access with the express or implied approval of, or without interference from, the occupier of the place; and

(c) a school, university or other place of education, other than a part of it to which neither students nor the public usually has access;

***reasonably suspects*** has the meaning given by section 4;

***record*** means any record of information, irrespective of how the information is recorded or stored or able to be recovered and includes —

(a) any thing from which images, sounds or writings can be reproduced, with or without the aid of anything else; and

(b) any thing on which information is recorded or stored, whether electronically, magnetically, mechanically or by some other means;

***remote communication*** means any way of communicating at a distance including by telephone, fax, email and radio;

***search warrant*** means a search warrant issued under Part 5 Division 3;

***senior police officer*** means a police officer who is, or is acting as, an inspector or an officer of a rank more senior than an inspector;

***statutory penalty*** for an offence, means the penalty specified by a written law for the offence;

***strip search*** of a person, means a search that complies with section 64;

***thing relevant to an offence*** has the meaning given to that term by section 5;

***vehicle*** means —

(a) any thing capable of transporting people or things by air, road, rail or water, irrespective of whether the thing is permanently or semi-permanently stationary, other than a mobile home; or

(b) a mobile home that is reasonably suspected not to be permanently or semi-permanently stationary in a single location,

and it does not matter how the thing or mobile home is moved or propelled;

***WA Police*** means the Police Force of Western Australia provided for by the *Police Act 1892*.

(2) Examples in this Act are provided to assist understanding and do not form part of the Act.

*[Section 3 amended: No. 21 of 2008 s. 656(2); No. 42 of 2009 s. 15.]*

*[Section 3. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]*

## 4. Reasonably suspects, meaning of

For the purposes of this Act, a person reasonably suspects something at a relevant time if he or she personally has grounds at the time for suspecting the thing and those grounds (even if they are subsequently found to be false or non-existent), when judged objectively, are reasonable.

## 5. Thing relevant to offence, meaning of

(1) For the purposes of this Act, a thing is a thing relevant to an offence if it is reasonably suspected that —

(a) the thing has been, is being, or is intended to be used for the purpose of committing an offence;

(b) the thing has been obtained by the commission of an offence;

(c) an offence has been, is being, or may be committed in respect of the thing;

(d) the thing is or may afford —

(i) evidence relevant to proving the commission of an offence or who committed an offence; or

(ii) evidence that tends to rebut an alibi.

(2) For the purposes of this Act, a thing relevant to an offence may be material or non-material, animate (other than human) or inanimate.

Example for this section:

The distance between 2 things or the visibility from a window are non material things.

### 5A. *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* Pt. 2 applies

The *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* Part 2 applies to this Act.

*[Section 5A inserted: No. 34 of 2020 s. 56.]*

### 6. Other written laws, this Act's relationship with

(1) Unless the contrary intention appears in this Act or another written law —

(a) this Act does not affect the operation of any other written law; and

(b) the powers conferred by this Act on a person are in addition to and do not derogate from any powers conferred on the person by any other written law.

(2) Without limiting subsection (1)(a), this Act does not affect the operation of —

(a) *The Criminal Code*, particularly Chapter XXVI of it; or

(b) the *Coroners Act 1996* section 32.

(3) If a provision in this Act is inconsistent with a provision in another Act, the provision in the other Act prevails.

### 7. Common law, this Act's relationship with

(1) Subject to this section, a police officer has the powers, duties and responsibilities that a constable has under the common law.

(2) If this Act confers a power, duty or responsibility on a police officer that the officer also has by reason of subsection (1), the

power must be exercised and the duty or responsibility must be performed in accordance with this Act.

(3) If there is an inconsistency between a provision of this Act and a power, duty or responsibility that a police officer has by reason of subsection (1), the provision of this Act prevails.

### 8A. Authority required for some investigations

This Act is subject to the *Criminal Appeals Act 2004* section 46C.

*[Section 8A inserted: No. 9 of 2012 s. 7.]*

### 8. Officer's powers as individual not affected

Unless this Act provides otherwise, it does not affect any power that an officer may lawfully exercise in common with any other citizen.

### 9. Public officers may be authorised to exercise powers

(1) For the purposes of this Act and in particular the definition of ***public officer*** in section 3(1), another Act or the regulations made under this Act may prescribe —

(a) an office to which people are appointed under a written law for a public purpose and the functions of which are or include investigating or prosecuting offences; and

(b) in respect of that office, some or all of the powers in this Act that a holder of that office may exercise, being powers that this Act expressly provides may be exercised by a public officer.

(2) A public officer may only exercise a power in this Act in relation to an offence if —

(a) this Act provides that the power may be exercised by a public officer; and

(b) the office held by the public officer has been prescribed under subsection (1)(a); and

(c) the power is one that the officer may exercise because it is prescribed under subsection (1)(b); and

(d) the offence is one that the officer, by virtue of being such an officer, is authorised to investigate or prosecute.

(3) If a public officer, under subsection (2), exercises a power in this Act, any enactment that protects the officer or the State from liability for the officer's acts or omissions is to be taken to operate as if those acts and omissions included the officer's acts and omissions when exercising the power.

## 10. Informing people who do not understand English

If under this Act an officer is required to inform a person about any matter and the person is for any reason unable to understand or communicate in spoken English sufficiently, the officer must, if it is practicable to do so in the circumstances, use an interpreter or other qualified person or other means to inform the person about the matter.

## 11. Officers' duty to identify themselves

(1) If this Act requires an officer to identify himself or herself to a person the officer must —

(a) if the officer is a police officer —

(i) give the person the officer's official details; and

(ii) if the officer is not in uniform, show the person evidence that the officer is a police officer;

(b) if the officer is a public officer —

(i) give the person the officer's official details; and

(ii) show the person evidence that the officer is a public officer.

(2) If an officer cannot comply with subsection (1)(a)(ii) or (b)(ii) immediately, the officer must comply with it as soon as practicable.

## 12. Delegation by officers

(1) An officer may delegate the performance of a function of the officer under this Act, other than this power of delegation, to another officer.

(2) If an officer delegates the performance of a duty imposed on the officer by this Act to another officer, he or she must ensure that the other officer performs the duty.

## 13. Warrants and orders, applying for

(1) In this section —

***judicial officer*** means a JP or a magistrate, as the case requires.

(2) A reference in this section to making an application includes a reference to giving information in support of the application.

(3) This section applies to and in respect of an application to a judicial officer for a warrant or order if another section of this Act requires the application to be made under this section.

(4) The application must be made in person before the judicial officer unless —

(a) the warrant or order is needed urgently; and

(b) the applicant reasonably suspects that a judicial officer is not available within a reasonable distance of the applicant,

in which case —

(c) it may be made to a judicial officer by remote communication; and

(d) the judicial officer must not grant it unless satisfied about the matters in paragraphs (a) and (b).

(5) The application must be made in writing unless —

(a) the application is made by remote communication; and

(b) it is not practicable to send the judicial officer written material,

in which case —

(c) it may be made orally; and

(d) the judicial officer must make a written record of the application and any information given in support of it.

(6) The application must be made on oath unless —

(a) the application is made by remote communication; and

(b) it is not practicable for the judicial officer to administer an oath to the applicant,

in which case —

(c) it may be made in an unsworn form; and

(d) if the judicial officer issues a warrant or order, the applicant must as soon as practicable send the judicial officer an affidavit verifying the application and any information given in support of it.

(7) If on an application made by remote communication a judicial officer issues a warrant or order, the judicial officer must, if practicable, send a copy of the original warrant or order to the applicant by remote communication, but otherwise —

(a) the judicial officer must give the applicant by remote communication any information that must be set out in the warrant or order; and

(b) the applicant must complete a form of a warrant or order with the information received and give the judicial officer a copy of the form as soon as practicable after doing so; and

(c) the judicial officer must attach the copy of the form to the original warrant or order and any affidavit received from the applicant and make them available for collection by the applicant.

(8) The copy of the original warrant or order sent, or the form of the warrant or order completed, as the case may be, under subsection (7) has the same force and effect as the original warrant or order.

# Part 2 — Ancillary provisions about exercising powers

## 14. When powers may be exercised

The powers in this Act may be exercised at any time of the day or night, unless it is expressly provided otherwise.

## 15. Assistance to exercise powers

(1) A person who may exercise a power in this Act may authorise as many other persons to assist in exercising the power as are reasonably necessary in the circumstances.

(2) A person so authorised may exercise the power or assist the other to exercise the power, as the case requires.

(3) Whether requested to do so or not, a person may assist another person to exercise a power in this Act if the person reasonably suspects that the other person —

(a) is lawfully entitled to exercise the power; and

(b) needs assistance for the purpose of doing so.

(4) A person who under this section is authorised by another to exercise a power, or is assisting another to exercise a power, must obey any lawful and reasonable directions of the other person when exercising or assisting to exercise the power.

(5) If a person, acting under this section, exercises a power in this Act having been authorised by another to do so, or assists another to exercise a power in this Act, any enactment that protects the person or the State from liability for the person's acts or omissions is to be taken to operate as if those acts or omissions included the person's acts or omissions when acting under this section.

## 16. Force, use of when exercising powers

(1) When exercising a power in this Act, a person may use any force against any person or thing that it is reasonably necessary to use in the circumstances —

(a) to exercise the power; and

(b) to overcome any resistance to exercising the power that is offered, or that the person exercising the power reasonably suspects will be offered, by any person.

(2) If under subsection (1) a person uses force, the force may be such as causes damage to the property of another person.

(3) Any use of force under subsection (1) against a person is subject to *The Criminal Code* Chapter XXVI.

## 17. Animals, use of by officers exercising powers

(1) An officer who is exercising a power in this Act, or using force under section 16, may use an animal to assist if —

(a) the animal has been trained for the purposes for which it is used; and

(b) use of the animal is reasonably necessary in the circumstances.

(2) Subject to section 16(2) and (3), an officer who uses an animal to assist with exercising a power in this Act must take all reasonable measures to ensure the animal does not injure any person or damage any property.

## 18. Roadblocks, use of to stop vehicles

(1) In this section —

***road*** has the meaning given to that term by the *Road Traffic (Administration) Act 2008* section 4;

***vehicle*** has the meaning given to that term by the *Road Traffic (Administration) Act 2008* section 4.

(2) If a senior police officer reasonably suspects —

(a) that it is necessary to exercise a power in another section of this Act to stop a vehicle; and

(b) that the vehicle is on a road; and

(c) that a roadblock is necessary to facilitate the exercise of that power,

the officer —

(d) may set up a roadblock on the road for the purpose of stopping the vehicle; or

(e) may authorise another police officer to set up a roadblock on the road for the purpose of stopping any vehicle specified in the authorisation.

(3) A senior police officer's authorisation under subsection (2)(e) —

(a) may be applied for and given by remote communication; and

(b) must specify the power referred to in subsection (2)(a) in relation to which the roadblock is necessary and why it is necessary to exercise it; and

(c) must specify whether the authorisation relates to all vehicles or to a specified class of vehicles; and

(d) has effect for 6 hours, or any lesser period specified by the officer, after it is given, but may be renewed.

(4) A senior police officer who under subsection (2) gives an authorisation must make a written record of it, the date and time it was given, and the reasons for giving it.

(5) If a police officer who is not a senior police officer reasonably suspects —

(a) the matters in subsection (2)(a), (b) and (c); and

(b) that the seriousness and urgency of the circumstances warrant doing so without a senior police officer's authorisation,

the police officer may set up a roadblock on the road for no more than 3 hours for the purpose of stopping the vehicle.

(6) A police officer who acts under subsection (5) must notify a senior police officer as soon as practicable after doing so and request the officer's authorisation for any further use of a roadblock.

(7) Subject to the terms of any authorisation given under subsection (2), a police officer who under this section sets up a roadblock may stop vehicles at the roadblock.

*[Section 18 amended: No. 8 of 2012 s. 77.]*

## 19. Stopping vehicles, powers in connection with

(1) If under this Act an officer may stop a vehicle, whether or not at a roadblock set up under section 18, the officer may use any means that are reasonably necessary in the circumstances to do so, including means that hinder or obstruct the passage of other vehicles.

(2) Subsection (1) does not authorise the use of means that are intended or are likely to cause death or grievous bodily harm to any person, whether or not in a vehicle.

(3) An officer who under this Act stops a vehicle in order to exercise a power in this Act in respect of the vehicle —

(a) may detain the vehicle for a reasonable period in order to exercise the power; and

(b) may move the vehicle to a place suitable to exercise the power.

## 20. Power to enter includes power to enter some other places

(1) This section applies if under this Act an officer may enter a place, with or without a search warrant.

(2) If the place is one of 2 or more premises in one building, then, in order to enter the place, the officer may enter, but not search, any part of the building that the occupiers of the premises use exclusively but in common with each other.

(3) If subsection (2) does not apply and the officer reasonably suspects that in order to enter the place it is necessary to enter another place, the officer may enter, but not search, the other place.

(4) Section 31 applies to and in respect of the entry of the other place under subsection (3).

**21. Forensic examination of thing relevant to offence**

(1) If under this Act a person may do a forensic examination on a thing relevant to an offence or a sample of such a thing, the person may do any or all of the following —

(a) examine or operate it;

(b) photograph, measure or otherwise make a record of it;

(c) take an impression of it;

(d) take samples of or from it;

(e) do tests on it, or on any sample taken under paragraph (d), for forensic purposes.

(2) If it is reasonably necessary to do so in order to exercise a power in subsection (1), the thing may be dismantled, damaged or destroyed.

(3) A power in subsection (1) must not be exercised in relation to a thing that may contain information that is privileged, as that term is defined in section 151, until under that section —

(a) a decision is made that the information is not privileged; or

(b) orders have been made to enable the power to be exercised.

## 22. Gender of person, ascertaining

If it is necessary to ascertain the gender of a person before exercising a power in this Act on the person and the gender of the person is uncertain to the officer authorised to exercise the power —

(a) the officer must ask the person to indicate whether a male or a female should exercise the power on the person and must act in accordance with the answer; and

(b) in the absence of an answer, the person must be treated as if of the gender that the person outwardly appears to the officer to be.

## 23. Consent to search or procedure, presumption against and withdrawal of

(1) If a person who is requested under this Act to consent to —

(a) a search of a place that he or she occupies; or

(b) undergoing a basic search or a strip search; or

(c) undergoing a forensic procedure,

does not reply, or consents but resists the carrying out of the search or procedure, he or she is to be taken to have not consented.

(2) A person who consents to a search or procedure referred to in subsection (1) may withdraw his or her consent at any time before the search or procedure is completed by informing an officer or person who is doing it.

# Part 3 — Citizens' powers

## 24. Prevention of offences and violence

(1) Any person (the ***citizen***) may use any force that is reasonably necessary in the circumstances to prevent —

(a) the continuance of an act being done by a person in his or her presence —

(i) that involves the use of violence against a person; or

(ii) that the citizen reasonably suspects will cause a person to use violence against another person; or

(iii) that the citizen reasonably suspects will cause a person to fear violence will be used by a person against another person;

or

(b) an act by a person that the citizen reasonably suspects is just about to be done in his or her presence that is likely —

(i) to involve the use of violence against a person; or

(ii) to cause a person to use violence against another person; or

(iii) to cause a person to fear violence will be used by a person against another person;

or

(c) any other breach of the peace by a person; or

(d) the commission of an offence; or

(e) the doing of any act that the citizen reasonably suspects will be done in the course of committing an offence.

(2) Subsection (1) does not authorise the entry of any place or vehicle.

(3) If a person reasonably suspects that the unlawful killing of a person is occurring in a place or vehicle, the person, without a warrant, may enter it in order to prevent the unlawful killing.

## 25. Citizen's arrest

(1) In this section —

***arrestable offence*** means an offence the statutory penalty for which is or includes imprisonment.

(2) Any person may arrest another person (the ***suspect***) if he or she reasonably suspects that the suspect has committed or is committing an arrestable offence.

(3) Any person may arrest another person (the ***suspect***) who is doing or about to do an act that the person is entitled to prevent under section 24(1)(a), (b) or (c).

(4) A person is not entitled, by reason only of subsection (2) or (3), to enter a place or vehicle where the person suspects the suspect is.

(5) A person who arrests a suspect under subsection (2) or (3) must as soon as practicable —

(a) arrange for a police officer to attend; or

(b) take the suspect and any thing relevant to the offence to a police officer.

(6) For the purpose of complying with subsection (5), a person may detain the suspect until the police officer attends or until the suspect is taken to a police officer.

(7) When a police officer attends or the suspect is taken to a police officer —

(a) the officer may arrest the suspect if, under section 128 or an arrest warrant, the officer is authorised to arrest the suspect; but

(b) if the officer does not arrest the suspect, the suspect ceases to be under arrest.

## 26. Person in command of vehicle, powers of

(1) In this section —

***endangering offence*** on a vehicle, means an offence that, if committed on board the vehicle, may endanger the safety of any person on board the vehicle.

(2) If the person in charge of a vehicle reasonably suspects that a person who is on or about to board the vehicle (the ***passenger***) is carrying a thing that may be used to commit an endangering offence on the vehicle or to damage the vehicle, the person in charge —

(a) may ask the passenger to consent to a frisk search by or on behalf of the person in charge; and

(b) if the passenger refuses to consent, may —

(i) if the passenger is on board, remove him or her from the vehicle or, if it is not safe to do so, restrain or confine him or her until it is safe to do so; or

(ii) if the passenger is about to board, prevent him or her from boarding.

(3) If on a request made under subsection (2)(a) a passenger consents to a frisk search —

(a) the person doing the search may seize any thing the person reasonably suspects may be used to commit an endangering offence on the vehicle or to damage the vehicle; and

(b) if any such thing is seized, it must be kept in safe custody and returned to the passenger when he or she leaves the vehicle or given to a police officer.

(4) If it is reasonably necessary to do so in order —

(a) to prevent danger to the safety of a vehicle or of any person on board it; or

(b) to prevent an offence being committed on board a vehicle,

the person in charge of the vehicle may remove a person who is on board from the vehicle or, if it is not safe to do so, restrain or confine him or her until it is safe to do so.

(5) If the person in charge of a vehicle reasonably suspects that a person on board (the ***suspect***) has committed or is committing an offence on board, he or she may —

(a) arrest the suspect; and

(b) detain the suspect until he or she can be taken to a police officer.

(6) Without limiting section 15, the person in charge of a vehicle may authorise another person to exercise any of the powers that the person in charge has under this section.

(7) If under subsection (5)(a) the suspect is arrested, section 25(5), (6) and (7) apply.

# Part 4 — Miscellaneous official powers and duties

## 27. Suspects and others may be ordered to move on

(1) A police officer may order a person who is in a public place, or in a vehicle used for public transport, to leave it, or a part of it specified by the officer, if the officer reasonably suspects that the person —

(a) is doing an act —

(i) that involves the use of violence against a person; or

(ii) that will cause a person to use violence against another person; or

(iii) that will cause a person to fear violence will be used by a person against another person;

or

(b) is just about to do an act that is likely to —

(i) involve the use of violence against a person; or

(ii) cause a person to use violence against another person; or

(iii) cause a person to fear violence will be used by a person against another person;

or

(c) is committing any other breach of the peace; or

(d) is hindering, obstructing or preventing any lawful activity that is being, or is about to be, carried out by another person; or

(e) intends to commit an offence; or

(f) has just committed or is committing an offence.

(2) A police officer giving an order under subsection (1) may in addition do either or both of the following —

(a) order the person to go beyond a reasonable distance from the place, or the part of the place, set by the officer;

(b) order the person to obey the order or orders for a reasonable period set by the officer; but the period must not be longer than 24 hours.

(3) When giving a person an order under subsection (1), a police officer must take into account the likely effect of the order on the person, including but not limited to the effect on the person's access to the places where he or she usually resides, shops and works, and to transport, health, education or other essential services.

(4) For the purpose of giving an order under this section to a person whose personal details (as that term is defined in the *Criminal Investigation (Identifying People) Act 2002* section 16) are unknown to the officer, a police officer may request the person to give the officer any or all of the person's personal details.

