

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(As read a first time)

CRIMINAL INVESTIGATION BILL 1981

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1980-81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented pursuant to leave granted and read 1^o, 18 November 1981)

(ATTORNEY-GENERAL, SENATOR DURACK)

No. 246

A BILL

FOR

An Act relating to the Investigation by Members of the Australian Federal Police of Offences against the Laws of the Commonwealth and of the Australian Capital Territory, and for purposes connected therewith

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Criminal Investigation Act* 1981.

Commencement

2. This Act shall come into operation on a date to be fixed by Proclamation.

Interpretation

- 10 3. In this Act, unless the contrary intention appears—
“Aboriginal” means a person who is a descendant of an indigenous inhabitant of Australia;

"Commissioner" means the person for the time being holding, or performing the duties of, the office of Commissioner of Police under the *Australian Federal Police Act 1979*;

"confession" includes any admission or incriminating statement;

"contravene" includes fail to comply with;

"court" includes a Magistrate hearing proceedings for the examination of a person and his commitment for trial on indictment or to be otherwise dealt with;

"interview", in relation to a person, includes asking the person questions in the course of investigating an offence;

"Judge" means a Judge of the Supreme Court of a State or Territory;

"Justice" means a Justice of the Peace;

"lawyer" means—

(a) a person who has been admitted in a State or Territory to practise as a barrister, as a solicitor or as a barrister and solicitor and whose right so to practise is not suspended or has not been cancelled; or

(b) a member of, or a person included in a prescribed class of persons employed by, a prescribed body, being a body formed for the purpose of providing legal assistance;

"Magistrate" includes a Justice;

"offence" means an offence against a law of the Commonwealth or of the Australian Capital Territory;

"Police Officer" means a member of the Australian Federal Police;

"Police Station" means a Police Station of the Australian Federal Police or of the Police Force of a State or of the Northern Territory;

"private legal practitioner" means a person who is practising as a solicitor, or as a barrister and solicitor, on his own account, in partnership or as a member of a body corporate comprising persons so practising;

"serious offence" means an offence punishable, in the case of a person who has not been previously convicted of the offence, by imprisonment for a term exceeding 6 months;

"telephone" includes telex, radio or similar facilities;

"Territory" means an internal Territory;

"Torres Strait Islander" means a person who is a descendant of an indigenous inhabitant of the Torres Strait Islands;

"vessel" includes an aircraft.

References to custody and lawful custody

4. (1) For the purposes of this Act, a person is in custody in respect of an offence if he is being detained as a person charged with that offence or as a person arrested for, but not yet charged with, that offence.

(2) If a person is not in custody in respect of a particular offence (in this sub-section referred to as "the offence"), but—

(a) is in custody, or is undergoing imprisonment, in respect of another offence, or is in custody for any other reason; or

(b) in connection with the investigation of the offence, is in the company of a Police Officer, is in a police vehicle or is on police premises, and a Police Officer concerned in the investigation of the offence—

(c) in the case of a person referred to in paragraph (a)—has come to the belief, or has given to the person reasonable grounds for believing that he has come to the belief, that it is probable that the person committed the offence; or

(d) in the case of a person referred to in paragraph (b)—would not allow the person to leave if he wished to do so or has given to the person reasonable grounds for believing that he would not be allowed to leave if he wished to do so,

then, unless the contrary intention appears, the provisions of this Act conferring rights on persons in custody, or imposing duties or restrictions on Police Officers in relation to persons in custody, have effect as if that person were in custody in respect of the offence.

(3) Sub-section (2) does not apply in relation to a person by reason that he is in the company of a Police Officer by the road-side, whether or not he is in a vehicle, for purposes related to an offence, not being a serious offence, arising out of the use of a motor vehicle.

(4) Unless the contrary intention appears, a reference in this Act to custody shall be read as including a reference to custody that was unlawfully commenced or is being unlawfully continued.

(5) For the purposes of this Act, the lawful custody of a person in respect of an offence ceases to be lawful custody if the person—

(a) being in custody by reason of arrest by a Police Officer, is not charged with the offence as soon as practicable, in accordance with section 41; or

(b) being in custody as a person charged with the offence, is not brought before a court, as soon as practicable, or, where sub-section 51 (1) applies, in accordance with that sub-section, to be dealt with according to law.

Act to bind Crown

5. This Act binds the Crown in right of the Commonwealth.

Relationship of Act to other laws

6. (1) Any provision of a law of the Commonwealth or of the Australian Capital Territory in force immediately before the commencement of this Act, or any rule of the common law, that is inconsistent with a provision of this Act does not, to the extent of the inconsistency, have any force or effect after the commencement of this Act.