(5) If a request is made under subsection (4), the *Criminal Investigation (Identifying People) Act 2002* section 16 applies to and in relation to the request in the same way as it applies to a request made under subsection (2) of that section.

(6) Any order given under this section must be in writing on a prescribed form.

(7) A person is not in breach of the move on order if the person is taking reasonable steps to comply with the order and move out of the area.

(8) This section does not prevent a police officer from charging a person with an offence without having exercised a power in this section.

*[Section 27 amended: No. 5 of 2008 s. 36.]*

*[Section 27. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section deleted 1 Nov 2009; altered 13 Jul 2010. See endnote 1M.]*

## 28. Persons accompanying officers to be informed of rights

(1) An officer who requests a person who is not in lawful custody to accompany the officer or another officer for the purposes of assisting in the investigation of an offence must inform the person and be satisfied that the person understands —

(a) that he or she is not under arrest; and

(b) that he or she does not have to accompany the officer concerned; and

(c) that if he or she accompanies the officer concerned, he or she is free to leave at any time unless he or she is then under arrest.

(2) Subsection (1) does not apply to or in respect of a person to whom a requirement has been made by a police officer under the *Road Traffic Act 1974* section ~~66~~ 66, 66B, 66D or 66E.

*[Section 28 amended: No. 8 of 2012 s. ~~78~~78; No. 27 of 2020 s. 43.]*

# Part 5 — Entering and searching places and vehicles

## Division 1 — General

### 29. Places with 2 or more occupiers, interpretation

If under this Part any information must be given to, or consent may be obtained from, or any thing must be done in respect of, the occupier of a place, then in a case where a place has 2 or more occupiers, it is sufficient to give the information to, or obtain consent from, or do the thing in respect of, any one of the occupiers.

### 30. Entry and search with occupier's consent

(1) This Part does not prevent an officer, with the informed consent of the occupier of a place, from exercising without a search warrant any of the powers that could be exercised under a search warrant in respect of the place.

(2) For the purposes of this Part, an occupier gives informed consent to an officer if the occupier consents after being informed by the officer —

(a) of the powers that the officer wants to exercise in respect of the place; and

(b) of the reason why the officer wants to exercise those powers; and

(c) that the occupier can refuse to consent to the officer doing so.

### 31. Occupier's rights

(1) This section applies to and in respect of the entry of a place where the entry is to be made under section 20(3), this Part or Part 12 Division 3.

(2) If the occupier of a place is present when it is proposed to enter the place, an officer must, before any officer enters the place —

(a) identify himself or herself to the occupier; and

(b) inform the occupier that it is intended to enter the place; and

(c) if the place is to be entered under a search warrant, give the occupier a copy of the warrant; and

(d) if the place is to be entered under some other statutory authority, inform the occupier of the reason, and the statutory authority, for the entry; and

(e) give the occupier an opportunity to give informed consent to the place being entered,

unless the officer reasonably suspects that to do so will endanger any person, including the officer, or jeopardise the purpose of the proposed entry or the effectiveness of any search of the place.

(3) If subsection (2) is not complied with before a place is entered, then as soon as practicable after the place is entered an officer must —

(a) identify himself or herself to the occupier; and

(b) if the entry was under a search warrant, give the occupier a copy of the warrant; and

(c) if the entry was under some other statutory authority, inform the occupier of the reason, and the statutory authority, for the entry.

(4) If the occupier of a place is present in the place when it is being searched, an officer doing the search must not prevent the occupier, or a person nominated by the occupier, from observing the search, unless —

(a) the officer reasonably suspects that the occupier or person might be endangered if he or she were to observe the search; or

(b) the occupier or person obstructs the search; or

(c) it is impracticable for the occupier or person to observe the search.

(5) If a place that is entered by one or more officers is unoccupied, the officer in charge must leave the following in a prominent position in the place before leaving the place —

(a) a notice stating —

(i) the officer's official details; and

(ii) that the place has been entered;

and

(b) if the entry was under a search warrant, a copy of the warrant completed in accordance with section 45(3); and

(c) if the entry was under some other statutory authority, the reason, and the statutory authority, for the entry.

(6) The copy of a search warrant given under subsection (2)(c) or (3)(b) or left under subsection (5)(b) must omit the name of the judicial officer who issued it.

## Division 2 — Powers without a search warrant

### 32A. Terms used

In this Division —

***out-of-control gathering*** has the meaning given in *The Criminal Code* section 75A;

***person in authority*** means —

(a) in relation to a place — an owner or occupier of, or person who has the control and management of, the place; or

(b) in relation to a vehicle — an owner of, or person in charge of, the vehicle.

*[Section 32A inserted: No. 56 of 2012 s. 6.]*

### 32. Warrant not required to exercise this Division's powers

The powers in this Division may be exercised without a search warrant.

### 33. Public open area, search powers in

(1) If an officer reasonably suspects —

(a) that a thing relevant to an offence; or

(b) that a person against whom an offence may have been, or may be being, committed,

is in a public open area, then, subject to this section, the officer may exercise in the area any of the powers that could be exercised under a search warrant if it were issued in respect of the area for the purposes of searching it for the thing or person.

(2) An officer exercising such a power must not damage or destroy any thing in the public open area, or dig up the ground, or seize any thing that is attached to the land, without the informed consent of the person who has the control or management of the area.

(3) Subsection (2) does not prevent the seizing of any plant that it is unlawful to possess.

(4) This section does not prevent an officer from applying for a search warrant for a place that is a public open area.

### 34. Public place, entry to keep order in

A police officer may enter and remain in a public place where members of the public are present for the purpose of ensuring that peace and good order are maintained at the place.

*[Section 34. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section deleted 1 Nov 2009; altered 13 Jul 2010. See endnote 1M.]*

### 35. Place or vehicle, entry of to prevent violence

(1) A police officer who reasonably suspects that any of the following is occurring or is just about to occur in a place or vehicle may enter the place, or may stop and enter the vehicle, in order to prevent it —

(a) an act by a person —

(i) that involves or is likely to involve the use of violence against a person; or

(ii) that is likely to cause a person to use violence against another person; or

(iii) that is likely to cause a person to fear violence will be used by a person against another person;

or

(b) any other breach of the peace by a person; or

(c) an act by a person that will or is likely to kill a person or cause serious injury to a person; or

(d) an act by a person that will or is likely to cause serious and unlawful damage to property.

(2) If a police officer who enters a place or vehicle under subsection (1) finds a thing relevant to an offence, whether or not the offence arises out of the circumstances that caused the officer to enter the place or vehicle, the officer —

(a) may, subject to section 146, seize the thing; and

(b) whether or not the officer seizes the thing, may do a forensic examination on it.

*[Section 35. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section deleted 1 Nov 2009; altered 13 Jul 2010. See endnote 1M.]*

## 36. Place or vehicle, entry of to attend to dead or seriously ill or injured person

If an officer reasonably suspects that there is in a place or vehicle a person who has died or who is so ill or injured as to be likely to die or suffer permanent injury to his or her health unless the officer enters the place or vehicle, the officer may enter the place, or stop and enter the vehicle, in order to ascertain the facts and if necessary attend to the person.

*[Section 36. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section deleted 1 Nov 2009; altered 13 Jul 2010. See endnote 1M.]*

## 37. Place or vehicle, entry of to investigate serious event

(1) In this section —

***serious event*** means a fire, an explosion, or the presence of any article, substance or gas, that is likely to endanger the safety of people or cause serious damage to property.

(2) If a police officer reasonably suspects that there is or has been a serious event in a place, the officer may enter the place.

(3) If a police officer reasonably suspects that there is or has been a serious event in a vehicle, the officer may stop and enter the vehicle.

(4) A police officer may only exercise the powers in subsection (2) or (3) if and for so long as the officer reasonably suspects that it is necessary to do so as a matter of urgency in order —

(a) to ensure there is no danger to people or property; or

(b) to establish whether the serious event is connected to an offence and to decide, under section 39 or 40 (as the case requires), whether or not to establish a protected forensic area at the place.

*[Section 37. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section deleted 1 Nov 2009; altered 13 Jul 2010. See endnote 1M.]*

## 38A. Authorisation to enter place or vehicle to prevent or disperse out-of-control gathering

(1) In this section —

***senior officer*** means a police officer who is, or is acting as, a sergeant or an officer of a rank more senior than a sergeant.

(2) If a senior officer reasonably suspects that —

(a) there is an out-of-control gathering occurring in a place or vehicle; or

(b) a gathering of persons occurring in a place or vehicle is likely to become an out-of-control gathering,

the officer may authorise the exercise of powers under section 38B.

(3) A senior officer's authorisation under subsection (2) —

(a) may be applied for and given by remote communication; and

(b) must specify the place or vehicle to which it applies; and

(c) has effect for 24 hours, or for any lesser period specified by the officer, after it is given.

(4) A senior officer who under subsection (2) gives an authorisation must make a written record of it, the date and time it was given, and the reasons for giving it.

(5) Powers under section 38B may be exercised by the senior officer who gave the authorisation under subsection (2) or by any other police officer.

*[Section 38A inserted: No. 56 of 2012 s. 7.]*

**38B. Entry of place or vehicle to prevent or disperse out-of-control gathering**

(1) Under an authorisation given under section 38A(2) in relation to a gathering and a place or vehicle, as the case requires, a police officer may do one or more of the following —

(a) enter the place, or stop and enter the vehicle, for any of the purposes mentioned in paragraphs (b) to (g);

(b) locate, or attempt to locate, a person in authority;

(c) order any person or group of persons in or in the vicinity of the place or vehicle to leave the place or vehicle immediately;

(d) order any person or group of persons in or in the vicinity of the place or vehicle to cease any conduct of a kind

described in *The Criminal Code* section 75A(1)(b)(i) to (xiv) or any other conduct that is unlawful;

(e) order any person or group of persons to do anything that is reasonably necessary to enable or assist any other person to comply with an order under paragraph (c) or (d) or subsection (2);

(f) take, or order any person or group of persons to take, any reasonable measures that the officer considers necessary —

(i) if an out-of-control gathering is occurring — to prevent the out-of-control gathering from continuing, to restore peace and good order, to protect the safety of any person or to prevent damage to property; or

(ii) if a gathering is occurring that is likely to become an out-of-control gathering — to prevent the gathering from becoming an out-of-control gathering;

(g) ascertain or attempt to ascertain whether any offence has been committed under section 38C or another written law.

(2) A police officer giving an order under subsection (1)(c) may in addition do either or both of the following —

(a) order the person or group of persons to go beyond a reasonable distance from the place or vehicle, set by the officer;

(b) order the person or group of persons to obey the order or orders for a reasonable period set by the officer, but the period must not be longer than 24 hours.

(3) An order under subsection (1) or (2) is to be given orally and, if given to a group of persons, it is to be given in a manner that is likely to be audible to all persons in that group, or as many of them as practicable.

(4) If an order under subsection (1) or (2) is given to a group of persons, it is not necessary to repeat the order to each person in the group.

(5) However, the fact that the police officer is not required to repeat the order does not in itself give rise to any presumption that each person in the group has received the order.

(6) A police officer may exempt a person or group of persons from the effect of an order given under subsection (1) or (2).

(7) An exemption under subsection (6) is to be given orally.

(8) A person is not failing to comply with an order under subsection (1) or (2) if the person is taking reasonable steps to comply with the order.

(9) This section does not prevent a police officer from charging a person with an offence without having exercised a power in this section.

(10) Without limiting section 6(1)(b), the powers conferred by this section on a police officer are in addition to and do not derogate from any powers conferred on the police officer by another provision of this Act.

*[Section 38B inserted: No. 56 of 2012 s. 7.]*

## 38C. Offence not to comply with order relating to out-of-control gathering

(1) In this section —

***assault*** has the meaning given in *The Criminal Code* section 222;

***behave in a disorderly manner*** has the meaning given in *The Criminal Code* section 74A(1);

***circumstances of aggravation*** means circumstances in which, during the commission of the offence, the offender —

(a) behaves in a disorderly manner; or

(b) destroys or damages the property of another person or threatens to do so; or

(c) assaults or threatens to assault any person; or

(d) throws any object or releases any material or thing —

(i) in a manner that is likely to endanger the life, health or safety of any person; or

(ii) in circumstances that are likely to cause fear or alarm to any person.

(2) A person commits an offence if the person fails to comply with an order given under section 38B(1) or (2).

Penalty:

(a) if the offence is committed in circumstances of aggravation, a fine of $18 000 or imprisonment for 3 years;

(b) in any other case, a fine of $12 000 or imprisonment for 12 months.

*[Section 38C inserted: No. 56 of 2012 s. 7.]*

**38. Vehicle, searches of to prevent offences, damage etc.**

If a police officer reasonably suspects that it is necessary to do so for one or more of these purposes —

(a) to prevent a vehicle from being used —

(i) in the commission of an offence; or

(ii) to aid or facilitate the commission of an offence; or

(iii) to provide the means for an offender to leave the place of the commission of an offence; or

(iv) by an offender to avoid, or attempt to avoid, being arrested for an offence;

(b) to prevent damage to a vehicle;

(c) to protect the safety of people who may board or be on board or who may be near a vehicle;

(d) to ensure peace and good order on a vehicle,

the officer —

(e) may stop, enter and search or inspect the vehicle; and

(f) may take any reasonably necessary action.

*[Section 38. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section deleted 1 Nov 2009; altered 13 Jul 2010. See endnote 1M.]*

## 39. Vehicle, search of for things relevant to offence

(1) If an officer reasonably suspects —

(a) that a vehicle is carrying a thing relevant to an offence; or

(b) that a vehicle is a thing relevant to an offence; or

(c) that a vehicle is carrying a person against whom an offence may have been, or may be being, committed; or

(d) that an offence has been, is being, or is about to be, committed in a vehicle,

the officer —

(e) may stop, enter and search the vehicle; and

(f) may, under section 46, establish a protected forensic area around or in the vehicle; and

(g) may, subject to section 146, seize any thing relevant to the offence; and

(h) may take any action that is reasonably necessary to stop any offence that is being, or prevent any offence that may be, committed against a person in the vehicle.

(2) If an officer doing a search under this section finds a thing relevant to an offence other than the offence giving rise to the search, the officer may, subject to section 146, seize it.

(3) If an officer doing a search under this section finds a thing that may be seized under this section, then whether or not the officer seizes it, the officer may do a forensic examination on it.

(4) The powers in subsection (1) may be exercised by an officer in the area associated with a dwelling but only if the officer reasonably suspects that —

(a) the person in charge of the vehicle does not reside in the dwelling; and

(b) the vehicle is not in that area with the express or implied permission of a person who does reside in the dwelling.

**40. Place, entry of to establish protected forensic area for serious offence**

(1) In this section —

***serious offence*** means an offence the statutory penalty for which is or includes imprisonment for 5 years or more or life.

(2) If a police officer reasonably suspects —

(a) that a serious offence has been or is being committed in a place; or

(b) that there is in a place a thing relevant to a serious offence,

the officer may enter the place and, under section 46, establish a protected forensic area there.

(3) A police officer may only exercise the power in subsection (2) in a public open area if the officer reasonably suspects that it is necessary to do so —

(a) to prevent a thing relevant to the serious offence that is or may be in the area from being concealed or disturbed until the area has been properly inspected or examined; or

(b) to protect the safety of any person who is in or may enter the area.

(4) A police officer may only exercise the power in subsection (2) in a place that is not a public open area if the officer reasonably suspects that in the time it would take to get a search warrant —

(a) a thing relevant to the serious offence that is or may be in the place is likely to be concealed or disturbed; or

(b) the safety of a person who is in or may enter the place is likely to be endangered.

## Division 3 — Powers with a search warrant

### 41. Search warrant, application for

(1) Only a police officer or a public officer may apply for a search warrant.

(2) An application for a search warrant must be made to a JP in accordance with section 13.

(3) An application for a search warrant must —

(a) state the applicant's full name and official details; and

(b) state the offence that is suspected to have been committed, or that is suspected may be committed, and in relation to which a search warrant is wanted; and

(c) state the grounds on which the applicant suspects that the offence has been or may be committed; and

(d) describe the place that it is desired to enter and search; and

(e) if it is desired to search the place for a thing relevant to the offence — describe the thing or the class of thing; and

(f) if it is desired to search the place for a person — name or describe the person; and

(g) state the grounds on which the applicant suspects one or more of the following —

(i) that the thing or class of thing is a thing relevant to the offence and that it is in the place;

(ii) that a person against whom an offence may have been, or may be being, committed is in the place;

and

(h) state, to the best of the applicant's knowledge, whether an application for a search warrant for the same place has been made to any other JP within the previous 72 hours and if so whether a warrant was issued or not; and

(i) include any other information that is prescribed.

## 42. Search warrant, issue of

(1) On an application made under section 41, a JP may issue a search warrant for a place if satisfied that, in respect of each of the matters in section 41(3) that the applicant suspects, there are reasonable grounds for the applicant to have that suspicion.

(2) A search warrant must contain this information —

(a) the applicant's full name and official details; and

(b) the suspected offence to which it relates; and

(c) the place that may be entered and searched under the warrant; and

(d) if a thing or class of thing is the object of the search — a description of the thing or the class of thing; and

(e) if a person is the object of the search — the name or a description of the person; and

(f) the period, not exceeding 30 days, during which it may be executed; and

(g) the name of the JP who issued it; and

(h) the date and time when it was issued.

(3) A search warrant must be in the prescribed form.

(4) If a JP refuses to issue a search warrant, the JP must record on the application the fact of, the date and time of, and the reasons for, the refusal.

## 43. Search warrant, effect of

(1) In this section —

***target place***, in relation to a search warrant, means the place described in the warrant that may be entered and searched under it;

***target thing***, in relation to a search warrant, means the thing or class of thing described in the warrant that is the object of the search.

(2) A search warrant has effect according to its contents and this section.

(3) A search warrant comes into force when it is issued by a JP.

(4) A search warrant may only be executed after it comes into force and before the end of the period during which it may be executed, despite subsection (11).

(5) A search warrant may be executed —

(a) if a police officer applied for it, by any police officer;

(b) if a public officer applied for it, by any public officer whose functions are the same as the applicant's, or by a police officer.

(6) A search warrant must be executed between 6 a.m. and 9 p.m. unless the officer executing it reasonably suspects that if it were, the safety of any person, including the officer, may be endangered or the effectiveness of the proposed search may be jeopardised.

(7) A search warrant authorises entry to the target place for a reasonable period for the purpose of executing the warrant.

(8) A search warrant authorises the officer executing it to exercise any or all of these primary powers —

(a) to enter the target place;

(b) if it authorises a search for a target thing —

(i) to search the target place for the target thing; and

(ii) to do a basic search or a strip search of a person who is in the target place when the warrant is being executed for the target thing; and

(iii) subject to section 146, to seize the target thing;

(c) if it authorises a search for a person —

(i) to search the target place for the person; and

(ii) to take any action that is reasonably necessary to stop any offence that is being, or prevent any offence that may be, committed against the person.

(9) If an officer doing a search under a search warrant finds a thing which is not a target thing but which is a thing relevant to an offence (including the offence to which the warrant relates), the officer may, subject to section 146, seize it.

(10) If an officer doing a search under a search warrant finds a target thing or a thing that may be seized under subsection (9), then whether or not the officer seizes it, the officer may do a forensic examination on it.

(11) Subject to subsection (4), a search warrant ceases to be in force when —

(a) if the target thing is found —

(i) the thing is seized; or

(ii) a forensic examination on the thing that it is reasonably necessary to do in the target place is completed;

or

(b) if a thing which is not the target thing but which can be seized under this Act is found when executing the warrant —

(i) the thing is seized; or

(ii) a forensic examination on the thing that it is reasonably necessary to do in the target place is completed;

or

(c) if the person to be searched for is found — any offence that is being or that may be committed against the person is stopped or prevented; or

(d) if the target thing or the person to be searched for is not found, the search is completed,

whichever happens last.

(12) This section does not prevent the exercise of the powers in Part 8 Division 2 on a person who is in the target place.

## 44. Search warrant, ancillary powers under

(1) In this section —

***senior officer*** means —

(a) in relation to a police officer — a police officer who is, or is acting as, a sergeant or an officer of a rank more senior than a sergeant;

(b) in relation to a public officer — a public officer prescribed as a senior officer in relation to that officer;

***target place*** has the meaning given to it by section 43;

***target thing*** has the meaning given to it by section 43.

(2) A search warrant also authorises the officer executing it to exercise any or all of these ancillary powers —

(a) subject to subsection (3), to enter but not to search a place near the target place if the officer reasonably suspects it is necessary to do so in order to —

(i) prevent a target thing from being concealed or disturbed; or

(ii) prevent a person from fleeing the target place; or

(iii) protect the safety of any person, including the officer, who is in or near the target place;

(b) to take into and use in the target place any equipment or facilities that are reasonably necessary in order to exercise any power under the warrant;

(c) to photograph or otherwise make a record of a target thing that is in the target place;

(d) to make reasonable use of any equipment, facilities or services in the target place in order to exercise any power under the warrant and for that purpose —

(i) to operate the equipment or facilities;

(ii) to order an occupier of the target place to do anything that is reasonable and necessary to facilitate that use;

(e) if the target thing is a record —

(i) to operate any device or equipment in the place that is needed to gain access to, recover, or make a reproduction of, the record;

(ii) if the officer reasonably suspects that an occupier of the target place knows how to gain access to or operate any such device or equipment — to order the occupier to provide any information or assistance that is reasonable and necessary to enable the officer to gain access to, recover, or make a reproduction of, the record;

(f) if the officer reasonably suspects it is necessary to do so in order to prevent —

(i) the target thing from being concealed or disturbed; or

(ii) a person in the place against whom an offence may have been, or may be being, committed from being endangered,

to establish a protected forensic area under section 46 in the target place;

(g) if the officer reasonably suspects it is necessary to do so to protect the safety of any person, including the officer, who is in the target place when the warrant is being executed —

(i) to order a person to leave the place or its vicinity;

(ii) to order a person not to enter the place or its vicinity;

(iii) to detain a person who is in the place for no longer than is reasonably necessary;

(iv) to do a basic search or a strip search of a person who is in the place for any weapon or other thing that could endanger a person;

(v) to seize and retain any such thing,

while the warrant is being executed.

(3) The powers in subsection (2)(a) must not be exercised by an officer unless the officer has written approval to do so from a senior officer who is not involved in the investigation to which the search warrant relates.

(4) A senior officer who gives such an approval must make a written record of it and —

(a) the place to be entered; and

(b) the other officer's grounds for suspecting that it is necessary to enter the place; and

(c) the date and time when it was given; and

(d) the reasons for giving it.

(5) A senior officer's approval under this section may be applied for and given by remote communication.

(6) This section does not prevent the exercise of the powers in Part 8 Division 2 on a person who is in the target place.

(7) A person who is detained under subsection (2)(g)(iii) when he or she is not under arrest is to be taken to be in lawful custody.

*[Section 44. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]*

### 45. Search warrant, execution of

(1) The officer in charge of executing a search warrant must comply with section 31.

(2) If reasonably practicable, an audiovisual recording must be made of the execution of a search warrant.

(3) On completing the execution of a search warrant the officer in charge of executing it must record the following matters on it —

(a) the officer's official details; and

(b) the date and time when the warrant was executed; and

(c) any other matter that is prescribed.

(4) Part 13 applies to and in respect of the seizure of any thing under a search warrant.

## Division 4 — Protected forensic areas

### 46. Protected forensic area, establishment of

(1) This section applies if another section in this Act authorises an officer to establish a protected forensic area under this section.

(2) In order to establish the protected forensic area, the officer must take reasonable steps to notify people of the existence and boundaries of the area.

(3) The area of the protected forensic area must not be greater than is reasonably necessary for the purposes for which it is established.

(4) The boundaries of the protected forensic area may be altered at any time.

(5) While a protected forensic area is established, the officer who established the area, or another officer involved in the investigation, must remain at the area.

(6) An officer must disestablish the protected forensic area when the purposes for which it was established cease to exist.

(7) More than one protected forensic area may be established in respect of any one offence or suspected offence or in a place or vehicle.

## 47. Protected forensic area, powers in relation to

(1) In this section —

***authorised***, in relation to a protected forensic area, means authorised by the officer in charge of the investigation at the protected forensic area;

***senior officer*** means —

(a) in relation to a police officer — a police officer who is, or is acting as, a sergeant or an officer of a rank more senior than a sergeant;

(b) in relation to a public officer — a public officer prescribed as a senior officer in relation to that officer.

(2) While a protected forensic area is established, an officer at the area may take reasonable measures, including giving orders —

(a) to prevent a thing relevant to the offence to which the area relates from being concealed or disturbed;

(b) to protect the safety of any person who is in or may enter the area;

(c) to secure the area against unauthorised disturbance;

(d) to prevent an unauthorised person, animal or vehicle from disturbing the area;

(e) to restrict entry to the area to people, animals, and vehicles, that are authorised;

(f) to remove an unauthorised person, animal or vehicle from the area;

(g) if the area is established in or around a vehicle, to prevent the vehicle from being moved.

(3) After a protected forensic area is established at a place that is not a public open area and before —

(a) the occupier of the place gives informed consent to the establishment of the protected forensic area; or

(b) a search warrant is issued for the place,

an officer involved in the investigation of the offence to which the area relates may, with the prior approval of a senior officer who is not involved in the investigation, exercise any power in the area that could be exercised under a search warrant if it had been issued for the area.

(4) A senior officer must not give such an approval for the exercise of a power unless satisfied that —

(a) a thing relevant to the offence to which the area relates is likely to be concealed or disturbed; or

(b) the safety of a person who is in the area is likely to be endangered,

if the power is not exercised before —

(c) the occupier of the place gives informed consent to the establishment of the protected forensic area; or

(d) a search warrant is issued for the place.

(5) A senior officer who gives such an approval must make a written record of it and —

(a) the power to be exercised; and

(b) the place where the power is to be exercised; and

(c) the date and time when it was given; and

(d) the reasons for giving it.

(6) A senior officer's approval under this section may be applied for and given by remote communication.

(7) An unauthorised person who, without reasonable excuse, enters a protected forensic area commits an offence.

Penalty: a fine of $12 000 and imprisonment for 12 months.

(8) An unauthorised person who, without reasonable excuse, disturbs any thing in a protected forensic area commits an offence.

Penalty: a fine of $12 000 and imprisonment for 12 months.

*[Section 47. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]*

## 48. Protected forensic area, continuance of

(1) If a protected forensic area is established under section 44(2)(f) under a search warrant, then, subject to any order made under section 49, it may continue in existence until the warrant ceases to be in force.

(2) If a protected forensic area is established —

(a) in a public open area; and

(b) not under section 44(2)(f) under a search warrant,

then, subject to any order made under section 49, it may continue in existence until the purposes for which it was established cease to exist.

(3) If —

(a) a protected forensic area is established in a place; and

(b) the place is not a public open area; and

(c) the protected forensic area is not established under section 44(2)(f) under a search warrant; and

(d) the occupier has given informed consent to the entry and search of the place and to the establishment of the protected forensic area,

then, subject to any order made under section 49, the protected forensic area may continue in existence —

(e) until the purposes for which it was established cease to exist; or

(f) until it is disestablished under subsection (4),

whichever happens first.

(4) If —

(a) a protected forensic area is established at a place; and

(b) the place is not a public open area; and

(c) the protected forensic area is not established under section 44(2)(f) under a search warrant; and

(d) the occupier withdraws consent to the entry and search of the place and to the establishment of the protected forensic area,

then —

(e) if an application for a search warrant is not made within 6 hours after the withdrawal of consent, the protected forensic area is to be taken to be disestablished 6 hours after the withdrawal;

(f) if such an application is made within 6 hours after the withdrawal of consent but is refused, the protected forensic area is to be taken to be disestablished when the application is refused,

and evidence of any thing relevant to an offence that is found in the area after the withdrawal is not admissible in proceedings in a court unless the court decides otherwise under section 155.

(5) If —

(a) a protected forensic area is established at a place; and

(b) the place is not a public open area; and

(c) the protected forensic area is not established under section 44(2)(f) under a search warrant; and

(d) the occupier does not give informed consent to the entry and search of the place and to the establishment of the protected forensic area,

then —

(e) if an application for a search warrant is not made within 6 hours after the protected forensic area is established, the area is to be taken to be disestablished 6 hours after it is established;

(f) if such an application is made within 6 hours after the protected forensic area is established but is refused, the area is to be taken to be disestablished when the application is refused,

and evidence of any thing relevant to an offence that is found in the area is not admissible in proceedings in a court unless the court decides otherwise under section 155.

(6) Subsections (2) to (5) do not —

(a) prevent an application for or the issue of a search warrant for a place; or

(b) if a search warrant is issued, affect the operation of section 44(2)(f) and subsection (1).

## 49. Protected forensic area, review of need for

(1) A person who is aggrieved by the fact that a protected forensic area is established (the ***aggrieved person***) may apply to the Magistrates Court to review the grounds for the continued establishment of the area.

(2) The application must be made in accordance with rules of court.

(3) On an application made under subsection (1) an officer involved in the investigation of the offence to which the protected forensic area relates (the ***investigating officer***) and the aggrieved person are entitled to be heard.

(4) On such an application the investigating officer may apply to the court for an order that information given to the court that is relevant to the continued establishment of the area not be disclosed to the aggrieved person.

(5) An application under subsection (4) may be made without notice to the aggrieved person and may be heard and decided in private and in the absence of the person.

(6) On an application made under subsection (4), the court must not make an order restricting the disclosure of information unless satisfied the disclosure might prejudice the safety of any person or the investigation of an offence to which the protected forensic area relates.

(7) On an application made under subsection (1) the court may make any orders it thinks fit including —

(a) an order as to the period for which the protected forensic area may continue to be established;

(b) an order to mitigate any inconvenience caused by the protected forensic area;

(c) if the court is satisfied that the protected forensic area should not continue, an order that it be disestablished.

(8) Proceedings under this section may be conducted by remote communication.

# Part 6 — Obtaining business records

## 50. Terms used

In this Part —

***business*** means any business, including a business of a governmental body or instrumentality or of a local government, or any occupation, trade or calling;

***business record*** means a record prepared or used in the ordinary course of a business for the purpose of recording any matter relating to the business;

***order to produce*** means an order issued under section 53.

## 51. Application of this Part

(1) An order to produce must not be issued under this Part to a person in relation to a business record that relates or may relate to an offence that the person is suspected of having committed.

(2) This Part does not prevent an officer from applying for a search warrant in respect of a business record, whether before or after the issue of an order to produce.

## 52. Order to produce, application for

(1) Only a police officer or a public officer may apply for an order to produce a business record.

(2) An application for an order to produce must be made to a JP in accordance with section 13.

(3) An application for an order to produce must —

(a) state the applicant's full name and official details; and

(b) state the offence that is suspected to have been committed and in relation to which the order is wanted; and

(c) state the grounds on which the applicant suspects that the offence has been committed; and

(d) state the name of the person to whom the order wanted will apply; and

(e) state that the person is not suspected of having committed the offence; and

(f) describe with reasonable particularity the business record or class of business record that the applicant wants the person to produce; and

(g) state the grounds on which the applicant suspects that the business record or class of business record is a thing relevant to the offence; and

(h) state whether the original or a copy of the business record or class of business record is required; and

(i) state whether a paper, electronic or other version of the business record or class of business record is required; and

(j) include any other information that is prescribed.

## 53. Order to produce, issue of

(1) On an application made under section 52, a JP may issue an order to produce a business record if satisfied that, in respect of each of the matters in section 52(3) that the applicant suspects, there are reasonable grounds for the applicant to have that suspicion.

(2) An order to produce must contain this information —

(a) the applicant's full name and official details;

(b) the name of the person to whom the order applies;

(c) a reasonably particular description of the business record or class of business record to be produced by the person;

(d) an order that the person produce the record or records;

(e) whether the original or a copy of the record or records is required;

(f) whether a paper, electronic or other version of the record or records is required;

(g) the place where the record or records are to be produced;

(h) the date on or before which the order must be obeyed, which must allow a reasonable period for the person to obey the order;

(i) the name of the JP who issued it;

(j) the date and time when it was issued.

(3) An order to produce must be in the prescribed form.

(4) If a JP refuses to issue an order to produce, the JP must record on the application the fact of, the date and time of, and the reasons for, the refusal.

### 54. Order to produce, service of

(1) An order to produce must be served on the person to whom it applies as soon as practicable after it is issued.

(2) An order to produce may be served by personal service or by post or, with the consent of the person to be served, by email or fax.

### 55. Order to produce, effect of

(1) An order to produce has effect according to its contents and this section.

(2) A person who is served with an order to produce and who, without reasonable excuse, does not obey it commits an offence.

Penalty: a fine of $12 000 and imprisonment for 12 months.

### 56. Produced records, powers in respect of

(1) An officer to whom a business record is produced under an order to produce may retain it for a reasonable time in order to decide whether it is a thing relevant to an offence.

(2) If a business record produced to an officer under an order to produce is a thing relevant to an offence, the officer —

(a) may, subject to section 146, seize it; and

(b) whether or not the officer seizes it, may do a forensic examination on it.

(3) Sections 148 and 150 to 152 apply to and in respect of a record that is seized after being produced under an order to produce.

# Part 7 — Gaining access to data controlled by suspects

## 57. Terms used

In this Part —

***data*** includes any record, any computer program, and any part of a computer program, in a digital, electronic or magnetic form;

***data access order*** means an order issued under section 59;

***data storage device*** means a thing that contains or is designed to contain data and it does not matter —

(a) if the thing is a fixed or removable part of another thing; or

(b) if the data it contains can be used or retrieved by the thing itself or not; or

(c) if the thing is separate from, but the data it contains can be used or retrieved by, another thing;

***serious offence*** means an offence the statutory penalty for which is or includes imprisonment for 5 years or more or life.

## 58. Data access order, application for

(1) Only a police officer or a public officer may apply for a data access order.

(2) An application for a data access order must be made to a magistrate in accordance with section 13.

(3) An application for a data access order must —

(a) state the applicant's full name and official details; and

(b) state the serious offence that is suspected to have been committed and in relation to which the order is wanted; and

(c) state the grounds on which the applicant suspects that the offence has been committed; and

(d) describe with reasonable particularity the data storage device to which the applicant wants access (the ***target device***); and

(e) explain how the applicant has possession of or access to the target device; and

(f) state the grounds on which the applicant suspects that any data the target device may contain is or may be a thing relevant to the serious offence; and

(g) state the name of the person to whom the order wanted will apply (the ***target person***); and

(h) state the grounds on which the applicant suspects that the target person has committed the serious offence; and

(i) state the grounds on which the applicant suspects that the target person has knowledge relevant to gaining access to any data the target device may contain; and

(j) include any other information that is prescribed.

## 59. Data access order, issue of

(1) On an application made under section 58, a magistrate may issue a data access order if satisfied —

(a) that the applicant has lawful possession of or lawful access to the target device; and

(b) that, in respect of each of the matters in section 58(3) that the applicant suspects, other than paragraph (i), there are reasonable grounds for the applicant to have that suspicion; and

(c) that the target person has knowledge relevant to gaining access to any data the target device may contain.

(2) A data access order must contain this information —

(a) the applicant's full name and official details;

(b) the name of the person to whom the order applies;

(c) a description of the data storage device to which the order relates;

(d) an order that the person provide information or assistance that is reasonable and necessary to allow the applicant to do any or all of the following —

(i) to gain access to any data the device may contain;

(ii) to copy any such data to another data storage device;

(iii) to reproduce any such data on paper;

(e) the date on or before which the order must be obeyed;

(f) the name of the magistrate who issued it;

(g) the date and time when it was issued.

(3) A data access order must be in the prescribed form.

(4) If a magistrate refuses to issue a data access order, he or she must record on the application the fact of, the date and time of, and the reasons for, the refusal.

**60. Data access order, service of**

A data access order must be served personally on the person to whom it applies as soon as practicable after it is issued.

**61. Data access order, effect of**

(1) A data access order has effect according to its contents.

(2) A person who is served with a data access order and who, without reasonable excuse (the onus of proving which is on the person), does not obey it commits a crime.

Penalty: imprisonment for 5 years.

Summary conviction penalty: a fine of $24 000 and imprisonment for 2 years.

(3) It is not a defence to a charge of an offence under subsection (2) that information required to be given under the data access order would or may have incriminated the accused.

# Part 8 — Searching people

## Division 1 — Preliminary

### 62. Terms used

A term used in this Part has the meaning given to it by section 73 which applies with any necessary changes.

### 63. Basic search, meaning of

(1) A person who is authorised by this Act to do a basic search of a person may do any or all of the following —

(a) scan the person with an electronic or mechanical device, whether hand held or not, to detect any thing;

(b) remove the person's headwear, gloves, footwear or outer clothing (such as a coat or jacket), but not his or her inner clothing or underwear, in order to facilitate a frisk search;

(c) frisk search the person;

(d) search any article removed under paragraph (b).

(2) A person who is authorised by this Act to do a basic search of a person is not, unless authorised to do so under Part 9, authorised to also do a forensic procedure on the person being searched.

### 64. Strip search, meaning of

(1) An officer who is authorised by this Act to do a strip search of a person may do any or all of the following —

(a) remove any article that the person is wearing including any article covering his or her private parts;

(b) search any article removed under paragraph (a);

(c) search the person's external parts, including his or her private parts;

(d) search the person's mouth but not any other orifice.

(2) An officer who is authorised by this Act to do a strip search of a person is not, unless authorised to do so under Part 9, authorised to also do a forensic procedure on the person being searched.

## 65. Searches, ancillary powers for

(1) This section operates if a person (the ***searcher***) is authorised by this Act to do a basic search or a strip search of a person.

(2) In the case of a basic search or a strip search, the searcher may do any or all of the following for the purposes of doing the search —

(a) stop and detain the person for a reasonable period;

(b) search any thing being carried by or under the immediate control of the person;

(c) order the person to remove any thing that might injure the searcher when doing the search from any article that the person is wearing;

(d) order the person to do anything reasonable to facilitate the exercise by the searcher of any power in this section, or in section 63 or 64, as the case requires.

(3) In the case of a basic search, the searcher may also photograph part or all of the search while it is being done.

(4) In the case of a strip search, the searcher may also —

(a) order the person to accompany the searcher to a place where the search can be done in accordance with section 72(3);

(b) photograph any thing that may be lawfully seized in the position it is found on the person's body.

(5) A person who is detained under subsection (2)(a) when he or she is not under arrest is to be taken to be in lawful custody.

## 66. How searches must be done

A basic search or a strip search that under this Act may be done on a person must be done in accordance with Division 3.

## Division 2 — General powers to search people

### 67. Warrant not required to exercise this Division's powers

The powers in this Division may be exercised without a warrant.

### 68. Searching people for things relevant to offences

(1) If an officer reasonably suspects that a person has in his or her possession or under his or her control any thing relevant to an offence, the officer —

(a) may do a basic search or a strip search of the person; and

(b) may, subject to section 146, seize any thing relevant to an offence that the officer finds, whether or not it is a thing that the officer suspected was in the possession or under the control of the person; and

(c) whether or not the officer seizes the thing, may do a forensic examination on it.

(2) For the purposes of exercising the powers in subsection (1), the officer may enter any place where the person to be searched is reasonably suspected by the officer to be and search it for the person, but may not enter —

(a) a dwelling; or

(b) the area associated with a dwelling, unless the officer reasonably suspects that the person —

(i) is in that area; and

(ii) does not reside in the dwelling; and

(iii) does not have the express or implied permission of a person who does reside in the dwelling to be in that area.

(3) For the purposes of exercising the powers in subsection (1), the officer may stop and enter a vehicle in which the person to be searched is reasonably suspected by the officer to be and search it for the person.