(2) Where, by virtue of a provision of a law of the Commonwealth in force immediately before the commencement of this Act, any laws of a State or Territory apply in relation to, or to persons who are charged with, offences against a law of the Commonwealth, those laws apply, after the commencement of this Act, to the extent only to which they are not inconsistent with this Act.

(3) The provisions of this Act insofar as they protect the individual are in addition to, and not in derogation of, any rights and freedoms of the individual, whether under the laws of the Commonwealth, of the States or of the Territories, and this Act is not intended to exclude or limit the operation of any of the laws providing for those rights and freedoms, insofar as they can operate concurrently with the provisions of this Act.

Application to Police Officers

7. (1) It is the duty of a Police Officer to comply with the provisions of this Act in exercising his powers and performing his duties as a Police Officer.

(2) Where a Police Officer (including a Police Officer of a State or of the Northern Territory) contravenes a provision of this Act that is applicable to him, the contravention is not punishable as an offence against this Act unless a penalty is provided by this Act in respect of the contravention.

(3) Sub-section (2) does not affect—

- (a) the operation of any law of the Commonwealth, a State or the Northern Territory relating to disciplinary offences by Police Officers;
- (b) the operation of any provision of this Act relating to the exclusion of evidence; or
- (c) any civil proceedings.

Arrangements with States and Territories

8. (1) The Governor-General may make arrangements with the Governor of a State or the Administrator of the Northern Territory or of Norfolk Island for the performance by all or any of the persons who from time to time hold office as Magistrates in that State or Territory of all or any of the functions of a Magistrate under this Act.

(2) A copy of each arrangement made under this section shall be published in the *Gazette*.

PART II—ARREST

Warrant for arrest

9. (1) A Magistrate shall not, in pursuance of a law of a State or Territory as applied by section 68 of the *Judiciary Act* 1903, issue a warrant for the arrest of a person for an offence by reason of an information laid before the Magistrate unless—

- (a) the information is on oath;
- (b) an affidavit of the informant has been furnished to the Magistrate setting out the reasons for which the issue of the warrant is sought

(including the reasons why it is believed that the person has committed the offence and the reasons why it is claimed that proceedings by summons would not be appropriate);

- (c) the informant or some other person has furnished to the Magistrate, on oath, such further information (if any) as the Magistrate requires concerning the reasons for which the issue of the warrant is sought; and
- (d) the Magistrate is satisfied, after considering the affidavit and any such further information, that there are reasonable grounds for the issue of the warrant.

(2) Where a Magistrate issues a warrant referred to in sub-section (1), he shall indicate, by writing under his hand, on the affidavit referred to in that sub-section, which of the reasons specified in that affidavit, and any other reasons, he has relied on as justifying the issue of the warrant.

Arrest without warrant by Police Officer

10. (1) In this section, "Police Officer" includes a member of the Police Force of a State or of the Northern Territory.

(2) A Police Officer may, without warrant, arrest a person for an offence if, and only if, the offence is an offence to which this section applies and he believes on reasonable grounds—

- (a) that the person has committed, or is committing, the offence;
- (b) that the arrest of the person is necessary in order to achieve one or more of the following purposes:
 - (i) the purpose of ensuring the appearance of the person before a court of competent jurisdiction in respect of the offence;
 - (ii) the purpose of preventing a continuation of, or repetition of, the offence or the commission of a further offence;
 - (iii) the purpose of preventing the concealment, loss or destruction of evidence of, or relating to, the offence;
 - (iv) the purpose of preserving the safety or welfare of the person; and
- (c) that proceedings by summons against the person in respect of the offence would not effectively achieve that purpose or those purposes.

(3) Where—

- (a) a person has been arrested for an offence in accordance with sub-section (2); and
- (b) before he is charged with the offence, the Police Officer in charge of the investigation—
 - (i) ceases to have reasonable grounds for believing that the person committed, or was committing, the offence; or

- (ii) ceases to have reasonable grounds for believing that the holding in custody of the person is necessary for achieving a purpose referred to in paragraph (2) (b),

the person shall no longer be held in custody in respect of the offence.

(4) A Police Officer may, without warrant, arrest and take before a court or Magistrate to be dealt with according to law any person who he believes on reasonable grounds is escaping from lawful custody or has escaped from lawful custody to which he is still liable.

(5) This section applies in relation to offences (including offences by way of attempts to commit other offences) other than—

- (a) offences that are specified in the regulations as offences in relation to which this section does not apply; and
- (b) attempts to commit offences so specified.