(4) The powers in subsection (3) may be exercised by an officer in the area associated with a dwelling but only if the officer reasonably suspects that —

(a) the person in charge of the vehicle does not reside in the dwelling; and

(b) the vehicle is not in that area with the express or implied permission of a person who does reside in the dwelling.

(5) A power in this section to search a place or vehicle is limited to searching the place or vehicle for the person to be searched.

### 69A. Searching people for things relevant to prohibited behaviour orders

If an officer reasonably suspects that a person in a public place is prohibited by a PBO made under the *Prohibited Behaviour Orders Act 2010* from having something in his or her possession (a ***prohibited thing***) in that place, the officer —

(a) may do a basic search of the person, whether or not the officer suspects the person is in possession of a prohibited thing; and

(b) may, subject to section 146, seize any prohibited thing that the officer finds; and

(c) may do a forensic examination on the prohibited thing, whether or not the officer seizes it.

*[Section 69A inserted: No. 59 of 2010 s. 47.]*

### 69B. Searching people for things relevant to interim control orders or control orders

If an officer reasonably suspects that a person in a public place is prohibited by an interim control order or a control order under the *Criminal Organisations Control Act 2012* from having something in his or her possession (a ***prohibited thing***) in that place, the officer —

(a) may do a basic search of the person, whether or not the officer suspects the person is in possession of a prohibited thing; and

(b) may, subject to section 146, seize any prohibited thing that the officer finds; and

(c) may do a forensic examination on the prohibited thing, whether or not the officer seizes it.

*[Section 69B inserted: No. 49 of 2012 s. 174.]*

**69. People and vehicles in public places, search of for security purposes**

(1) The powers in this section may be exercised in a public place by a police officer —

(a) if the place is prescribed; or

(b) if the place is the subject of a written declaration made under subsection (2); or

(c) if the officer reasonably suspects that it is necessary to exercise the powers for the purposes of safeguarding the place or people who are in or may enter the place.

(2) If a senior police officer is of the opinion that it is necessary to do so to safeguard a particular public place or people who are in or may enter the place, the officer may declare the place to be one where the powers in this section may be exercised by a police officer.

(3) A senior police officer who makes such a declaration must make a written record of it and —

(a) the public place to which it applies; and

(b) the date and time it was made; and

(c) the period for which it will be in force, which must not be more than 48 hours; and

(d) the reasons for making it.

(4) If the powers in this section may be exercised in a public place by a police officer, the officer —

(a) having informed a person who is about to enter the place that entry will be refused unless the person consents —

(i) to undergoing a basic search; and

(ii) if the person is in charge of a vehicle, to a search of the vehicle,

may order the person not to enter the place if the person does not consent; or

(b) having informed a person who is in the place that he or she will be ordered to leave the place unless the person consents —

(i) to undergoing a basic search; and

(ii) if the person is in charge of a vehicle, to a search of the vehicle,

may order the person to leave the place if the person does not consent.

(5) If a person does not obey an order given by a police officer under subsection (4), the officer may physically enforce the order.

(6) If a person who is about to enter or is in a public place consents to undergoing a basic search by a police officer, the officer —

(a) may do a basic search for the purpose of searching for any thing that the officer reasonably suspects does or may endanger the place or people who are in or may enter it; and

(b) may seize any such thing found.

(7) A thing so seized from a person must be made available to be collected by the person when or as soon as practicable after he or she leaves the place, unless it may be lawfully seized and retained under another provision of this Act or under another written law.

(8) The *Criminal and Found Property Disposal Act 2006* applies to and in relation to a thing so seized that is made available to but not collected by the person.

(9) If a police officer doing a search under this section finds a thing which is not a thing referred to in subsection (6) but which is a thing relevant to an offence, the officer —

(a) may, subject to section 146, seize it; and

(b) whether or not the officer seizes it, may do a forensic examination on it.

*[Section 69. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section deleted 1 Nov 2009; altered 13 Jul 2010. See endnote 1M.]*

## Division 3 — How searches must be done

### 70. Basic search or strip search, rules for doing

(1) This section operates if a person (the ***searcher***) is authorised by this Act to do a basic search or a strip search of a person.

(2) Before the searcher does a basic search or a strip search of the person the searcher must, if reasonably practicable —

(a) identify himself or herself to the person; and

(b) inform the person of the reason for the search; and

(c) request the person to consent to the search; and

(d) if the person does not consent to the search or withdraws his or her consent, inform the person that it is an offence to obstruct the searcher doing the search.

(3) If a basic search or a strip search is done of a person —

(a) it must be done as quickly as is reasonably practicable; and

(b) it must not be any more intrusive than is reasonably necessary in the circumstances; and

(c) the searcher, if he or she proposes to remove any article that the person is wearing, must tell the person why it is considered necessary to do so; and

(d) the person must be allowed to dress as soon as it is finished; and

(e) the person must be provided with a reasonably adequate replacement for any article of clothing or footwear seized if, due to the seizure, the person is left without adequate clothing or footwear in the circumstances; and

(f) the person must not be questioned while it is being done about any offence that he or she is suspected of having committed.

## 71. Basic search, additional rules for doing

(1) This section is in addition to section 70 and operates if a person (the ***searcher***) is authorised by this Act to do a basic search of a person.

(2) The searcher must, if practicable, be a person of the same gender as the person being searched, unless the searcher is a doctor or a nurse.

## 72. Strip search, additional rules for doing

(1) This section is in addition to section 70 and operates if a person (the ***searcher***) is authorised by this Act to do a strip search of a person.

(2) Unless the strip search is being done under section 135, it must not be done unless the searcher reasonably suspects that a strip search is necessary in the circumstances.

(3) If the strip search involves removing any article that the person is wearing or searching the person's private parts —

(a) the searcher must be the same gender as the person being searched, unless the searcher is a doctor or a nurse; and

(b) any person present while it is done must, if practicable, be of the same gender as the person being searched; and

(c) it must be done in circumstances affording reasonable privacy to the person; and

(d) it must not involve the removal of more articles being worn by the person than is reasonably necessary for doing it; and

(e) it must not involve more visual inspection than is reasonably necessary for doing it; and

(f) the number of people present while it is done (excluding a person who is present under paragraph (g)), must not be more than is reasonably necessary to ensure it is done effectively and to ensure the safety of all present; and

(g) if the person is a protected person, it must, if practicable, be done in the presence of a responsible person or some other person who can provide the protected person with support and represent his or her interests.

# Part 9 — Forensic procedures on people

## Division 1 — Preliminary

### 73. Terms used

In this Part, unless the contrary intention appears —

***adult*** means a person who has reached 18 years of age and in respect of whom there are no reasonable grounds to suspect that he or she is an incapable person;

***child*** means a person who is under 18 years of age and in respect of whom there are no reasonable grounds to suspect that he or she is an incapable person;

***dentist*** means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the dental profession whose name is entered on the Dentists Division of the Register of Dental Practitioners kept under that Law;

***doctor*** means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

***forensic procedure*** means —

(a) a non-intimate forensic procedure; or

(b) an intimate forensic procedure; or

(c) an internal forensic procedure;

***FP warrant (involved person)*** means a warrant issued under section 90;

***FP warrant (suspect)*** means a warrant issued under section 100;

***identifying particular*** has the meaning given to that term by the *Criminal Investigation (Identifying People) Act 2002* section 11(1);

***incapable person*** means a person of any age —

(a) who is unable by reason of a mental disability (which term includes intellectual disability, a psychiatric

condition, an acquired brain injury and dementia) to understand the general nature and effect of, and the reason for and the consequences of undergoing, a forensic procedure; or

(b) who is unconscious or otherwise unable to understand a request made or information given under this Act or to communicate whether or not he or she consents to undergoing a forensic procedure;

***internal forensic procedure*** on a person, means a procedure that complies with section 76(1);

***intimate forensic procedure*** on a person, means a procedure that complies with section 75(1);

***involved person*** in connection with an offence, means a person who is not a suspect for the offence but who is reasonably suspected to have been the victim of or to have witnessed the commission of the offence;

***midwife*** means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the midwifery profession;

***non-intimate forensic procedure*** on a person, means a procedure that complies with section 74(1);

***nurse*** means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the nursing profession whose name is entered on Division 1 of the Register of Nurses kept under that Law as a registered nurse;

***protected person*** means a person who is a child or an incapable person;

***Public Advocate*** has the meaning given to that term by the *Guardianship and Administration Act 1990*;

***qualified person***, in relation to a forensic procedure, means a person who is qualified under the regulations to do the procedure;

***relevant thing***, in relation to a forensic procedure, means a thing referred to in section 77(1) a search for which, or for evidence of which, is the purpose of the procedure;

***responsible person***, in relation to a child, means —

(a) a parent of the child; or

(b) a guardian of the child; or

(c) another person who has responsibility for the day-to-day care of the child; or

(d) if no person mentioned in another paragraph of this definition is available — a person, or a person in a class of persons, prescribed;

***responsible person***, in relation to an incapable person, means —

(a) the spouse or de facto partner of the incapable person; or

(b) a parent of the incapable person; or

(c) if the incapable person is under 18 years of age — a guardian of the incapable person; or

(d) if the incapable person has reached 18 years of age — a guardian of the incapable person appointed under the *Guardianship and Administration Act 1990* or the Public Advocate; or

(e) another person who has responsibility for the day-to-day care of the incapable person; or

(f) if no person mentioned in another paragraph of this definition is available — a person, or a person in a class of persons, prescribed;

***suspect*** for an offence, means a person who is reasonably suspected of having committed the offence and it does not matter whether or not the person —

(a) is under arrest for the offence; or

(b) has been charged with the offence; or

(c) having been charged with the offence, has been granted bail.

*[Section 73 amended: No. 22 of 2008 Sch. 3 cl. 16; No. 35 of 2010 s. 58; No. 11 of 2011 s. 4; No. 4 of 2018 s. 108.]*

*[Section 73. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]*

## 74. Non-intimate forensic procedure, meaning of and powers for

(1) A person who is authorised under this Act to do a non-intimate forensic procedure on a person may do any or all of the following —

(a) take a swab, or use other means, to detect a relevant thing on the external parts of the person's body, other than his or her private parts;

(b) remove a relevant thing attached physically to those external parts;

(c) take a sample of a relevant thing on those external parts;

(d) take an impression of a relevant thing on those external parts;

(e) take a sample of a relevant thing from under a nail of the person;

(f) remove a relevant thing from, or take a sample of a relevant thing in, the person's mouth.

(2) A person who is authorised under this Act to do a non-intimate forensic procedure on a person may in addition do any or all of the following —

(a) remove any article that the person is wearing, other than any article covering his or her private parts;

(b) search any article removed under paragraph (a);

(c) search the person's external parts, other than his or her external private parts;

(d) search the person's mouth but not any other orifice;

(e) photograph any relevant thing in the position it is found on the external parts of the person's body, or in the person's mouth.

(3) A power under this Act to do a non-intimate forensic procedure on a person does not include a power to do an intimate forensic procedure or an internal forensic procedure on the person.

**75. Intimate forensic procedure, meaning of and powers for**

(1) A person who is authorised under this Act to do an intimate forensic procedure on a person may do any or all of the following —

(a) take a swab, or use other means, to detect a relevant thing on the person's external private parts;

(b) remove a relevant thing attached physically to those external private parts;

(c) take a sample of a relevant thing on those external private parts;

(d) take an impression of a relevant thing on those external private parts;

(e) take a sample of blood from the person.

(2) A person who is authorised under this Act to do an intimate forensic procedure on a person may in addition do any or all of the following —

(a) remove any article that the person is wearing, including any article covering his or her private parts;

(b) search any article removed under paragraph (a);

(c) search the person's external parts, including his or her external private parts;

(d) photograph any relevant thing in the position it is found on the person's external private parts;

(e) do a non-intimate forensic procedure on the person.

(3) A power under this Act to do an intimate forensic procedure on a person does not include a power to do an internal forensic procedure on the person.

## 76. Internal forensic procedure, meaning of and powers for

(1) A person who is authorised under this Act to do an internal forensic procedure on a person may do any or all of the following —

(a) search the person's internal parts for a relevant thing using x-rays, ultrasound or similar means;

(b) search the person's orifices, other than the mouth, for a relevant thing;

(c) take a swab, or use other means, to detect a relevant thing in those orifices;

(d) remove a relevant thing from, or take a sample of a relevant thing in, any such orifice.

(2) A person who is authorised under this Act to do an internal forensic procedure on a person may in addition do any or all of the following —

(a) remove any article that the person is wearing, including any article covering his or her private parts;

(b) search any article removed under paragraph (a);

(c) search the person's external parts, including his or her external private parts;

(d) photograph any relevant thing in the position it is found in the person's internal parts or orifices;

(e) do a non-intimate forensic procedure on the person;

(f) do an intimate forensic procedure on the person.

## 77. Forensic procedures, purpose of

(1) Subject to any authorisation given under section 82, a forensic procedure must not be done under this Part on a person except for the purpose of searching for a thing or evidence of a thing —

(a) that is relevant to an offence that is reasonably suspected to have been committed; and

(b) the existence or absence of which on or in the body of the person is relevant to the investigation of the offence.

(2) A forensic procedure must not be done under this Part on a person for the purpose of obtaining an identifying particular of the person.

(3) If as a result of a forensic procedure done under this Part on a person a blood sample, buccal swab, or any other thing, that could be used to obtain an identifying particular of the person is taken or seized, it must not be used to obtain the identifying particular unless authority to do so exists or is obtained under the *Criminal Investigation (Identifying People) Act 2002*.

### 78. How forensic procedures must be done

A forensic procedure that under this Part may be done on a person other than a deceased person must be done in accordance with Division 6.

*[Section 78 amended: No. 5 of 2008 s. 37.]*

## Division 2 — Forensic procedures on volunteers

### 79. Term used: volunteer

In this Division —

***volunteer*** means a person who is —

(a) an adult to whom section 80(1)(a) applies; or

(b) a child to whom section 80(1)(b) or (c) applies; or

(c) an incapable person to whom section 80(1)(c) applies.

### 80. Volunteer for forensic procedure to be informed

(1) If —

(a) in the case of a person who is an adult, the person is willing to undergo a forensic procedure for a purpose permitted by section 77 and advises an officer accordingly;

(b) in the case of a protected person who is a child who has reached 10 years of age —

(i) the child is willing to undergo a forensic procedure for a purpose permitted by section 77; and

(ii) a responsible person wants the child to undergo the procedure; and

(iii) both advise an officer accordingly;

(c) in the case of a protected person who is a child under 10 years of age or an incapable person, a responsible person wants the protected person to undergo a forensic procedure for a purpose permitted by section 77 and advises an officer accordingly,

the officer must inform each person whose consent is required under section 81(1) in accordance with subsection (2).

(2) The volunteer or the responsible person or both, as the case requires, must be informed of these matters —

(a) the purpose, permitted by section 77, of the forensic procedure and what relevant thing is sought; and

(b) how the procedure will be carried out; and

(c) that information derived from the procedure may be compared with or put in a database; and

(d) that the procedure may provide evidence that could be used in court against the volunteer; and

(e) that the volunteer cannot be compelled to undergo the procedure; and

(f) that he or she may get legal advice before deciding whether or not to consent to the procedure; and

(g) that, if he or she consents to the procedure, he or she may withdraw consent at any time before the procedure has been completed; and

(h) any matter prescribed.

(3) The information in subsection (2) may be provided in writing.

(4) Any consent given by a person who has been informed under subsection (2) must be recorded in writing and signed by the person in the presence of an officer.

(5) A copy of the person's signed form must be given to the person.

### 81. When forensic procedure may be done on volunteer

(1) A forensic procedure may only be done on a volunteer if section 80 is complied with and —

(a) in the case of an adult — he or she consents to undergoing the forensic procedure;

(b) in the case of a protected person who is a child who has reached 10 years of age —

(i) the child consents to undergoing the forensic procedure; and

(ii) the responsible person consents to the child undergoing the procedure;

(c) in the case of a protected person who is a child under 10 years of age or an incapable person — the responsible person consents to the protected person undergoing the procedure.

(2) If before a forensic procedure is completed on a volunteer —

(a) the volunteer objects to or resists the carrying out of the procedure; or

(b) any consent required under subsection (1) is withdrawn,

the procedure must not be completed.

## Division 3 — Forensic procedures on deceased people

### 82. Forensic procedures on deceased people

(1) The State Coroner may authorise the doing of forensic procedures on deceased people, whether or not their deaths are

reportable deaths (as that term is defined in the *Coroners Act 1996* section 3), for or in connection with purposes permitted by section 77(1) or any other purpose stated in the authorisation.

(2) An authorisation given under subsection (1) may apply —

(a) generally to all deceased people or forensic procedures;

(b) to a specific class of deceased people or forensic procedures;

(c) conditionally or unconditionally.

(3) A coroner, on his or her own initiative or on the application of a person with a proper interest, may —

(a) authorise a person to do a forensic procedure on a deceased person for or in connection with a purpose permitted by section 77(1) or any other purpose; and

(b) make any orders necessary to enable the procedure to be done, including orders relating to the temporary custody of the body of the deceased person.

(4) An authorisation given under this section must be in writing.

## Division 4 — Forensic procedures on victims and witnesses

### 83. Request to adult to undergo forensic procedure

(1) In this section —

***involved person*** means an involved person who is an adult.

(2) If an officer reasonably suspects —

(a) that an offence has been committed; and

(b) that it is necessary to do a forensic procedure for a purpose permitted by section 77 on an involved person in connection with the offence,

the officer may request the person to consent to undergoing a non-intimate forensic procedure, an intimate forensic procedure or an internal forensic procedure, as the case requires.

(3) An officer who requests an involved person to consent to undergoing a forensic procedure must at the time inform the person of these matters —

(a) the offence that is suspected to have been committed and to which the procedure relates;

(b) the purpose, permitted by section 77, of the forensic procedure and what relevant thing is sought;

(c) how the procedure will be done;

(d) that information derived from the procedure may be compared with or put in a database;

(e) that if the person should become a suspect for the offence, evidence provided by the procedure could be used in a court against the person;

(f) that the person may consent or refuse to consent to the procedure;

(g) that, if the person consents to the procedure, the person may withdraw consent at any time before the procedure has been completed;

(h) that if the person does not consent or withdraws consent —

(i) an application may be made for authority to do the procedure without the person's consent; and

(ii) if authority is given, the procedure may be done without the person's consent.

## 84. Request for protected person to undergo forensic procedure

(1) In this section —

***involved person*** means an involved person who is a protected person.

(2) If an officer reasonably suspects —

(a) that an offence has been committed; and

(b) that it is necessary to do a forensic procedure for a purpose permitted by section 77 on an involved person in connection with the offence,

the officer may request —

(c) if the involved person is a child who has reached 10 years of age — both the child and a responsible person;

(d) if the involved person is a child under 10 years of age or an incapable person — a responsible person,

to consent to a non-intimate forensic procedure, an intimate forensic procedure, or an internal forensic procedure, being done on the involved person, as the case requires.

(3) An officer who makes a request to a person under subsection (2) must at the time inform the person of these matters —

(a) the offence that is suspected to have been committed and to which the procedure relates; and

(b) the purpose, permitted by section 77, of the forensic procedure and what relevant thing is sought; and

(c) how the procedure will be done; and

(d) that information derived from the procedure may be compared with or put in a database; and

(e) that if the involved person should become a suspect for the offence, evidence provided by the procedure could be used in a court against the involved person; and

(f) that the person may consent or refuse to consent to the procedure being done on the involved person; and

(g) that, if the person consents to the procedure, he or she may withdraw consent at any time before the procedure has been completed; and

(h) that if the person does not consent or withdraws consent —

(i) an application may be made for authority to do the procedure without the person's consent; and

(ii) if authority is given, the procedure may be done without the person's consent.

## 85. Request and giving of information to be recorded

(1) An officer who makes a request to a person under section 83 or 84 must make a record of the request, of the information given under the section and of the person's responses (if any).

(2) The record must be an audiovisual recording or in writing.

## 86. Forensic procedure, when it may be done

(1) If under section 83 an involved person who is an adult is requested to consent to undergoing a forensic procedure and is informed under that section and he or she consents to undergoing the procedure, then the procedure may be done on him or her.

(2) If under section 84 a person is requested to consent to a forensic procedure being done on an involved person who is a protected person and the person is informed under that section, then the procedure may be done on him or her if —

(a) in the case of a child who has reached 10 years of age —

(i) the child consents to undergoing the forensic procedure; and

(ii) the responsible person consents to the child undergoing the procedure;

(b) in the case of a child under 10 years of age or an incapable person — the responsible person consents to the protected person undergoing the procedure.

(3) If, in the case of an involved person who is an adult —

(a) the involved person, having been —

(i) requested under section 83 to consent to undergoing a forensic procedure; and

(ii) informed under that section,

does not consent or withdraws consent; or

(b) for any reason the involved person is not requested under section 83 to consent to undergoing a forensic procedure,

the procedure may only be done on the involved person if a magistrate issues an FP warrant (involved person) that authorises it.

(4) If, in the case of an involved person who is a protected person —

(a) a person, having been —

(i) requested under section 84 to consent to a forensic procedure being done on the involved person; and

(ii) informed under that section,

does not consent or withdraws consent; or

(b) for any reason a person is not requested under section 84 to consent to a forensic procedure being done on the involved person,

the procedure may only be done on the involved person if a magistrate issues an FP warrant (involved person) that authorises it.

**87. Consent may be withdrawn**

(1) This section applies to and in respect of an involved person if a forensic procedure may be done on the involved person under section 86(1) or (2).

(2) An involved person who is an adult and who has consented to undergoing the forensic procedure may withdraw his or her consent at any time before the procedure has been completed.

(3) A person who has consented to a forensic procedure being done on an involved person who is a protected person may withdraw his or her consent at any time before the procedure on the involved person has been completed.

(4) If consent is withdrawn under this section, section 86(3) or (4) applies, as the case requires.

## 88. Officer may apply for FP warrant (involved person)

(1) Whether or not a request has been made under section 83 for consent to do a forensic procedure on an involved person who is an adult, an officer may apply for an FP warrant (involved person) to do a forensic procedure on the involved person.

(2) Whether or not a request has been made under section 84 for consent to do a forensic procedure on an involved person who is a protected person, an officer may apply for an FP warrant (involved person) to do a forensic procedure on the involved person.

(3) If an officer reasonably suspects that in the time it will take —

(a) to apply for an FP warrant (involved person); and

(b) for the application to be decided,

the relevant thing to be searched for may be disturbed or lost, the officer, without a warrant, may arrest the involved person and, having arrested the person —

(c) may detain the person for a reasonable time to allow for the application to be made and decided; and

(d) while the person is so detained, may take reasonable measures to prevent the thing or evidence of it from being disturbed or lost.

(4) When arresting and detaining a protected person under subsection (3), an officer must consider the best interests of the person.

## 89. FP warrant (involved person), application for

(1) Only an officer may apply for an FP warrant (involved person).

(2) An application for an FP warrant (involved person) must be made in accordance with section 13 to a magistrate.

(3) An application for an FP warrant (involved person) must —

(a) state the applicant's full name and official details; and

(b) name the involved person in respect of whom the warrant is wanted; and

(c) if the involved person is a protected person, state why the involved person is a protected person; and

(d) state the offence in respect of which the involved person is suspected to have been an involved person; and

(e) state the grounds on which the applicant suspects that the person is an involved person in respect of the offence; and

(f) specify for which of the following the warrant is wanted —

(i) a non-intimate forensic procedure;

(ii) an intimate forensic procedure;

(iii) an internal forensic procedure;

and

(g) if the warrant is wanted for an internal forensic procedure, state what kind of internal forensic procedure is proposed to be done on the involved person; and

(h) state the purpose, permitted by section 77, of the forensic procedure and describe what thing or evidence will be sought during the procedure; and

(i) state the grounds on which the applicant suspects that the thing or evidence sought is a relevant thing; and

(j) include any other information that is prescribed.

(4) If an application for an FP warrant (involved person) is made in respect of an involved person in a case where a request has not been made under section 83 or 84, the application must also

state the applicant's grounds for suspecting any or all of the following —

(a) that the investigation of the offence concerned would be prejudiced if a request were made under section 83 or 84, as the case requires;

(b) that it is not reasonably practicable to obtain the consent or consents to do the procedure on the involved person;

(c) in the case of an involved person who is a protected person, that the responsible person or any associate of the person is a suspect in relation to an offence and the procedure will afford evidence of whether or not the responsible person or the associate committed the offence.

(5) If an application for an FP warrant (involved person) relates to an involved person who is a child, the application must also state whether the applicant suspects that the child —

(a) is sufficiently mature and capable of understanding the general nature and effect of, and the reason for and the consequences of, undergoing the procedure; and

(b) is willing to undergo the procedure,

and the grounds for suspecting those matters.

## 90. FP warrant (involved person), issue and effect of

(1) On an application made under section 89, a magistrate may issue an FP warrant (involved person) if satisfied —

(a) that in respect of each of the matters in section 89(3) and, if the case requires, section 89(4), on which the applicant is required to have a suspicion, there are reasonable grounds for the applicant to have that suspicion; and

(b) that the interests of justice justify doing the procedure described in the application.

(2) In deciding whether to make and, if so, the terms of an FP warrant (involved person), the magistrate must take into account the seriousness of the offence in respect of which the involved person is suspected to have been a victim or witness.

(3) In deciding whether to make and, if so, the terms of an FP warrant (involved person) in respect of a protected person, the magistrate must take into account —

(a) in the case of a child — the maturity of the child and his or her capacity to make decisions and whether he or she is willing to undergo the procedure, to the extent that those matters can be determined by the magistrate; and

(b) the best interests of the protected person.

(4) For the purposes of this section, a magistrate may inform himself or herself in any way he or she thinks fit.

(5) In the case of an application for an FP warrant (involved person) in respect of an incapable person, the magistrate may, on his or her own initiative —

(a) give a copy of the application to the Public Advocate;

(b) seek information or submissions from the Public Advocate;

(c) if the warrant is issued, give a copy of it to the Public Advocate,

and may use remote communication to do so.

(6) An FP warrant (involved person) must contain this information —

(a) the applicant's full name and official details; and

(b) the name of the involved person to whom it relates; and

(c) the offence to which it relates; and

(d) whether it relates to —

(i) a non-intimate forensic procedure; or

(ii) an intimate forensic procedure; or

(iii) an internal forensic procedure;

and

(e) if it relates to an internal forensic procedure, the kind of internal forensic procedure that is proposed to be done on the involved person; and

(f) the relevant thing to be searched for during the forensic procedure; and

(g) the period, not exceeding 14 days, during which it may be executed; and

(h) the name of the magistrate who issued it; and

(i) the date and time when it was issued.

(7) An FP warrant (involved person) authorises —

(a) an officer authorised by subsection (8) —

(i) to arrest the involved person to whom it relates; and

(ii) to detain him or her for a reasonable period in order to do the procedure specified in it;

and

(b) if applicable, the doing of the procedure on the involved person without the consent or consents referred to in section 86(1) or (2).

(8) The powers in subsection (7)(a) may be exercised by —

(a) if a police officer applied for the warrant, any police officer;

(b) if a public officer applied for the warrant, the applicant or any public officer who has the same functions as the applicant, or any police officer.

(9) An FP warrant (involved person) that relates to an internal forensic procedure only authorises the kind of internal forensic procedure specified in the warrant but this subsection does not affect the operation of section 76(2).

## Division 5 — Forensic procedures on suspects

### 91. Request to adult to undergo forensic procedure

(1) In this section —

***suspect*** means a suspect who is an adult.

(2) If an officer reasonably suspects —

(a) that an offence has been committed; and

(b) that it is necessary to do a forensic procedure for a purpose permitted by section 77 on a suspect for the offence,

the officer may request the suspect to consent to undergoing a non-intimate forensic procedure, an intimate forensic procedure or an internal forensic procedure, as the case requires.

(3) An officer who requests a suspect to consent to a forensic procedure must at the time inform the suspect of these matters —

(a) the offence that the suspect is suspected of having committed and to which the procedure relates; and

(b) the purpose, permitted by section 77, of the forensic procedure and what relevant thing is sought; and

(c) how the procedure will be done; and

(d) that information derived from the procedure may be compared with or put in a database; and

(e) that the procedure may provide evidence that could be used in a court against the suspect; and

(f) that the suspect may consent or refuse to consent to the procedure; and

(g) that if the suspect consents to the procedure, the suspect may withdraw consent at any time before the procedure has been completed; and

(h) that if the suspect does not consent —

(i) an application may be made for authority to do the procedure without the suspect's consent; and

(ii) if authority is given, the procedure may be done without the suspect's consent.

## 92. Request for protected person to undergo forensic procedure

(1) In this section —

***suspect*** means a suspect who is a protected person.

(2) If an officer reasonably suspects —

(a) that an offence has been committed; and

(b) that it is necessary to do a forensic procedure for a purpose permitted by section 77 on a suspect for the offence,

the officer may request —

(c) if the suspect is a child who has reached 10 years of age — both the child and a responsible person;

(d) if the suspect is a child under 10 years of age or an incapable person — a responsible person,

to consent to a non-intimate forensic procedure, an intimate forensic procedure or an internal forensic procedure, as the case requires, being done on the suspect.

(3) An officer who makes a request under subsection (2) must at the time inform the person of these matters —

(a) the offence that the suspect is suspected of having committed and to which the procedure relates; and

(b) the purpose, permitted by section 77, of the forensic procedure and what relevant thing is sought; and

(c) how the procedure will be done; and

(d) that information derived from the procedure may be compared with or put in a database; and

(e) that the procedure may provide evidence that could be used in a court against the suspect; and

(f) that the person may consent or refuse to consent to the forensic procedure being done on the suspect; and

(g) that if the person consents to the procedure, he or she may withdraw consent at any time before the procedure has been completed; and

(h) that if the person does not consent or withdraws consent —

(i) an application may be made for authority to do the procedure without the person's consent; and

(ii) if authority is given, the procedure may be done without the person's consent.

**93. Request and giving of information to be recorded**

(1) An officer who makes a request to a person under section 91 or 92 must make a record of the request, of the information given under the section and of the person's responses (if any).

(2) The record must be an audiovisual recording or in writing.

**94. Forensic procedure, when it may be done**

(1) If under section 91 a suspect who is an adult is requested to consent to undergoing a forensic procedure and is informed under that section and he or she consents to undergoing the procedure, then the procedure may be done on him or her.

(2) If under section 92 a person is requested to consent to a forensic procedure being done on a suspect who is a protected person and the person is informed under that section, then the procedure may be done on him or her if —

(a) in the case of a child who has reached 10 years of age —

(i) the child consents to undergoing the forensic procedure; and

(ii) the responsible person consents to the child undergoing the procedure;

(b) in the case of a child under 10 years of age or an incapable person — the responsible person consents to the protected person undergoing the procedure.

(3) If, in the case of a suspect who is an adult —

(a) the suspect, having been —

(i) requested under section 91 to consent to undergoing a forensic procedure; and

(ii) informed under that section,

does not consent or withdraws consent; or

(b) for any reason the suspect is not requested under section 91 to consent to undergoing a forensic procedure,

the procedure may only be done on the suspect if —

(c) in the case of a non-intimate forensic procedure — approval for it is given under section 98; or

(d) in the case of an intimate forensic procedure or an internal forensic procedure — a JP issues an FP warrant (suspect) that authorises it.

(4) If, in the case of a suspect who is a protected person —

(a) a person, having been —

(i) requested under section 92 to consent to a forensic procedure being done on the suspect; and

(ii) informed under that section,

does not consent or withdraws consent; or

(b) for any reason a person is not requested under section 92 to consent to a forensic procedure being done on the suspect,

the procedure may only be done on the suspect if a magistrate issues an FP warrant (suspect) that authorises it.

## 95. Consent may be withdrawn

(1) This section applies to and in respect of a suspect if a forensic procedure may be done on the suspect under section 94(1) or (2).

(2) A suspect who is an adult and who has consented to undergoing the forensic procedure may withdraw his or her consent at any time before the procedure has been completed.

(3) A person who has consented to a forensic procedure being done on a suspect who is a protected person may withdraw his or her consent at any time before the procedure on the suspect has been completed.

(4) If consent is withdrawn under this section, section 94(3) or (4) applies, as the case requires.

## 96. Application for approval or FP warrant (suspect)

(1) Whether or not a request has been made under section 91 for consent to do a forensic procedure on a suspect who is an adult, an officer may apply —

(a) under section 97 for approval to do a non-intimate forensic procedure on the suspect; or

(b) under section 99 for an FP warrant (suspect) to do an intimate forensic procedure or an internal forensic procedure on the suspect.

(2) Whether or not a request has been made under section 92 for consent to do a forensic procedure on a suspect who is a protected person, an officer may apply under section 99 for an FP warrant (suspect) to do a forensic procedure on the suspect.

(3) If an officer reasonably suspects that in the time it will take —

(a) to apply under section 97 for approval or to apply under section 99 for an FP warrant (suspect); and

(b) for the application to be decided,

the relevant thing to be searched for may be disturbed or lost, the officer, without a warrant, may arrest the suspect and, having arrested the suspect —

(c) may detain the suspect for a reasonable time to allow for the application to be made and decided; and

(d) while the suspect is so detained, may take reasonable measures to prevent the thing or evidence of it from being disturbed or lost.

## 97. Non-intimate forensic procedure on adult, application for approval to do

(1) In this section and section 98 —

***senior officer*** means —

(a) if an application is being made under this section by a police officer — a police officer who is, or is acting as, a sergeant or an officer of a rank more senior than a sergeant;

(b) if an application is being made under this section by a public officer — a public officer prescribed as a senior officer in relation to that officer;

***suspect*** means a suspect who is an adult.

(2) An application for an approval under this section to do a non-intimate forensic procedure on a suspect must be made to another officer who is a senior officer and not involved in the investigation of the offence to which the proposed procedure relates.

(3) The approval may be applied for and given by remote communication.

(4) The application must —

(a) if practicable be in writing; and

(b) state the applicant's full name and official details; and

(c) name the suspect to whom it relates; and

(d) state the offence that the suspect is suspected of having committed; and

(e) state the grounds for suspecting that the suspect has committed the offence; and

(f) state the purpose, permitted by section 77, of the non-intimate forensic procedure and describe what thing or evidence will be sought during the procedure; and

(g) state the grounds on which the applicant suspects that the thing or evidence sought is a relevant thing; and

(h) if the suspect has not been requested under section 91 to consent to undergoing a forensic procedure, state the reasons why the request has not been made; and

(i) include any other information that is prescribed.

*[Section 97. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]*

## 98. Non-intimate forensic procedure on adult, senior officer may approve

(1) On an application made under section 97, a senior officer may approve a non-intimate forensic procedure being done on a suspect without the suspect's consent if satisfied —

(a) that the suspect is an adult; and

(b) that —

(i) the suspect has been informed in accordance with section 91; or

(ii) there are good reasons why the suspect has not been requested under section 91 to consent to undergoing a forensic procedure;

and

(c) that in respect of each of the matters in section 97(4) about which the applicant is required to have a

suspicion, there are reasonable grounds for the applicant to have that suspicion; and

(d) that the interests of justice justify doing the procedure.

(2) In deciding whether to approve a non-intimate forensic procedure being done on a suspect without the suspect's consent, a senior officer must take into account the seriousness of the offence that the suspect is suspected to have committed.

(3) A senior officer who gives such an approval must make a written record of it and —

(a) the suspect to whom it relates; and

(b) the non-intimate procedure that is approved; and

(c) the date and time when the approval was given; and

(d) the reasons for giving it.

(4) An approval given under this section authorises —

(a) an officer —

(i) to arrest the suspect to whom it relates; and

(ii) to detain him or her for a reasonable period in order to do the non-intimate forensic procedure approved;

and

(b) the doing of the non-intimate forensic procedure on the suspect without his or her consent.

**99. FP warrant (suspect), application for**

(1) Only an officer may apply for an FP warrant (suspect).

(2) An application for an FP warrant (suspect) must be made in accordance with section 13 —

(a) to a JP if the application is in respect of an adult;

(b) to a magistrate if the application is in respect of a protected person.

(3) An application for an FP warrant (suspect) must —

(a) state the applicant's full name and official details; and

(b) name the suspect in respect of whom the warrant is wanted; and

(c) state whether the suspect is a protected person and, if he or she is, why the suspect is a protected person; and

(d) state the offence that the suspect is suspected of having committed; and

(e) state the grounds for suspecting that the suspect has committed the offence; and

(f) if the warrant will relate to a suspect who is an adult, specify for which one of the following the warrant is wanted —

(i) an intimate forensic procedure;

(ii) an internal forensic procedure;

and

(g) if the warrant will relate to a suspect who is a protected person, specify for which one of the following the warrant is wanted —

(i) a non-intimate forensic procedure;

(ii) an intimate forensic procedure;

(iii) an internal forensic procedure;

and

(h) if the warrant is wanted for an internal forensic procedure, state what kind of internal forensic procedure is proposed to be done on the suspect; and

(i) state the purpose, permitted by section 77, of the forensic procedure and describe what thing or evidence will be sought during the procedure; and

(j) state the grounds on which the applicant suspects that the thing or evidence sought is a relevant thing; and

(k) include any other information that is prescribed.

## 100. FP warrant (suspect), issue and effect of

(1) On an application made under section 99, a JP or a magistrate, as the case requires, may issue an FP warrant (suspect) if satisfied —

(a) that in respect of each of the matters in section 99(3) on which the applicant is required to have a suspicion, there are reasonable grounds for the applicant to have that suspicion; and

(b) that the interests of justice justify doing the procedure described in the application.

(2) In deciding whether to issue an FP warrant (suspect) a JP or a magistrate, as the case requires, must take into account the seriousness of the offence that the suspect is suspected to have committed.

(3) For the purposes of this section, a JP or magistrate may inform himself or herself in any way he or she thinks fit.

(4) In the case of an application for an FP warrant (suspect) in respect of an incapable person, the magistrate may, on his or her own initiative —

(a) give a copy of the application to the Public Advocate; or

(b) seek information or submissions from the Public Advocate; or

(c) if the warrant is issued, give a copy of it to the Public Advocate,

and may use remote communication to do so.

(5) An FP warrant (suspect) must contain this information —

(a) the applicant's full name and official details;

(b) the name of the suspect to whom it relates;

(c) the offence to which it relates;

(d) whether it relates to —

(i) a non-intimate forensic procedure; or

(ii) an intimate forensic procedure; or

(iii) an internal forensic procedure;

(e) if it relates to an internal forensic procedure, the kind of internal forensic procedure that may be done on the suspect;

(f) the relevant thing to be searched for during the forensic procedure;

(g) the period, not exceeding 14 days, during which the warrant may be executed;

(h) the name of the JP or magistrate who issued it;

(i) the date and time when it was issued.

(6) An FP warrant (suspect) must be in the prescribed form.

(7) An FP warrant (suspect) authorises —

(a) an officer authorised by subsection (8) —

(i) to arrest the suspect to whom it relates; and

(ii) to detain him or her for a reasonable period in order to do the forensic procedure specified in it;

and

(b) the doing of the forensic procedure on the suspect without the consent or consents referred to in section 94(1) or (2).

(8) The powers in subsection (7)(a) may be exercised by —

(a) if a police officer applied for the warrant, any police officer;

(b) if a public officer applied for the warrant, the applicant or any public officer who has the same functions as the applicant, or any police officer.

(9) An FP warrant (suspect) that relates to an internal forensic procedure only authorises the kind of internal forensic procedure specified in the warrant but this subsection does not affect the operation of section 76(2).