Additional power of arrest without warrant by a Police Officer in the Australian Capital Territory

11. (1) A Police Officer may, without warrant, arrest a person in the Australian Capital Territory if—

- (a) he believes on reasonable grounds that the person has committed an offence against a law of a State in the State or at a place to which that law extends;
- (b) there is, under a law of the Australian Capital Territory, a corresponding offence that is punishable by imprisonment for a period exceeding 6 months; and
- (c) he believes on reasonable grounds—
 - (i) that the arrest is necessary in order to achieve one or more of the purposes specified in paragraph 10 (2) (b); and
 - (ii) that proceedings by summons against the person in respect of the offence would not effectively achieve that purpose or those purposes.

(2) Section 10 does not apply to a person arrested under this section but such a person shall be brought forthwith before a Magistrate who has power to issue warrants for the apprehension of persons under a law of the Australian Capital Territory, and the Magistrate may—

- (a) discharge the person;
- (b) admit the person to bail on such conditions and recognizances as the Magistrate thinks fit; or
- (c) authorize the detention of the person for a reasonable time pending the endorsement, under the *Service and Execution of Process Act 1901*, in the Territory of a warrant issued, or to be issued, in the State against the law of which the offence was committed.

(3) In this section, a reference to a State shall be read as including a reference to the Northern Territory.

Arrest without warrant by other persons

12. (1) In this section, "Police Officer" includes a member of the Police Force of a State or of the Northern Territory.

(2) A person who is not a Police Officer may, without warrant, arrest another person for an offence if, and only if, the offence is an offence to which section 10 applies and he believes on reasonable grounds—

- (a) that the person is committing, or has just committed, the offence;
- (b) that the arrest of the person is necessary in order to achieve one or more of the purposes specified in paragraph 10 (2) (b); and
- (c) that proceedings by summons against the person in respect of the offence would not effectively achieve that purpose or those purposes.

(3) A person who arrests another person in accordance with sub-section (2) shall, forthwith after the arrest, take the other person before a Magistrate to be dealt with according to law or deliver the person into the custody of a Police Officer.

(4) This section does not affect any power to arrest a person for an offence without warrant that is conferred on a person who is not a Police Officer by any other law of the Commonwealth or by a law of the Australian Capital Territory.

Power to enter to make arrest

13. (1) Subject to sub-section (3), where a Police Officer has, under a warrant, power to arrest a person, the Police Officer may enter any premises, by force if necessary, at any time of the day or night for the purpose of arresting the person, and may search the premises for the person, if the Police Officer believes on reasonable grounds that the person is on the premises.

(2) Subject to sub-section (3), where, under this Act, a Police Officer may, without warrant, arrest a person, the Police Officer may enter any premises, by force if necessary, at any time of the day or night for the purpose of arresting the person, and may search the premises for the person, if the Police Officer believes on reasonable grounds that the person has committed a serious offence and that he is on the premises.

(3) Sub-sections (1) and (2) do not authorize a Police Officer to enter premises at any time during the period commencing at 9 o'clock in an evening and ending at 6 o'clock in the next following morning for the purpose of arresting a person if the Police Officer has reasonable grounds for believing that it will be practicable to arrest the person, either on the premises or elsewhere, at any other time.

Use of force in making arrest

14. (1) A Police Officer or other person shall not, in the course of arresting a person for an offence, use more force, or subject the person to greater indignity, than is necessary to make the arrest or to prevent the escape of the person after he has been arrested.

(2) A Police Officer—

- (a) shall not, in the course of arresting a person for an offence, do an act likely to cause the death of, or grievous bodily harm to, the person unless the Police Officer believes on reasonable grounds that the doing of that act is necessary to protect life or to prevent serious injury to any other person (including the Police Officer); and
- (b) without limiting the application of paragraph (a), shall not, in the course of arresting a person for an offence, being a person who is attempting to escape arrest by fleeing, do such an act unless the person has, if practicable, been called upon to surrender and the Police Officer believes on reasonable grounds that the person cannot be apprehended in any other manner.

Persons to be informed of grounds of arrest

15. (1) A person who arrests another person for an offence shall inform the other person, at the time of the arrest, of the offence for which he is arrested.

(2) A person who arrests another person for an offence shall be taken to have complied with sub-section (1) if he informs the other person of the substance of the offence for which he is arrested, and it is not necessary for him to do so in language of a precise or technical nature.