## Division 6 — How forensic procedures must be done

### 101. General requirements

(1) Before doing a forensic procedure on a person the officer who is responsible for doing it must —

(a) identify himself or herself to the person; and

(b) inform the person of how the procedure will be done; and

(c) if it is being done without the person's consent, tell the person that it is an offence to obstruct the doing of it.

(2) If a forensic procedure is to be done on a person —

(a) it must be done as quickly as is reasonably practicable; and

(b) it must not be any more intrusive than is reasonably necessary in the circumstances; and

(c) the person must be allowed to dress as soon as the procedure is finished; and

(d) the person must be provided with a reasonably adequate replacement for any article of clothing or footwear seized if, due to the seizure, the person is left without adequate clothing or footwear in the circumstances; and

(e) the number of people present while the procedure is done (excluding a person who is present under subsection (4)) must not be more than is reasonably necessary to ensure it is done effectively and to ensure the safety of all present; and

(f) the person must not be questioned while the procedure is being done about any offence that he or she is suspected of having committed.

(3) If an intimate forensic procedure or an internal forensic procedure is to be done on a person —

(a) it must be done in circumstances giving reasonable privacy to the person; and

(b) it must not involve the removal of more clothing than is necessary for doing it.

(4) If a forensic procedure is to be done on a protected person the officer who is responsible for doing it must arrange for the protected person to have near him or her while the procedure is done a responsible person or another person who can provide him or her with support and represent his or her interests.

(5) If this Part requires a power to be exercised in relation to a person by a person with specific qualifications, the officer authorised to exercise the power may authorise a person with those qualifications to exercise the power.

(6) A person so authorised may exercise the power.

**102. Gender of people doing forensic procedures**

(1) A person who does a non-intimate forensic procedure on a person may be of either gender.

(2) A person who does an intimate forensic procedure or an internal forensic procedure on a person must be of the same gender as that person unless the person who does it is —

(a) a doctor or nurse; or

(b) if the intimate forensic procedure being done on that person is the taking of a sample of that person's blood — a doctor, nurse or qualified person.

(3) A person who is present while an intimate forensic procedure or an internal forensic procedure is done on another person (excluding a person who is present under section 101(4)) must, if practicable, be of the same gender as the person on whom the procedure is done.

(4) Subsection (3) does not apply if the intimate forensic procedure is the taking of a sample of the person's blood.

(5) If this Part requires a power to be exercised in relation to a person by a person of the same gender as the person, the officer authorised to exercise the power may authorise a person of that gender to exercise the power.

(6) A person so authorised may exercise the power.

*[Section 102 amended: No. 5 of 2008 s. 38; No. 22 of 2013 s. 29(2).]*

## 103. Who may do forensic procedure

(1) When a non-intimate forensic procedure is being done on a person, a power in the Table to this subsection may only be exercised by a person specified opposite the power in the Table.

**Table**

| | **Power** | **Who may exercise it** |
|---|---|---|
| 1. | Removing any article that the person is wearing, other than any article covering his or her private parts | Person of either gender |
| 2. | Searching any article removed | Person of either gender |
| 3. | Swabbing or using other means to detect a relevant thing on the external parts of the person's body, other than his or her private parts | Doctor, nurse or qualified person |
| 4. | Removing a relevant thing attached physically to those external parts | Doctor, nurse or qualified person |
| 5. | Taking a sample of a relevant thing on those external parts | Doctor, nurse or qualified person |
| 6. | Taking an impression of a relevant thing on those external parts | Qualified person |

| | **Power** | **Who may exercise it** |
|---|---|---|
| 7. | Taking a sample of a relevant thing from under the nail of the person | Doctor, nurse or qualified person |
| 8. | Removing a relevant thing from, or taking a sample of a relevant thing in, the person's mouth | Doctor, dentist, nurse or qualified person |

(2) When an intimate forensic procedure is being done on a person, a power in the Table to this subsection may only be exercised by a person specified opposite the power in the Table.

**Table**

| | **Power** | **Who may exercise it** |
|---|---|---|
| 1. | Removing any article that the person is wearing | Person of the same gender as the person |
| 2. | Searching any article removed | Person of either gender |
| 3. | Swabbing or using other means to detect a relevant thing on the person's external private parts | Doctor, nurse or qualified person |
| 4. | Removing a relevant thing attached physically to those external private parts | Doctor, nurse or qualified person |
| 5. | Taking a sample of a relevant thing on those external private parts | Doctor, nurse or qualified person |
| 6. | Taking an impression of a relevant thing on those external private parts | Qualified person |

| | Power | Who may exercise it |
|---|---|---|
| 7. | Taking a sample of blood from the person | Doctor, nurse or qualified person |

(3) When an internal forensic procedure is being done on a person, a power in the Table to this subsection may only be exercised by a person specified opposite the power in the Table.

**Table**

| | Power | Who may exercise it |
|---|---|---|
| 1. | Removing any article that the person is wearing | Person of the same gender as the person |
| 2. | Searching any article removed | Person of either gender |
| 3. | Searching the person's internal parts for a relevant thing using x-rays, ultrasound or similar means | Doctor or qualified person |
| 4. | Searching the person's orifices, other than the mouth, for a relevant thing | Doctor, or a qualified person who is a nurse, midwife or other prescribed person |
| 5. | Swabbing or using other means to detect the presence of a relevant thing in those orifices | Doctor or qualified person |
| 6. | Removing a relevant thing from, or taking a sample of a relevant thing in, any such orifice | Doctor, or a qualified person who is a nurse, midwife or other prescribed person |

*[Section 103 amended: No. 11 of 2011 s. 5.]*

## 104. Samples, things etc., how to be taken

(1) If during a forensic procedure done under this Part —

(a) a relevant thing is removed, or a sample of a relevant thing is taken, from on or in a person's body; or

(b) an impression (including a dental impression) is taken of a relevant thing on or in a person's body,

it must be done by the least painful method that is known or available to the person doing the procedure.

(2) If —

(a) a relevant thing on a person's body is attached to the person's hair; and

(b) under this Part it is permissible to seize the thing itself or a sample of it,

then, if practicable, the hair to which the thing is attached must not be uprooted but instead may be cut and taken from the person together with the thing or a sample of it.

(3) If under this Part it is permissible to search a person's external parts for a relevant thing the person's hair may be combed for the thing or a sample of it.

(4) The regulations may —

(a) prohibit or regulate methods by which samples, photographs or impressions are taken or procedures are done under this Part;

(b) prescribe the equipment to be used for taking samples, photographs or impressions or doing procedures under this Part.

## Division 7 — Dealing with things found during a forensic procedure

### 105. Things found by chance during forensic procedure

If in the course of doing a forensic procedure under this Part a person finds a thing a search for which is not the object of the procedure but which an officer reasonably suspects is relevant to the offence to which the forensic procedure relates or to another offence, the person may remove the thing or take a sample of it.

### 106. Things found may be seized and examined

If under this Part a forensic procedure is done on a person and —

(a) the thing, a search for which was the object of the procedure, is removed, or a sample of it is taken, from the person; or

(b) under section 105, a thing is removed, or a sample of it is taken, from the person,

then —

(c) the thing or sample may, subject to section 146, be seized;

(d) whether or not it is seized, a forensic examination may be done on it.

## Division 8 — Admissibility of certain evidence

### 107. Evidence of refusal of consent etc.

(1) Evidence that an adult, or a child who has reached 10 years of age, refused to or did not or withdrew consent to undergoing a forensic procedure is not admissible in proceedings against the adult or child except —

(a) in proceedings against him or her for an offence alleged to have been committed while the procedure was being done on him or her; or

(b) to establish or rebut an allegation that an officer investigating the commission of an offence acted contrary to law in doing the investigation.

(2) Evidence that a responsible person refused to or did not or withdrew consent to a forensic procedure being done on a protected person is not admissible in proceedings against the responsible person, or the protected person, except —

(a) in proceedings against him or her for an offence alleged to have been committed while the forensic procedure was being done on the protected person; or

(b) to establish or rebut an allegation that an officer investigating the commission of an offence acted contrary to law in doing the investigation.

## 108. Evidence of how procedure was done

Evidence of how a forensic procedure was done is admissible in proceedings in court against a person —

(a) to establish or rebut an allegation that unreasonable force was used to do the procedure;

(b) in connection with deciding the admissibility of a confession or other evidence adverse to the person where the person alleges it was induced or obtained by the use of unreasonable force;

(c) to establish or rebut an allegation that the procedure was not done in accordance with this Part.

# Part 10 — Provisions about searches and forensic procedures on people

## 109. Term used: body search

In this Part —

***body search*** means a basic search or a strip search.

## 110. Body searches and forensic procedures may be repeated

(1) In relation to any one investigation, a person may, subject to the relevant provisions of this Act —

(a) be requested on more than one occasion to undergo a body search or forensic procedure;

(b) be required to undergo more than one body search;

(c) be required to undergo more than one forensic procedure.

(2) Without limiting subsection (1) a person may, subject to the relevant provisions of this Act, be requested to undergo the same body search or forensic procedure on more than one occasion.

## 111. People not obliged to do searches etc.

Nothing in Part 8 or 9 requires a person —

(a) to do or to assist in doing a body search or a forensic procedure on a person; or

(b) to remove a thing from a person's body; or

(c) to take a sample of a thing on or in a person's body; or

(d) to take a photograph or impression of any thing on or in a person's body.

## 112. Forensic information, use and destruction of

(1) In this section —

***forensic database*** has the meaning given to that term by the *Criminal Investigation (Identifying People) Act 2002* section 61;

***forensic information*** means —

(a) a photograph or other record created while doing a body search or forensic procedure on a person; or

(b) any thing removed from a person as a result of doing a body search or a forensic procedure on the person; or

(c) any sample or impression taken while doing a forensic procedure on a person; or

(d) any information derived from such a thing, sample or impression.

(2) Any forensic information obtained under Part 8 or 9 may be —

(a) compared with information in a forensic database; or

(b) put in a forensic database.

(3) Subject to section 152, any forensic information obtained under Part 8 or 9 must not be destroyed except with the approval of the Commissioner of Police.

Penalty: a fine of $12 000 and imprisonment for 12 months.

(4) Subject to section 152, any forensic information obtained under Part 8 or 9 in relation to the investigation of the death of a person, or under Part 9 from a deceased person, must not be destroyed except with the approval of the Coroner.

Penalty: a fine of $12 000 or imprisonment for 12 months.

## 113. Disclosure of photographs obtained under Part 8 or 9

(1) In this section —

***forensic purpose*** means —

(a) investigating an offence or a suspected offence or offences generally; or

(b) investigating the death of a person or identifying a deceased person; or

(c) investigating the whereabouts of or identifying a missing person;

***protected information*** means any photograph of a person or of any part of a person, taken under Part 8 or 9.

(2) A person who has access, or has had access, to protected information may only disclose the information in these circumstances —

(a) if the person is the person to whom the information relates;

(b) if the person to whom the information relates consents in writing to the disclosure;

(c) for the purpose of the medical treatment of the person to whom the information relates;

(d) if the information is already public;

(e) for a forensic purpose where the investigation or identification is being done by a police officer or a public officer or by a law enforcement officer prescribed by the regulations;

(f) for the purpose of a decision as to whether to prosecute an offence;

(g) for the purpose of criminal proceedings for an offence;

(h) for the purpose of an investigation or inquest under the *Coroners Act 1996*;

(i) for the purpose of civil or disciplinary proceedings that relate to the way in which, or the conduct of any procedure by which, the information was obtained;

(j) for the purpose of an investigation under the *Parliamentary Commissioner Act 1971* into the exercise of any power under this Act;

(k) in accordance with the Mutual Assistance in *Criminal Matters Act 1987*, or the *Extradition Act 1988*, of the Commonwealth;

(l) for the purposes of a compensation claim made under the *Criminal Injuries Compensation Act 2003*;

(m) for the purpose of instructing a person who is or is training to be —

(i) a person referred to in or prescribed for paragraph (e); or

(ii) a person with qualifications in a forensic science,

if all reasonable measures are taken to prevent the person from whom the personal information was obtained being identified from the information;

(n) for a purpose that the Minister approves because it is in the public interest in any particular case;

(o) for a purpose prescribed by the regulations.

(3) A person who has access, or has had access, to protected information must not disclose the information except as provided by this section.

Penalty: a fine of $24 000 or imprisonment for 2 years.

*[Section 113 inserted: No. 5 of 2008 s. 39.]*

**114. Legal protection for people carrying out searches etc.**

(1) This section does not apply to a person to whom the *Police Act 1892* section 137 applies.

(2) In this section a reference to the doing of anything includes a reference to an omission to do anything.

(3) An action in tort does not lie against a person for anything that the person has done, in good faith, in the exercise or purported exercise of a power in Part 8 or 9.

(4) The protection given by this section applies even though the thing done as described in subsection (3) may have been capable of being done whether or not this Act had been enacted.

# Part 11 — Interviewing suspects

## 115. Terms used

In this Part —

***CCC*** means the Corruption and Crime Commission established under the *Corruption, Crime and Misconduct Act 2003*;

***CCC officer*** has the meaning given to the term officer of the Commission by the *Corruption, Crime and Misconduct Act 2003* section 3;

***interview*** means an interview with a suspect by a police officer or a CCC officer or any part of such an interview;

***ombudsman officer*** means —

(a) the Parliamentary Commissioner for Administrative Investigations appointed under the *Parliamentary Commissioner Act 1971*; or

(b) the Acting Commissioner or the Deputy Commissioner appointed under that Act; or

(c) an officer appointed under section 9(1) of that Act;

***Parliamentary Inspector*** has the meaning given to that term by the *Corruption, Crime and Misconduct Act 2003* section 3;

***suspect*** means a person suspected of having committed an offence, whether or not he or she has been charged with the offence.

*[Section 115 amended: No. 35 of 2014 s. 39.]*

## 116. Interviews, conduct of

(1) An interview may be conducted by remote communication.

(2) An interpreter, if needed for an interview, may participate by remote communication.

## 117. Recorded interview to be made available to suspect

(1) If an audiovisual recording is made of an interview and the suspect is charged with an offence to which the interview

relates, a copy of the recording must be made available to the suspect or the suspect's legal practitioner within 14 days after the suspect is so charged or, if that is not practicable, as soon as practicable after that period.

(2) No person is entitled to a transcript of an audiovisual recording of an interview, or any part of such a recording.

(3) A court must not order that such a transcript be made unless satisfied that —

(a) words spoken in the interview cannot be understood satisfactorily; and

(b) it is practicable to prepare such a transcript.

(4) Subsections (2) and (3) do not prevent a person from making a transcript of an audiovisual recording of an interview and supplying a copy of it to any person.

*[Section 117 amended: No. 21 of 2008 s. 656(3).]*

## 118. Admission in serious case inadmissible unless recorded

(1) In this section —

***admission*** means an admission made by a suspect to a police officer or a CCC officer, whether the admission is by spoken words or by acts or otherwise;

***adult*** means a person who has reached 18 years of age;

***child*** means a person who is under 18 years of age;

***reasonable excuse***, for the absence of an audiovisual recording of an admission, includes —

(a) the admission was made when it was not practicable to make an audiovisual recording of it;

(b) equipment to make an audiovisual recording of the admission could not be obtained while it was reasonable to detain the suspect;

(c) the suspect did not consent to an audiovisual recording being made of the admission;

(d) the equipment used to make an audiovisual recording of the admission malfunctioned.

(2) This section applies in respect of a suspect who is —

(a) a child charged with an indictable offence, irrespective of whether, if an adult were charged with it, it could be dealt with by a court of summary jurisdiction; or

(b) an adult charged with an indictable offence that cannot be dealt with by a court of summary jurisdiction.

(3) On the trial of the suspect for the offence, evidence of any admission by the suspect is not admissible unless —

(a) the evidence is an audiovisual recording of the admission; or

(b) in the absence of an audiovisual recording of the admission —

(i) the prosecution proves, on the balance of probabilities, that there is a reasonable excuse for the absence; or

(ii) the court decides otherwise under section 155.

(4) Subsection (3) does not apply to an admission by a person made before there were reasonable grounds to suspect that he or she had committed the offence.

## 119. Recording admitted as evidence, jury may play

If an audiovisual recording of an interview is admitted as evidence in a trial, the jury is entitled to play the recording during its deliberations.

## 120. Recordings of interviews, possession etc. restricted

(1) In this section —

***authorised person*** means any of the following, acting in the course of duty —

(a) a police officer;

(b) a person authorised for the purposes of this Part by the Commissioner of Police;

(c) the DPP or a person acting under the authority of the DPP;

(d) a legal practitioner acting for or representing the State;

(e) a CCC officer;

(f) the Parliamentary Inspector;

(g) an ombudsman officer;

(h) a court or a person acting at the direction of a court;

(i) a coroner or a person acting at the direction of a coroner;

(j) a person prescribed to be an authorised person.

(2) A person who is in possession of an audiovisual recording of an interview commits an offence unless the person —

(a) is an authorised person; or

(b) is the suspect or the suspect's legal practitioner; or

(c) has possession of the recording in a sealed package as part of his or her duties as a person engaged by a person referred to in paragraph (a) or (b) to transport it; or

(d) was served with the recording under the *Criminal Procedure Act 2004* section 35, 42, 61 or 95.

(3) A person who plays an audiovisual recording of an interview to another person commits an offence except when —

(a) the recording is played for purposes connected with the prosecution or defence of, or legal proceedings relating to, a charge to which the interview relates; or

(b) the recording is played for purposes connected with proceedings before a coroner; or

(c) the recording is played for purposes connected with proceedings under the *Police Act 1892* to remove a member, as that term is defined in section 33K of that Act; or

(d) the recording is played under a direction of a court; or

(e) the recording is played under section 124.

(4) Subsection (3) does not apply to any of the following when acting in the course of duty —

(a) a police officer;

(b) a CCC officer;

(c) the Parliamentary Inspector;

(d) an ombudsman officer.

(5) A person who supplies, or offers to supply, an audiovisual recording of an interview to another who is not —

(a) an authorised person; or

(b) the suspect or the suspect's legal practitioner; or

(c) a person engaged by a person referred to in paragraph (a) or (b) to transport it; or

(d) a person who is required to be served with it under the *Criminal Procedure Act 2004* section 35, 42, 61 or 95,

commits an offence unless the person is acting under a direction given under section 122.

(6) A person, other than an authorised person, who copies any part of an audiovisual recording of an interview, or who permits another person to make a copy of any part of such a recording, commits an offence unless the person is acting under a direction given under section 122.

(7) An authorised person who erases an audiovisual recording of an interview commits an offence, except when the person is acting under —

(a) a direction given under section 122; or

(b) an authorisation given under section 123(3).

(8) A person who commits an offence under this section is liable to a fine of $5 000.

*[Section 120 amended: No. 21 of 2008 s. 656(4)-(6).]*

**121. Recorded interview, broadcast prohibited**

A person must not broadcast an audiovisual recording of an interview or any part of such a recording unless the broadcast is made under a direction of a court given under section 122.

Penalty:

(a) for an individual, a fine of $12 000 and imprisonment for 12 months;

(b) for a body corporate, a fine of $100 000.

**122. Recordings, court may give directions as to supply etc.**

The Supreme Court, District Court, Magistrates Court or Children's Court may give directions (with or without conditions) as to the supply, copying, editing, erasure, playing, or broadcast of an audiovisual recording of an interview.

**123. Recordings to be retained by police and CCC**

(1) If an audiovisual recording is made of an interview, the Commissioner of Police or the CCC, as the case requires, must keep the recording or a copy of it in safe custody for at least 5 years.

(2) If the Supreme Court is satisfied there is good cause to keep an audiovisual recording of an interview for more than 5 years, it may order the Commissioner of Police or the CCC to keep the recording for an additional period set by the Court.

(3) The Commissioner of Police or the CCC, in writing, may authorise a person to erase audiovisual recordings of interviews in accordance with this section.

**124. Recordings may be played for teaching purposes**

(1) In this section —

***prescribed person*** means —

(a) a police officer or police trainee; or

(b) a CCC officer; or

(c) a legal practitioner or a person training to become a legal practitioner; or

(d) a person prescribed for the purposes of this section.