(3) Sub-section (1) does not apply to or in relation to the arrest of a person—

- (a) if that person ought, by reason of the circumstances in which he is arrested, to know the substance of the offence for which he is arrested; or
- (b) if that person makes it impracticable, by reason of his actions, for the person effecting the arrest to inform him of the offence for which he is arrested.

PART III—POWERS AND DUTIES OF POLICE OFFICERS WHEN INVESTIGATING OFFENCES

Division 1—Preliminary**Interpretation**

16. Where a Police Officer who is in charge of investigating an offence has grounds for suspecting that a person who is in custody in respect of the offence has committed another offence, the person shall, for the purposes of this Part, be deemed to be in custody in respect of both of those offences.

Division 2—Furnishing of Name and Address**Requirement to furnish name, &c.**

17. (1) Where a Police Officer believes on reasonable grounds that a person whose name or address is, or whose name and address are, unknown to the Police Officer may be able to assist the Police Officer in his inquiries in connection with an offence that the Police Officer has reason to believe has been, may have been or is likely to be committed, the Police Officer may request the person to furnish his name or address, or name and address, as the case requires, to the Police Officer.

(2) Where a Police Officer who, in accordance with sub-section (1), requests a person to furnish his name or address, or name and address, to the Police Officer, informs the person of his reason for making the request, and complies with sub-section (3) if the person makes a request under that sub-section, the person shall not—

- (a) refuse or fail to comply with the request of the Police Officer;
- (b) furnish to the Police Officer a name that is false in a material particular; or
- (c) furnish to the Police Officer as his address an address other than the full and correct address of his ordinary place of residence.

(3) Where a Police Officer who makes a request of a person under sub-section (1) is requested by the person to furnish to the person his name or the address of his place of duty, or his name and that address, or, if he is not in uniform, evidence that he is a Police Officer, the Police Officer shall not—

- (a) refuse or fail to comply with the request;
- (b) furnish to the person a name that is false in a material particular; or
- (c) furnish to the person as the address of his place of duty an address other than the full and correct address of his ordinary place of duty.

Penalty: \$200.

Division 3—Duties When Interviewing Suspects**Police Officers may question persons**

18. (1) Where a Police Officer who is investigating an offence believes that a person (including a person believed by the Police Officer to have committed the offence) may be able to furnish information that may assist the Police Officer in his investigation of the offence, the Police Officer may, subject to this Act, ask the person questions relevant to his investigation of the offence.

(2) A person who is asked a question by a Police Officer in accordance with sub-section (1) is not required to answer the question unless his failure to answer the question would constitute a contravention of another provision of this Act or of a provision of another law of the Commonwealth or of a law of a State or of a Territory.

Police Officers to inform persons of rights

19. (1) Where a person is in custody, a Police Officer shall not ask him any questions, or ask him to do any thing, for a purpose connected with the investigation of an offence, unless the Police Officer has told him his name and rank.

(2) Where an interview of a person in connection with an offence is being conducted or continued by a Police Officer after the person has come into custody in respect of the offence, the Police Officer shall not—

(a) ask him any questions, or ask him to do any thing, for the purpose of investigating the offence; or

(b) cause or permit another Police Officer to ask him any questions, or to ask him to do any thing, for the purpose of investigating the offence,

unless a Police Officer has, at or since the commencement of the interview, cautioned the person, or caused the person to be cautioned, in a language in which the person is reasonably fluent, that he is not obliged to answer any questions, or to do any thing, asked of him, that anything said by him may be used in evidence and that he may, at any time, consult a lawyer or communicate with a relative or friend, if he wishes to do so.

(3) If, at or since the commencement of an interview with a person, a Police Officer has cautioned the person in the manner described in sub-section 20 (2), sub-section (2) of this section does not apply in relation to anything done during that interview after the giving of that caution.

(4) Sub-section (2) does not apply in relation to—

(a) asking a person to take part in an identification parade as referred to in section 36; or

(b) asking a person to do a particular thing, or causing or permitting a Police Officer to ask a person to do a particular thing, where the Police Officer so asking, causing or permitting is authorized to do so by a provision of any other law of the Commonwealth or of a law of the Australian Capital Territory, being a provision that is prescribed for the purposes of this paragraph.

Persons to be charged or summoned to be given caution

20. (1) After a Police Officer has decided to charge a person with an offence, to seek the issue of a summons against a person for an offence or to recommend that a person be so charged or that a summons be so sought—

(a) a Police Officer shall not ask the person any question, or request the person to do any thing, in relation to the offence unless a Police Officer has, at or since the commencement of the interview in which the question is asked or the request is made, cautioned the person as provided in sub-section (2); and

(b) the Police Officer who made the decision shall take reasonable steps to ensure that other Police Officers comply with paragraph (a).