(2) An audiovisual recording of an interview may be played to a prescribed person for the purposes of instruction if —

(a) the suspect has been convicted of a charge to which the interview relates; and

(b) all legal proceedings in relation to the subject matter of the interview have been concluded; and

(c) all reasonable measures are taken to prevent the identification of the suspect from the recording when it is played.

*[Section 124 amended: No. 21 of 2008 s. 656(7).]*

# Part 12 — Arrest and related matters

## Division 1 — Preliminary

### 125. Terms used

(1) In this Part —

***unconditionally***, in relation to the release of a person, means released without being required to enter into, or without having entered into, a bail undertaking under the *Bail Act 1982*.

(2) For the purposes of this Part, a person who is under arrest ceases to be under arrest —

(a) if the person was arrested under an arrest warrant — when the person is delivered into the custody of the relevant court or, in the case of an arrest warrant issued under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 52Q(1)(b), released under section 52ZB of that Act; or

(b) if the person is arrested under section 128 —

(i) when the person is released, whether on bail or unconditionally; or

(ii) if the person is not released, when the person is delivered into the custody of a court;

or

(c) if at the time of being arrested the person was at large having escaped from lawful custody — when the person is returned to that lawful custody; or

(d) in any event — if the person escapes from lawful custody.

*[Section 125 amended: No. 25 of 2020 s. 109.]*

### 126. Proceedings by summons etc. not prevented

This Part does not prevent a person from being charged with an offence without having been first arrested for it.

## Division 2 — Arrest without an arrest warrant

### 127. Arrest warrant not required to exercise this Division's powers

The powers in this Division may be exercised without an arrest warrant.

### 128. Arrest power for offences

(1) In this section —

***serious offence*** means an offence —

(a) the statutory penalty for which is or includes imprisonment for 5 years or more or life; or

(b) under the *Restraining Orders Act 1997* section 61(1) or (2a); or

(c) that involves family violence as defined in the *Restraining Orders Act 1997* section 5A(2)(a), (b), (e) or (j) or a threat to enact that violence; or

(d) under section 38C(2).

(2) A police officer or a public officer may arrest a person for a serious offence if the officer reasonably suspects that the person has committed, is committing, or is just about to commit, the offence.

(3) A police officer or a public officer may arrest a person for an offence that is not a serious offence if the officer reasonably suspects —

(a) that the person has committed, is committing, or is just about to commit, the offence; and

(b) that if the person is not arrested —

(i) it will not be possible, in accordance with law, to obtain and verify the person's name and other personal details; or

(ii) the person will continue or repeat the offence; or

(iii) the person will commit another offence; or

(iv) the person will endanger another person's safety or property; or

(v) the person will interfere with witnesses or otherwise obstruct the course of justice; or

(vi) the person will conceal or disturb a thing relevant to the offence; or

(vii) the person's safety will be endangered.

*[Section 128 amended: No. 32 of 2011 s. 17; No. 56 of 2012 s. 8; No. 49 of 2016 s. 102.]*

## Division 3 — Ancillary powers to making an arrest

### 129. Warrant not required to exercise this Division's powers

The powers in this Division may be exercised without a warrant.

### 130. Occupier's rights if place entered

Section 31 applies to and in respect of the entry of a place under this Division.

### 131. Powers exercisable on search under this Division

An officer who is authorised under this Division to enter and search a place may, for the purpose of doing so, exercise any of the ancillary powers in section 44.

### 132. Places may be entered and vehicles may be stopped

(1) In this section —

***arrestable person*** means a person who may be arrested —

(a) under a warrant issued under Part 9; or

(b) under section 88(3) or 96(3); or

(c) under an approval given under section 98; or

(d) under section 128; or

(e) under an arrest warrant; or

(f) under the *Criminal Investigation (Identifying People) Act 2002*; or

(g) under the *Criminal Investigation (Extra-territorial Offences) Act 1987*.

(2) For the purposes of arresting an arrestable person a police officer or a public officer —

(a) may enter a place where the officer reasonably suspects the person is and search it for the person; and

(b) may stop and enter a vehicle in which the officer reasonably suspects the person is and search it for the person.

(3) If the officer reasonably suspects that an arrestable person is in a building that consists of 2 or more dwellings then the power in subsection (2)(a) is limited to entering and searching —

(a) the parts of the building that the occupiers of the dwellings use in common with each other; and

(b) any individual dwelling where the officer reasonably suspects the person is.

(4) The power in this section to search is limited to searching for the arrestable person.

(5) If an officer doing a search under this section finds a thing relevant to an offence, the officer —

(a) may, subject to section 146, seize it; and

(b) whether or not the officer seizes it, may do a forensic examination on it.

*[Section 132 amended: No. 22 of 2013 s. 29(3).]*

## 133. Places and vehicles of certain arrested suspects may be searched for evidence

(1) In this section —

***senior officer*** means —

(a) in relation to a police officer — a police officer who is, or is acting as, a sergeant or an officer of a rank more senior than a sergeant;

(b) in relation to a public officer — a public officer prescribed as a senior officer in relation to that officer;

***serious offence*** means an offence the statutory penalty for which is or includes imprisonment for 5 years or more or life.

(2) If a person is under arrest for a serious offence, a police officer or a public officer —

(a) may enter the place in which the person was when he or she was arrested or from which the person fled immediately before being arrested; and

(b) may stop and enter any vehicle in which the person was when he or she was arrested or from which the person fled immediately before being arrested; and

(c) may stop and enter any vehicle that the person controls or manages, whether or not he or she was arrested in that vehicle,

and search it for —

(d) any thing relevant to the serious offence; or

(e) any person against whom the serious offence was committed.

(3) If a person is under arrest for a serious offence then, subject to subsection (4), a police officer or a public officer may enter a place that the person occupies, controls or manages, not being a place referred to in subsection (2)(a), and search it for —

(a) any thing relevant to the serious offence; or

(b) any thing relevant to an offence that is connected with, or of the same character as, the serious offence; or

(c) any person against whom the serious offence, or an offence that is connected with, or of the same character as, the serious offence, was committed.

(4) The powers in subsection (3) must not be exercised by an officer unless —

(a) the officer reasonably suspects that the place contains a thing or person referred to in subsection (3)(a), (b) or (c); and

(b) the officer has written approval to do so from a senior officer who is not involved in the investigation of the serious offence.

(5) A senior officer who gives such an approval must make a written record of it and —

(a) the place to be entered and searched; and

(b) the thing suspected to be in the place; and

(c) the other officer's grounds for suspecting that the place contains a thing or person referred to in subsection (3)(a), (b) or (c); and

(d) the date and time when it was given; and

(e) the reasons for giving it.

(6) The powers in subsections (2) and (3) cease when the person is charged with an offence or is released from arrest, whichever happens first.

(7) If an officer doing a search under subsection (2) or (3) finds a thing relevant to an offence, whether the serious offence or another offence, the officer —

(a) may, subject to section 146, seize the thing; and

(b) whether or not the officer seizes the thing, may do a forensic examination on it.

(8) A senior officer's approval under this section may be applied for and given by remote communication.

*[Section 133. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]*

## 134. Escapees, additional powers to aid recapture

(1) In this section —

***escapee*** means a person who has escaped from lawful custody or detention.

(2) The powers in this section are in addition to those in sections 131 to 133.

(3) While an escapee is at large, a police officer may enter and search any place where the police officer reasonably suspects —

(a) the escapee has been since his or her escape; or

(b) the escapee is likely to go while at large.

(4) The power in subsection (3) is limited to searching for —

(a) evidence of the escapee's whereabouts; and

(b) any thing relevant to —

(i) an offence under *The Criminal Code* section 146 committed by the escapee; or

(ii) an offence under *The Criminal Code* section 144, 145, 147, 148 or 149 that is reasonably suspected has been, is being or may be committed in relation to the escapee's escape; or

(iii) an indictable offence that is reasonably suspected to have been committed by the escapee while at large.

(5) If an officer doing a search under this section finds a thing relevant to an offence, whether or not an offence referred to in subsection (4), the officer —

(a) may, subject to section 146, seize it; and

(b) whether or not the officer seizes it, may do a forensic examination on it.

## Division 4 — Searches of people in custody for security purposes

### 135. Certain people in custody may be searched

(1) In this section —

***authorised officer*** means —

(a) in relation to a person who is in the custody of a police officer — any police officer;

(b) in relation to a person who is in the custody of a public officer — any public officer who has the same functions as that public officer;

***security risk item*** means any thing —

(a) that could be used to endanger the person in possession of the thing or any other person; or

(b) that could be used to assist a person to escape from lawful custody; or

(c) that could adversely affect the security, good order or management of a place where a person is being kept in custody.

(2) A person is in custody for the purposes of this section if —

(a) the person is under arrest, whether under this Act or under another written law, or is otherwise in the lawful custody of an officer; or

(b) the person, having been required to do so by a police officer acting under the *Road Traffic Act 1974* section 66, 66B, 66D or 66E, is accompanying a police officer to, or is waiting at, a police station or other place; or

(c) the person is complying with an order under the *Restraining Orders Act 1997* section 62F(1)(c) or (2)(a).

(3) A person is not in custody for the purposes of this section if —

(a) the person is in custody because he or she is a child in the CEO's care, as that term is defined by the *Children and Community Services Act 2004* section 30, and not for any other reason; or

(b) the person is a person in custody, as that term is defined by the *Court Security and Custodial Services Act 1999* section 3, and under that Act the CEO (as that term is defined in that Act) is responsible for the person's security, control, safety, care and welfare.

(4) If a person is in custody, an authorised officer may search the person for a security risk item.

(5) For the purpose of searching a person under subsection (4) an authorised officer may, as often as is reasonably necessary —

(a) subject to Part 8 Division 3, do a basic search or a strip search of the person;

(b) if authorised to do so under Part 9 Division 5, do an internal forensic procedure on the person in accordance with Part 9 Division 6.

(6) If an authorised officer, exercising a power in subsection (4) on a person, finds a thing that the officer reasonably suspects is a security risk item, then —

(a) if the item is not attached physically to the person — the officer may seize it;

(b) if the item is attached physically to the person, but not to his or her private parts, or is in the person's mouth — the officer may remove it but in doing so must comply with Part 9 Division 6 as if doing a non-intimate forensic procedure on the person;

(c) if the item is attached physically to the person's private parts — the officer must not remove it except by means of an intimate forensic procedure authorised and conducted in accordance with Part 9;

(d) if the item is in an orifice (other than the mouth) of the person, the officer must not remove it except by means of an internal forensic procedure authorised and conducted in accordance with Part 9.

(7) For the purposes of subsections (5)(b) and (6)(c) and (d), Part 9, with any necessary changes, applies as if —

(a) a security risk item were a thing that is relevant to an offence; and

(b) searching for and removing a security risk item were a purpose permitted by section 77.

(8) If an authorised officer, exercising a power in subsection (4) on a person, finds a thing that is not a security risk item but that is a thing relevant to an offence, then —

(a) if the thing is not attached physically to the person, the officer may seize it; but

(b) in any other case, the officer must not remove the thing, or take a sample or impression of it, or take a swab or use other means to detect it, except by means of a forensic procedure authorised and conducted in accordance with Part 9.

(9) If under subsection (6) a security risk item is removed, it may be seized.

(10) If under this section an authorised officer seizes a security risk item from a person, the officer must make it available for collection by the person when he or she is released from custody, unless it may be lawfully seized and retained under another provision of this Act or under another written law.

(11) The *Criminal and Found Property Disposal Act 2006* applies to and in relation to a thing so seized that is made available to but not collected by the person.

(12) If under subsection (8) an authorised officer removes a thing that is not a security risk item but that is a thing relevant to an offence from a person, the officer —

(a) may, subject to section 146, seize the thing; and

(b) whether or not the officer seizes it, may do a forensic examination on it.

*[Section 135 amended: No. 8 of 2012 s. 79; No. 49 of 2016 s. 103; No. 27 of 2020 s. 44.]*

*[Section 135. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]*

## Division 5 — Dealing with arrested people

### 136. *Young Offenders Act 1994* not affected

This Division is in addition to and does not affect the operation of the *Young Offenders Act 1994* and in particular section 20 and Part 4 of that Act.

### 137. Arrested people, rights of

(1) In this section —

***officer*** means a police officer, a public officer, or any person who holds an office with power to arrest people.

(2) This section applies to a person who has been arrested by an officer, no matter under what authority or written law.

(3) The arrested person is entitled —

(a) to any necessary medical treatment; and

(b) to a reasonable degree of privacy from the mass media; and

(c) to a reasonable opportunity to communicate or to attempt to communicate with a relative or friend to inform that person of his or her whereabouts; and

(d) if he or she is for any reason unable to understand or communicate in spoken English sufficiently, to be assisted in doing so by an interpreter or other qualified person.

## 138. Arrested suspects, rights of

(1) In this section —

***arrested suspect*** means a person who is under arrest having been arrested —

(a) under section 128, under an arrest warrant, or under another written law, on suspicion of having committed an offence; or

(b) under the *Criminal Investigation (Extra-territorial Offences) Act 1987*;

***officer*** means a police officer, a public officer, or any person who holds an office with power to arrest people.

(2) In addition to the rights in section 137 an arrested suspect is entitled —

(a) to be informed of the offence for which he or she has been arrested and any other offences that he or she is suspected of having committed;

(b) to be cautioned before being interviewed as a suspect;

(c) to a reasonable opportunity to communicate or to attempt to communicate with a legal practitioner;

(d) if he or she is for any reason unable to understand or communicate in spoken English sufficiently, not to be interviewed until the services of an interpreter or other qualified person are available.

(3) The officer in charge of the investigation must, as soon as practicable after the arrest of an arrested suspect —

(a) inform the suspect of his or her rights under section 137(3)(c) and subsection (2)(c); and

(b) afford the suspect his or her other rights under section 137 and subsection (2).

(4) An officer may refuse an arrested suspect his or her right to communicate or to attempt to communicate with a person if the officer reasonably suspects that the communication would result in —

(a) an accomplice taking steps to avoid being charged; or

(b) evidence being concealed, disturbed or fabricated; or

(c) a person's safety being endangered.

*[Section 138 amended: No. 21 of 2008 s. 656(8).]*

## 139. Arrested suspects, detention of

(1) In this section —

***arrested suspect*** means a person who is under arrest having been arrested under section 128, or under another written law, on suspicion of having committed an offence but who has not been arrested under an arrest warrant.

(2) A police officer or a public officer may detain an arrested suspect in custody after the suspect is arrested for the purposes of —

(a) doing a search under section 133 or 135; and

(b) investigating any offence suspected of having been committed by the suspect; and

(c) interviewing the suspect in relation to any offence that the suspect is suspected to have committed; and

(d) deciding whether or not to charge the suspect with an offence.

*[(3) deleted]*

(4) The detention of an arrested suspect must be in accordance with section 140.

(5) The detention of an arrested suspect in contravention of section 140 is not unlawful if it occurs due to circumstances that are not reasonably foreseeable.

*[Section 139 amended: No. 31 of 2014 s. 4.]*

## 140. Detention period for arrested suspects

(1) In this section —

***arrested suspect*** has the meaning given to that term by section 139;

***senior officer*** means —

(a) in the case of an arrested suspect who has been arrested by a police officer — a police officer who is, or is acting as, a sergeant or an officer of a rank more senior than a sergeant;

(b) in the case of an arrested suspect who has been arrested by a public officer — another public officer prescribed as a senior officer in relation to that officer,

who is not involved in the investigation of any offence that the suspect is suspected of having committed.

(2) For the purposes of this section, the detention of an arrested suspect is justified if the detention —

(a) is for a purpose referred to in section 139(2); and

(b) is for a period that is reasonable having regard to the factors in section 141.

(3) Subject to subsection (2), the detention of an arrested suspect —

(a) must not exceed 6 hours from the arrest of the suspect unless a further period has been authorised under subsection (4)(b); and

(b) must not exceed any further period authorised under subsection (4)(b) unless one or more further periods have been authorised under subsection (6)(b).

(4) At any time during the 6 hours immediately following a suspect's arrest on suspicion of having committed an offence —

(a) an officer involved in investigating the offence may apply to a senior officer for an authorisation under paragraph (b); and

(b) on such an application, the senior officer may authorise the detention of the suspect for a further period of not more than 6 hours if the officer is satisfied that detention of the suspect for the further period is justified.

(5) If under subsection (4)(b) a senior officer authorises the detention of an arrested suspect for a further period —

(a) the senior officer must make a written record of the authorisation and —

(i) the name or a description of the arrested suspect to whom it relates; and

(ii) the further period authorised; and

(iii) the date and time of the authorisation; and

(iv) the reasons for the authorisation;

and

(b) if practicable the senior officer must give the applicant a copy of the written record; and

(c) the further period commences at the end of the 6 hours immediately following the suspect's arrest; and

(d) no senior officer can give another authorisation under subsection (4)(b).

(6) At any time during a further period authorised under subsection (4)(b) or this subsection —

(a) an officer involved in investigating the offence concerned, with the prior written approval of a senior officer, may apply to a magistrate for an authorisation under paragraph (b); and

(b) on such an application, a magistrate may authorise the detention of the suspect for a further period of not more than 8 hours if the magistrate is satisfied that detention of the suspect for the further period is justified.

(7) If under subsection (6)(b) a magistrate authorises the detention of an arrested suspect for a further period —

(a) the magistrate must make a written record of the authorisation and —

(i) the name or a description of the arrested suspect to whom it relates; and

(ii) the further period authorised; and

(iii) the date and time of the authorisation;

and

(b) if practicable the magistrate must give the applicant a copy of the written record; and

(c) the further period commences —

(i) at the end of the further period authorised under subsection (4)(b); or

(ii) if a further period has previously been authorised under subsection (6)(b), at the end of that further period.

(8) An application may be made, and an authorisation may be given, under subsection (6) on more than one occasion.

(9) An application may be made, and an authorisation may be given, under this section by remote communication.

*[Section 140. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]*

## 141. Reasonable period of detention, factors determining

The factors to be taken into account under section 140 are —

(a) the number and complexity of the offences to be investigated;

(b) the time needed by officers with knowledge of or responsibility for the investigation to travel to attend to the matters in section 139(2);

(c) the time needed to interview potential witnesses, whether before, during or after any interview with the suspect;

(d) the time needed to interview any other people who are suspected of being involved in an offence suspected of having been committed by the suspect;

(e) the time needed to transport the suspect from the place where he or she was arrested to a place where appropriate facilities are available to conduct an interview or any other investigation;

(f) the time needed by an officer to assess relevant material or to take any other steps to prepare to interview the suspect;

(g) the time needed to afford the suspect his or her rights in sections 137 and 138;

(h) the time needed to allow the suspect to receive medical treatment, to rest or to receive refreshment;

(i) the time needed to obtain the use of facilities to make an audiovisual recording of an interview with the suspect;

(j) any delay in making such a recording caused by technical matters beyond the control of the person interviewing the suspect;

(k) any period when it is not reasonable to interview or conduct other investigations with the suspect because the suspect is intoxicated, ill or incapacitated;

(l) the time needed to visit any place connected with the offence;

(m) the time needed to complete any of the matters, or any matter reasonably connected with the matters, in section 139(2);

(n) the time needed to complete any identifying procedure under the *Criminal Investigation (Identifying People) Act 2002* Part 6;

(o) the time needed to complete any search of the suspect under Part 8;

(p) the time needed to complete any forensic procedure on the suspect under Part 9;

(q) the time needed to complete any test that may be conducted on the suspect under a written law;

(r) the time needed to arrange and conduct an identification parade;

(s) the time needed to comply with this Act or any other written law.

## 142. Arrested suspects, charging and releasing

(1) In this section —

***arrested suspect*** has the meaning given to that term by section 139;

***officer*** means a police officer, a public officer, or any person who holds an office with power to arrest people;

***serious offence*** means an indictable offence the statutory penalty for which is or includes imprisonment for 5 years or more or life.