(2) A caution referred to in sub-section (1) shall be given to a person in the following manner:

(a) by handing to him a document, in accordance with the prescribed form and written in a language in which the person is reasonably fluent, informing him to the following effect:

(i) that he is not obliged to answer any questions, or to do any thing, asked of him by a Police Officer and that anything said by him may be used in evidence;

(ii) that he may communicate with a lawyer, and have, as provided by this Act, the assistance of a lawyer while he is being questioned; and

(iii) that he may, as provided by this Act, communicate with a relative or friend; and

(b) by reading a copy of the document, or causing a copy of the document to be read, to him in the language in which it is written, unless it is impracticable for the document to be read to him.

(3) Sub-section (1) does not apply in relation to—

(a) asking a person to take part in an identification parade as referred to in section 36; or

(b) asking a person a question, or requesting a person to do any thing, for the purpose of arresting the person or in relation to the removal of the person from one place of custody to another or the treatment of the person while in custody.

Access to lawyer

21. (1) In this section, "investigative action", in relation to a person who is in custody in respect of an offence, means investigative action taken in the presence of the person and includes asking the person questions or further questions for the purpose of investigating the offence.

(2) Where a Police Officer concerned in the investigation of an offence—

(a) is informed by a person who is in custody in respect of the offence that he wishes to consult a lawyer; or

(b) has reasonable grounds for believing that such a person wishes to consult a lawyer,

the Police Officer—

(c) shall forthwith, but after complying with sub-section 22 (4), if applicable, cause reasonable facilities to be provided to enable the person to communicate with a lawyer of his choice and to arrange for a lawyer of his choice to be present while any investigative action is being taken by a Police Officer in relation to him; and

(d) shall not take, and shall not cause or permit another Police Officer to take, any investigative action in relation to the person until the person has had a reasonable opportunity to communicate with a lawyer of his choice.

(3) Where a person who is in custody in respect of an offence arranges for a lawyer to be present while investigative action is being taken by a Police

Officer in relation to him, no such action shall be taken by a Police Officer until the lawyer has arrived or a period that is reasonable in the circumstances has been allowed for his arrival unless the Police Officer—

- (a) has reasonable grounds for believing that it is necessary to take that action without delay in order to avoid danger of the death of, or serious injury to, any person or serious damage to property; or 5
- (b) is authorized to take that action by a provision of any other law of the Commonwealth or of a law of the Australian Capital Territory, being a provision prescribed for the purposes of this paragraph.
- (4) Where a lawyer attends to consult with a person who is in custody in respect of an offence, or to be present while investigative action is being taken by a Police Officer in relation to a person who is in such custody— 10
 - (a) no such action shall be taken by a Police Officer until the lawyer has had a reasonable opportunity to consult with the person in private, and reasonable facilities shall be made available for such consultation; and 15
 - (b) the lawyer is entitled to be present while any such action is taken by a Police Officer and to give advice to the person on any matter on which his advice is sought, but only while he does not otherwise interfere with the taking of that action. 20
- (5) Where a Police Officer gives a person who is not in custody in respect of an offence the caution referred to in sub-section 19 (2) before he commences to interview the person or during an interview with the person, the preceding sub-sections of this section apply as if the person were in custody in respect of an offence during the period commencing when the caution is given and ending when the interview terminates or the person comes into such custody, whichever first occurs. 25

Lists of legal practitioners

- 22. (1) In this section, "prescribed place" means a place prescribed for the purposes of this section, being a place at which there are likely to be persons in custody. 30
- (2) Subject to and in accordance with the regulations, the Minister shall establish and, so far as it is reasonably practicable to do so, update at such intervals as the Minister thinks appropriate, a list, in relation to each prescribed place, of the names of those lawyers who, and of those legal firms that, are willing to assist persons in custody at, or in the vicinity of, that place. 35
- (3) For the purposes of this section, the Minister shall consult with appropriate professional bodies representing private legal practitioners.
- (4) Where a person is in custody in respect of an offence at, or in the vicinity of, a prescribed place, a Police Officer shall furnish to the person a copy of the list of the names of lawyers and legal firms kept in relation to that place if— 40
 - (a) the person, to the knowledge of the Police Officer, seeks to communicate, but is unable to communicate, with a lawyer of his choice; or

- (b) the Police Officer has reasonable grounds for believing that the person wishes to communicate with a lawyer but does not know of a lawyer whom he could consult.