(2) For the purposes of this section, not releasing a suspect unconditionally is justified if the officer who has custody of the

suspect reasonably suspects that if the suspect were released unconditionally —

(a) the suspect would —

(i) commit another offence;

(ii) continue or repeat the offence for which he or she is under arrest;

(iii) endanger another person's safety or property;

(iv) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to the suspect or any other person;

or

(b) the suspect's safety would be endangered.

(3) If it is decided not to charge an arrested suspect with an offence, then whether or not the suspect —

(a) is cautioned in relation to an offence; or

(b) is issued an infringement notice in relation to an offence,

the officer who has custody of the suspect must release the suspect unconditionally.

(4) If it is decided to charge an arrested suspect with a simple offence, then, subject to subsection (8), the officer who has custody of the suspect must release the suspect unconditionally unless —

(a) the officer reasonably suspects that the presence of the suspect when the charge is first dealt with by a court is likely to be necessary for any reason or for sentencing purposes; or

(b) not releasing the suspect unconditionally is justified under subsection (2),

in which case the officer may detain the suspect in custody subject to subsections (7) and (8).

(5) If it is decided to charge an arrested suspect with an indictable offence that is not a serious offence, then, subject to subsection (8), the officer who has custody of the suspect must release the suspect unconditionally unless —

(a) the officer reasonably suspects that if, under the *Criminal Procedure Act 2004*, the suspect were served with a summons in relation to the charge and released unconditionally the suspect would not obey the summons; or

(b) not releasing the suspect unconditionally is justified under subsection (2),

in which case the officer may detain the suspect in custody subject to subsections (7) and (8).

(6) If it is decided to charge an arrested suspect with a serious offence, the officer who has custody of the suspect may detain the suspect in custody subject to subsections (7) and (8).

(7) If it is decided to charge an arrested suspect with an offence and the suspect is not released unconditionally, the officer who has custody of the suspect must ensure the suspect is charged as soon as practicable and is dealt with —

(a) under the *Bail Act 1982* section 6; or

(b) under the *Mental Health Act 1996* section 196.

(8) If it is decided to charge an arrested suspect with an offence, the suspect may be detained in custody before being released unconditionally, or being dealt with under subsection (7), for a reasonable period that is to be determined having regard to these factors —

(a) the time needed to complete any identifying procedure under the *Criminal Investigation (Identifying People) Act 2002* Part 7;

(b) the time needed to complete any forensic procedure on the suspect under Part 9;

(c) if it is decided not to release the suspect unconditionally, the time needed to comply with —

(i) the *Bail Act 1982* and in particular section 6 of that Act; or

(ii) the *Mental Health Act 2014* section 157; or

(iii) any other written law.

(9) This section does not prevent a police officer from exercising a power in section 27 in relation to an arrested suspect before releasing him or her unconditionally.

*[Section 142 amended: No. 25 of 2014 s. 52; No. 31 of 2014 s. 5.]*

### 143. Other arrested people, dealing with

(1) A person who is arrested under any process or warrant must be dealt with according to the process or warrant.

(2) Subsection (1) does not prevent this Part from applying to a person referred to in that subsection if he or she is reasonably suspected to have committed an offence that is unrelated to the process or warrant.

## Division 6 — Miscellaneous

### 144. Possession of warrant at time of arrest not necessary

(1) If a police officer reasonably suspects that a warrant has been issued for the arrest or imprisonment of a person, the officer may arrest the person even though the officer does not have the warrant at the time.

(2) Subsection (1) does not limit the operation of *The Criminal Code* section 231.

# Part 13 — Seizing things and related matters

## 145. Application

This Part applies to and in respect of the seizing under this Act of a thing that is relevant to an offence.

## 146. Things relevant to offence, grounds for seizing

If this Act provides that an officer may seize a thing that is relevant to an offence the officer may do so only if the officer reasonably suspects one or more of the following —

(a) that the thing is property that has been stolen or otherwise unlawfully obtained;

(b) that the thing may be seized under another written law;

(c) that possession of the thing at that time and place by the person in possession of it is unlawful;

(d) that the thing may be forfeited to the State or the Crown;

(e) that it is necessary to seize the thing for one or more of the following purposes —

(i) to prevent it from being concealed, disturbed or lost;

(ii) to preserve its evidentiary value;

(iii) to do a forensic examination on it;

(iv) to prevent it from being used in the commission of another offence.

## 147. Seizing things, ancillary powers

(1) If it is not practicable or convenient to move a thing that may be seized, an officer may seize the thing by attaching a notice of seizure in the prescribed form to the thing.

(2) If it is not practicable or convenient to move a thing that has been seized, an officer may do whatever is reasonably necessary to secure the thing in the place where it is.

(3) If a power in subsection (1) or (2) is exercised, the officer must, if practicable, give written notice of the fact that the thing has been seized to the person in possession of the thing and the occupier of the place where the thing is.

(4) If under subsection (2) a thing is secured in a place without the consent of the occupier of the place, it may only be secured in the place for a reasonable period.

(5) An occupier of a place who is aggrieved by the fact that a thing that has been seized is secured in the place may apply to the Magistrates Court to review the matter.

(6) The application must be made in accordance with rules of court.

(7) On an application made under subsection (5) an officer involved in the investigation of the offence to which the seized thing relates (the ***investigating officer***) and the occupier are entitled to be heard.

(8) On an application made under subsection (5) the court may make any orders it thinks fit including —

(a) an order as to the period for which the seized thing may remain in the place;

(b) an order to mitigate any inconvenience caused by the continued presence of the seized thing in the place;

(c) if the court is satisfied that the seized thing should not remain in the place, an order that it be removed.

(9) Court proceedings under this section may be conducted by remote communication.

## 148. Records relevant to offence

(1) If a record may be seized, the officer authorised to seize it may, if practicable, reproduce the record, whether or not in the same form, and instead seize the reproduction.

Example for this subsection:

A record on a computer could be reproduced by printing it out on paper or copying it on to a disc and the paper or disc could then be seized.

(2) If a record is seized, the officer authorised to seize it may copy or take extracts from the record.

(3) If a record is seized and a person —

(a) who appears entitled to possession of the record; and

(b) who does not already have a copy of the record,

so requests, the officer in charge of the investigation must —

(c) if it is reasonably practicable to do so, give a copy of the record to the person as soon as practicable after it is seized; or

(d) unless the officer reasonably suspects that doing so will jeopardise the evidentiary value of the record, allow the person to inspect the record and to make and keep a copy of it,

unless it would be an offence for the person to possess the copy.

## 149. Records, powers to facilitate seizing

(1) If a record may be seized, any device or equipment needed to gain access to, recover, or reproduce, the information in the record is to be taken as also being relevant to the offence to which the record is relevant and, subject to section 146, may also be seized.

(2) For the purpose of seizing a record or exercising a power in section 148(1) or (2), an officer —

(a) may operate any device or equipment, whether seized under subsection (1) or not, that is needed to gain access to, recover, or make a reproduction of, the record and that is possessed by the person from whom the record may be seized;

(b) if he or she reasonably suspects that —

(i) the person from whom the record may be seized; or

(ii) an employee (whether under a contract of service or a contract for services) of that person,

knows how to gain access to or operate any such device or equipment — may order the person or employee to provide any information or assistance that is reasonable and necessary to enable the officer to seize the record or exercise the power.

## 150. Seized things, list to be supplied on request

(1) If an officer seizes any thing —

(a) the person who had custody or control of the thing before it was seized; or

(b) the occupier of the place where it was seized,

may ask the officer for a list of what was seized.

(2) The officer must comply with the request within a reasonable time after it is made.

(3) If it is not reasonably practicable to list all the things seized because they are too numerous, the list may give a general description of the things seized that contains as much detail as is reasonably practicable.

(4) This section does not apply in respect of a record if under section 148 a copy of the record was seized or was given to the person making the request.

## 151. Privileged material, procedure on seizure of

(1) In this section —

***court*** means the Magistrates Court;

***privileged*** means privileged because of either or both —

(a) legal professional privilege;

(b) public interest privilege.

(2) If a record is seized or, under an order to produce a business record issued under section 53, a business record is produced and —

(a) a person entitled to possession of the record claims that all or some of the information in it is privileged; or

(b) the officer seizing the record or to whom it is produced reasonably suspects that all or some of the information in it is privileged,

the record must be dealt with in accordance with this section.

(3) The record must be secured in a manner —

(a) that prevents it from being concealed, disturbed or lost; and

(b) that preserves its evidentiary value; and

(c) that prevents access to the information in it by any person who would not be entitled to access to the information if it were privileged.

(4) The officer in charge of the investigation must apply to the court to decide whether the information is privileged and must deliver the record into the custody of the court.

(5) The application must be made in accordance with rules of court and must be served on the person entitled to possession of the record or, if the identity or whereabouts of the person is unknown, on any person directed by the court to be served.

(6) The application may, if the court thinks fit, be heard in private.

(7) The applicant and any person entitled to possession of the record are entitled to be heard on the application.

(8) For the purpose of deciding the application the court may have access to all of the information in the record.

(9) If the court decides that all of the information is not privileged, the court must make the record available to be collected by the applicant.

(10) If the court decides that all of the information is privileged, the court must make the record available to be collected by the person from whom it was seized.

(11) If the court decides that some of the information is privileged, the court must make orders to enable the applicant to have access to the information in the record that is not privileged.

(12) If —

(a) the court decides that all or some of the information is privileged; and

(b) the applicant has applied to be permitted to do a forensic examination on the record,

the court must make orders that enable the forensic examination to be done on the record and to ensure that any information in it that is privileged remains privileged.

(13) After making a decision, the court may make any orders it thinks fit —

(a) as to costs;

(b) as to securing the record, or suspending the operation of any orders made under this section, until an appeal against the determination is commenced and dealt with.

(14) Proceedings under this section are part of the court's criminal jurisdiction.

(15) Subject to the *Criminal Appeals Act 2004* Part 2, an appeal lies against a decision made by the court under this section.

## 152. *Criminal and Found Property Disposal Act 2006* applies

(1) If under this Act any thing is seized, the *Criminal and Found Property Disposal Act 2006* applies to and in relation to it.

(2) Subsection (1) does not apply to a sample taken or seized under Part 9.

# Part 14 — Miscellaneous

## 153. Order by officer, offence to not obey

(1) A person who, without reasonable excuse, does not comply with an order given by an officer under this Act commits an offence.

Penalty: a fine of $12 000 and imprisonment for 12 months.

(2A) Subsection (1) does not apply to an order given under section 38B(1) or (2).

(2) It is not a defence to a charge of an offence under subsection (1) that information required to be given under the order would or may have incriminated the accused.

*[Section 153 amended: No. 56 of 2012 s. 9.]*

## 154. Evidence obtained improperly

(1) In this section —

***authorisation*** includes a warrant and an order.

(2) If in the purported exercise of a power conferred by this Act or by an authorisation issued or purportedly issued under this Act —

(a) a thing relevant to an offence is seized or obtained; and

(b) a requirement of this Act in relation to exercising the power or issuing the authorisation, including a requirement that arises before or after the exercise of the power or the issue of the authorisation, is contravened,

any evidence derived from the thing referred to in paragraph (a) or from the exercise of the power is not admissible in any criminal proceedings against a person in a court unless —

(c) the person does not object to the admission of the evidence; or

(d) the court decides otherwise under section 155; or

(e) if the power exercised was exercised in relation to a protected person (as that term is defined in section 73), the court is of the opinion that the contravention arose out of a mistaken but reasonable belief as to whether the person was a protected person.

**155. Inadmissible evidence, court may allow admission**

(1) This section applies if under another section a court may make a decision under this section in relation to evidence that is not admissible in proceedings in the court.

(2) The court may nevertheless decide to admit the evidence if it is satisfied that the desirability of admitting the evidence outweighs the undesirability of admitting the evidence.

(3) In making a decision under subsection (2) the court must take into account —

(a) any objection to the evidence being admitted by the person against whom the evidence may be given;

(b) the seriousness of the offence in respect of which the evidence is relevant;

(c) the seriousness of any contravention of this Act in obtaining the evidence;

(d) whether any contravention of this Act in obtaining the evidence —

(i) was intentional or reckless; or

(ii) arose from an honest and reasonable mistake of fact;

(e) the probative value of the evidence;

(f) any other matter the court thinks fit.

(4) The probative value of the evidence does not by itself justify its admission.

## 156. Regulations

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

(2) Without limiting subsection (1) regulations may —

(a) provide for the procedure to be followed in and in relation to doing a forensic examination on a thing;

(b) adopt, either wholly or in part or with modifications, any code, standard, or rule, that does not by itself have legislative effect in this State;

(c) create offences with statutory penalties not exceeding $5 000.

(3) If the regulations adopt a code, standard or rule, it is adopted as in force from time to time unless the regulations specify that a particular text is adopted.

## 157. Review of Act

(1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as practicable after the expiry of 5 years from its commencement.

(2) The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared, must cause the report to be laid before each House of Parliament.

# Notes

This is a compilation of the *Criminal Investigation Act 2006* and includes amendments made by other written laws [1M]. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

## Compilation table

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Criminal Investigation Act 2006* | 58 of 2006 | 16 Nov 2006 | s. 1 and 2: 16 Nov 2006;<br>Act other than s. 1, 2 and 113: 1 Jul 2007 (see s. 2 and *Gazette* 22 Jun 2007 p. 2837);<br>s. 113: 26 Jul 2008 (see s. 2 and *Gazette* 25 Jul 2008 p. 3391) |
| *Acts Amendment (Justice) Act 2008* Pt. 8 | 5 of 2008 | 31 Mar 2008 | s. 39: 26 Jul 2008 (see s. 2(c)(i) and *Gazette* 25 Jul 2008 p. 3391);<br>s. 35-38: 30 Sep 2008 (see s. 2(d) and *Gazette* 11 Jul 2008 p. 3253) |
| *Legal Profession Act 2008* s. 656 | 21 of 2008 | 27 May 2008 | 1 Mar 2009 (see s. 2(b) and *Gazette* 27 Feb 2009 p. 511) |
| *Medical Practitioners Act 2008* Sch. 3 cl. 16 | 22 of 2008 | 27 May 2008 | 1 Dec 2008 (see s. 2 and *Gazette* 25 Nov 2008 p. 4989) |
| *Police Amendment Act 2009* s. 15 | 42 of 2009 | 3 Dec 2009 | 13 Mar 2010 (see s. 2(b) and *Gazette* 12 Mar 2010 p. 941) |
| *Health Practitioner Regulation National Law (WA) Act 2010* Pt. 5 Div. 17 | 35 of 2010 | 30 Aug 2010 | 18 Oct 2010 (see s. 2(b) and *Gazette* 1 Oct 2010 p. 5075-6) |
| *Prohibited Behaviour Orders Act 2010* Pt. 5 Div. 2 | 59 of 2010 | 8 Dec 2010 | 23 Feb 2011 (see s. 2(b) and *Gazette* 23 Feb 2011 p. 633) |
| **Reprint 1: The *Criminal Investigation Act 2006* as at 14 Jan 2011** (includes amendments listed above except those in the *Prohibited Behaviour Orders Act 2010*) | | | |
| *Criminal Investigation Amendment Act 2011* | 11 of 2011 | 2 May 2011 | s. 1 and 2: 2 May 2011 (see s. 2(a));<br>Act other than s. 1 and 2: 3 May 2011 (see s. 2(b)) |
| *Restraining Orders Amendment Act 2011* Pt. 3 | 32 of 2011 | 12 Sep 2011 | 5 May 2012 (see s. 2(b) and *Gazette* 4 May 2012 p. 1847) |

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Road Traffic Legislation Amendment Act 2012* Pt. 4 Div. 14 | 8 of 2012 | 21 May 2012 | 27 Apr 2015 (see s. 2(d) and *Gazette* 17 Apr 2015 p. 1371) |
| *Criminal Appeals Amendment (Double Jeopardy) Act 2012* s. 7 | 9 of 2012 | 21 May 2012 | 26 Sep 2012 (see s. 2(b) and *Gazette* 25 Sep 2012 p. 4499) |
| *Criminal Organisations Control Act 2012* s. 174 | 49 of 2012 | 29 Nov 2012 | 2 Nov 2013 (see s. 2(b) and Gazette 1 Nov 2013 p. 4891) |
| *Criminal Law Amendment (Out-of-Control Gatherings) Act 2012* Pt. 3 | 56 of 2012 | 6 Dec 2012 | 15 Dec 2012 (see s. 2(b) and *Gazette* 14 Dec 2012 p. 6196) |
| **Reprint 2: The *Criminal Investigation Act 2006* as at 5 Apr 2013** (includes amendments listed above except those in the *Criminal Organisations Control Act 2012* and the *Road Traffic Legislation Amendment Act 2012*) | | | |
| *Criminal Investigation (Identifying People) Amendment Act 2013* s. 29 | 22 of 2013 | 12 Nov 2013 | 13 Nov 2013 (see s. 2(c)) |
| *Mental Health Legislation Amendment Act 2014* Pt. 4 Div. 4 Subdiv. 8 (other than s. 52(1)) | 25 of 2014 | 3 Nov 2014 | 30 Nov 2015 (see s. 2(b) and *Gazette* 13 Nov 2015 p. 4632) |
| *Criminal Investigation Amendment Act 2014* | 31 of 2014 | 3 Dec 2014 | s. 1 and 2: 3 Dec 2014 (see s. 2(a)); Act other than s. 1 and 2: 28 Jan 2015 (see s. 2(b) and *Gazette* 27 Jan 2015 p. 435) |
| *Corruption and Crime Commission Amendment (Misconduct) Act 2014* s. 39 | 35 of 2014 | 9 Dec 2014 | 1 Jul 2015 (see s. 2(b) and *Gazette* 26 Jun 2015 p. 2235) |
| **Reprint 3: The *Criminal Investigation Act 2006* as at 4 Sep 2015** (includes amendments listed above except those in the *Mental Health Legislation Amendment Act 2014*) | | | |
| *Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016* Pt. 3 Div. 5 | 49 of 2016 | 29 Nov 2016 | 1 Jul 2017 (see s. 2(b) and *Gazette* 7 Feb 2017 p. 1157) |
| *Health Practitioner Regulation National Law (WA) Amendment Act 2018* s. 108 | 4 of 2018 | 19 Apr 2018 | 1 Dec 2018 (see s. 2(d) and *Gazette* 13 Nov 2018 p. 4427-8) |

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2020* Pt. 3 Div. 2 | 25 of 2020 | 19 Jun 2020 | 29 Sep 2020 (see s. 2(1)(c) and SL 2020/159 cl. 2(a)) |
| *Road Traffic Amendment (Impaired Driving and Penalties) Act 2020* Pt. 3 Div. 1 | 27 of 2020 | 9 Jul 2020 | 1 Jul 2021 (see s. 2(1)(b) and SL 2021/54 cl. 2(d)) |
| *COVID-19 Response and Economic Recovery Omnibus Act 2020* s. 56 | 34 of 2020 | 11 Sep 2020 | 12 Sep 2020 (see s. 2(b)) |

## Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Mental Health Legislation Amendment Act 2014* s. 52(1) | 25 of 2014 | 3 Nov 2015 | To be proclaimed (see s. 2(b)) |
| ~~*Road Traffic Amendment (Impaired Driving and Penalties) Act 2020* Pt. 3 Div. 1~~ | ~~27 of 2020~~ | ~~9 Jul 2020~~ | ~~1 Jul 2021 (see s. 2(1)(b) and SL 2021/54 cl. 2(d))~~ |

## Other notes

[1M] Under the *Cross-border Justice Act 2008* section 14, in order to give effect to that Act, this Act must be applied with the modifications prescribed by the *Cross-border Justice Regulations 2009* Part 3 Division 6 as if this Act had been altered in that way. If a modification is to replace or insert a numbered provision, the new provision is identified by the superscript 1M appearing after the provision number. If a modification is to replace or insert a definition, the new definition is identified by the superscript 1M appearing after the defined term.