(5) In this section, "legal firm" means—

- 5 (a) a partnership of, or a body corporate comprising, private legal practitioners; or
- (b) a body formed for the purpose of providing legal assistance.
- (6) A reference in this section to a person in custody in respect of an offence shall be read— 10
 - (a) as not including a reference to any person who is on remand or is undergoing imprisonment in respect of that offence; and
 - (b) as including a reference to any person who is to be, or is being, interviewed by a Police Officer in connection with the investigation of the offence and has been given the caution referred to in sub-section 19 (2).

15 Communication with relative or friend

23. (1) Subject to sub-section (2), where a Police Officer—

- (a) is informed by a person who is in custody in respect of an offence that he wishes to communicate with a relative or friend; or
 - (b) has reasonable grounds for believing that a person who is in custody in respect of an offence wishes to communicate with a relative or friend, 20
- the Police Officer shall, as soon as practicable, cause reasonable facilities to be provided to enable the person to communicate with a relative or friend of his choice.

25 (2) A Police Officer is not required to comply with sub-section (1) in respect of a person who is in custody in respect of an offence if the Police Officer believes on reasonable grounds that the non-compliance is necessary for the purpose of preventing—

- (a) the escape of an accomplice of the person;
- (b) the concealment, loss, destruction or fabrication of evidence of, or relating to, the offence; or
- (c) the intimidation by any person of a witness. 30

(3) A reference in this section to a person in custody in respect of an offence shall be read—

- 35 (a) as not including a reference to any person who is on remand or is undergoing imprisonment in respect of an offence; and
- (b) as including a reference to any person (other than a person referred to in paragraph (a)) who is to be, or is being, interviewed by a Police Officer in connection with the investigation of an offence and has been given the caution referred to in sub-section 19 (2).

Notification of whereabouts of persons in custody

24. (1) For the purposes of this section, the Commissioner shall—

- (a) designate regional offices of the Australian Federal Police in respect of specified regions;
- (b) appoint Police Officers to be in charge of the records maintained at each regional office; and
- (c) cause to be maintained at each regional office records showing the persons who are from time to time in custody in the region in respect of offences.

(2) Where a person is in custody at a place in respect of an offence, the Police Officer in charge of investigating the offence shall ensure that the Police Officer appointed under sub-section (1) to be in charge of records maintained at the regional office in respect of the region in which the place is situated is notified, as soon as practicable, that the person is, for the time being, in custody at that place and whether he has consented to particulars of the place at which he is in custody being furnished to all or any of the persons referred to in sub-section (3), and any other Police Officer concerned in the custody of the person shall take any action necessary on his part to enable the Police Officer in charge of investigating the offence to comply with this sub-section.

(3) Subject to sub-section (6), the Police Officer appointed under sub-section (1) to be in charge of records maintained at a regional office shall, upon application being made to him, by telephone or otherwise, by a relative or friend of a person, or by a lawyer representing a person, inform the applicant whether, according to those records, the person is in custody in respect of an offence, and, if the person is in custody, furnish to the applicant such information (if any) as he has in his possession, or as he is reasonably able to obtain, concerning the whereabouts of the person.

(4) Where a person is not in custody but has been in the company of a Police Officer (whether the one Police Officer or not) for a continuous period of one hour or more for a purpose connected with the investigation of an offence and a Police Officer concerned in the investigation of the offence suspects that the person committed the offence, sub-sections (2) and (3) apply as if the person were in custody in respect of the offence and, for the purposes of the application of sub-section (2), the last-mentioned Police Officer shall be deemed to be concerned in the custody of the person.

(5) For the purposes of sub-section (4), a person shall be deemed to be in the company of a Police Officer for a purpose connected with the investigation of an offence if the person is, at the request of that Police Officer, waiting at a place for such a purpose or in the company of another Police Officer for such a purpose.

(6) The Police Officer appointed under sub-section (1) to be in charge of records maintained at a regional office—

- (a) shall not furnish any information concerning a person to an applicant under sub-section (3) unless the person has consented to the furnishing of such information to the applicant;

- (b) may refuse to furnish such information to an applicant under sub-section (3) if he believes on reasonable grounds that it is necessary to refuse to furnish the information for the purpose of preventing—

- (i) the escape of an accomplice of the person; or
- (ii) the concealment, loss, destruction or fabrication of evidence of, or relating to, the offence; and

- (c) may, before deciding whether to furnish information requested by an applicant under sub-section (3), make reasonable inquiries as to whether the applicant is a person entitled to make the application and is not an accomplice in the offence or a person seeking the information on behalf of such an accomplice.

Treatment of persons in custody

25. (1) A person shall, while in custody, be treated with humanity and with respect for human dignity.

(2) No person shall, while in custody, be subjected to cruel, inhuman or degrading treatment.

(3) Where a Police Officer concerned in the custody of a person—

- (a) is informed by the person that he wishes to be provided with medical treatment in respect of illness or an injury; or
- (b) has reasonable grounds for believing that the person wishes to be provided with, or requires, medical treatment in respect of illness or an injury,

the Police Officer shall, forthwith, take such action as is reasonable in the circumstances with a view to the provision of medical treatment to the person.

(4) The cost (if any) of medical treatment provided under sub-section (3) for a person at the request of the person shall be borne by the person.

(5) A Police Officer in charge of investigating an offence in respect of which a person is in custody shall take all reasonable steps to ensure that the person is provided with reasonable refreshments and reasonable access to toilet facilities.

(6) Where a person in custody in respect of an offence is to be brought before a court while still in custody, the Police Officer in charge of investigating the offence shall take all reasonable steps to ensure that the person is provided with facilities to wash or shower, and with the opportunity to obtain, and change into, other clothes, before he is brought before the court.

(7) The provisions of sub-section (1) or (2) shall not be taken to be contravened by the taking of any action by a Police Officer in accordance with section 34 or by the taking of necessary custodial measures.

Division 4—Special Duties When Interviewing Certain Persons

Aboriginals and Torres Strait Islanders

26. (1) Where a Police Officer in charge of investigating an offence has reasonable grounds for believing that a person who is in custody in respect of the offence is an Aboriginal or a Torres Strait Islander, the Police Officer—

- (a) shall, unless, to his knowledge, the person has arranged for a lawyer to be present while he is being interviewed, or other investigative action is being taken, in connection with the offence, forthwith inform the person that, unless he objects, a representative of a specified organization will be notified that he is in custody in respect of the offence; and
- (b) shall, unless the person has so objected, as soon as practicable notify a representative of the organization accordingly.

(2) The organization to be specified shall be one of such organizations providing legal assistance to Aboriginals and Torres Strait Islanders as are prescribed for the purposes of this section, being the organization that can most conveniently provide legal assistance to the person concerned.

(3) Subject to sub-section (4), where a Police Officer—

- (a) suspects that a person has committed a serious offence or an offence against the person or property, or is of the opinion that information received by the Australian Federal Police may implicate a person in the commission of such an offence, and also has reasonable grounds for believing that the person is an Aboriginal or a Torres Strait Islander; or
- (b) has reasonable grounds for believing that a person in custody in respect of a serious offence or of an offence against the person or property is an Aboriginal or a Torres Strait Islander,

the Police Officer shall not interview the person, or ask or cause the person to do any thing, in connection with the investigation of the offence, unless—

- (c) a prisoner's friend is present while he is being interviewed or is doing that thing; or
- (d) he has expressly and voluntarily waived his right to have such a person present.

(4) A Police Officer is not required to comply with sub-section (3) in respect of a person if the Police Officer has reasonable grounds for believing that, having regard to the person's level of education and understanding, he is not at a disadvantage, in respect of the investigation referred to in that sub-section, in comparison with members of the Australian community generally.

(5) Sub-section (3) does not prevent a Police Officer—

- (a) from interviewing a person, or asking or causing a person to do a particular thing, where the Police Officer has reasonable grounds for believing that it is necessary to do so without delay in order to avoid

danger of the death of, or serious injury to, any person or serious damage to property; or

- (b) from asking or causing a person to do a particular thing that the Police Officer is authorized to ask or cause the person to do by a provision of any other law of the Commonwealth or of a law of the Australian Capital Territory, being a provision prescribed for the purposes of this paragraph.

(6) The burden of proving that an Aboriginal or Torres Strait Islander has waived the right referred to in sub-section (3), or has objected to a notification being given in accordance with sub-section (1), lies, in any proceedings, on the prosecution, and the burden shall not be taken to have been satisfied unless the court is satisfied that the person voluntarily waived that right, or made that objection, and did so with full knowledge and understanding of what he was doing.

(7) The burden of proving that, at a relevant time, a person in custody in respect of an offence had, to the knowledge of the Police Officer concerned, made an arrangement of a kind referred to in paragraph (1) (a) lies, in any proceedings, on the prosecution.

(8) Where a Police Officer has not complied with sub-section (3) in respect of a person, the burden of proving, in any proceedings, that the Police Officer had reasonable grounds for believing as mentioned in sub-section (4) lies on the prosecution.

(9) In this section, "prisoner's friend", in relation to a person referred to in paragraph (3) (a) or (b) (in this sub-section referred to as the "suspect"), means—

- (a) a relative or other person chosen by the suspect, not being a relative or other person believed on reasonable grounds by the Police Officer in charge of investigating the offence to be a person with whom the suspect should be prevented from communicating in order to prevent—
 - (i) the escape of an accomplice of the suspect;
 - (ii) the loss, destruction or fabrication of evidence of, or relating to, the offence; or
 - (iii) the intimidation by any person of a witness;

(b) a lawyer;

(c) a representative of an organization referred to in sub-section (2); or

(d) any other person whose name is included on a list kept in pursuance of sub-section 27 (2).

(10) The provisions of this section shall, for the purposes of sub-section 8 (1) of the *Racial Discrimination Act 1975*, be taken to be special measures of the kind referred to in that sub-section.

Aboriginal and Torres Strait Islander prisoners' friends and interpreters

27. (1) In this section, "prescribed place" means a place prescribed for the purposes of the provision of this section in which the expression occurs, being a place at which there are likely to be persons in custody.

(2) Subject to and in accordance with the regulations, the Minister shall establish and, so far as it is reasonably practicable to do so, update at such intervals as the Minister thinks appropriate, a list, in relation to each prescribed place, of the names of prisoners' friends, that is to say, persons who are suitable persons to assist Aboriginals or Torres Strait Islanders in custody in respect of offences and are willing to assist any such persons who are in custody at, or in the vicinity of, that place.

(3) In establishing and maintaining, in relation to a prescribed place, a list of the names of prisoners' friends, the Minister shall consult, from time to time, with any prescribed organization providing legal assistance to Aboriginals or Torres Strait Islanders that is operating at, or in the vicinity of, that place.

(4) Subject to and in accordance with the regulations, the Minister shall establish and, so far as it is reasonably practicable to do so, update at such intervals as the Minister thinks appropriate, a list, in relation to each prescribed place, of the names of persons who are able and willing to act as interpreters for Aboriginals and Torres Strait Islanders, being Aboriginals or Torres Strait Islanders to whom section 28 applies, who are in custody at, or in the vicinity of, that place.

(5) The list of the names of persons referred to in sub-section (4) shall specify, in relation to a prescribed place, in relation to a person, the language or languages that the person is able to understand and converse in.

Persons not fluent in English

28. Where a Police Officer has reasonable grounds for believing that a person in custody is unable, by reason of inadequate knowledge of the English language, or any physical disability, to communicate orally with reasonable fluency in the English language, the Police Officer shall not ask the person any questions in connection with the investigation of an offence unless—

- (a) he does so in a language in which both he and the person are able to communicate with reasonable fluency, or by any other means by which he and the person are able to communicate satisfactorily;
- (b) a person competent to act as interpreter is present and acts as interpreter during the questioning; or
- (c) he has reasonable grounds for believing that it is necessary to question the person otherwise than in accordance with paragraph (a) or (b) without delay in order to avoid danger of the death of, or serious injury to, any person or serious damage to property.

Children

29. (1) Where a Police Officer has reasonable grounds for believing that a person whom he is holding in custody has not attained the age of 16 years, the Police Officer shall—

- (a) if he has reasonable grounds for so believing when he takes the person into custody—forthwith after taking the person into custody; or

- (b) if he first has reasonable grounds for so believing only after he has taken the person into custody—forthwith after he first has reasonable grounds for so believing,

cause a parent or guardian of the person to be informed that the person is in custody and of the offence in respect of which the person is in custody.

(2) Where a Police Officer—

- (a) suspects that a person has committed a serious offence or an offence against the person or property;
- (b) believes that information that has been received by the Australian Federal Police may implicate a person in the commission of such an offence; or

(c) is investigating an offence in respect of which a person is in custody, and the Police Officer also has reasonable grounds for believing that the person (in this sub-section and in sub-sections (3) and (4) referred to as the "child") has not attained the age of 16 years, the Police Officer shall not interview the child, or ask or cause the child to do any thing, in connection with the investigation of the offence unless—

- (d) a person who is acceptable to the child, being a parent, relative or friend of the child or a lawyer or welfare officer, is present while the child is being interviewed or is doing that thing; or
- (e) where such a person is not present—
 - (i) a Police Officer has taken reasonable steps to secure the presence of such a person during the interview or the doing of that thing and a period that is reasonable in the circumstances has elapsed since the Police Officer commenced to take those steps; and
 - (ii) another person (who may be a Police Officer) who has not been concerned in the investigation of the offence is present.

(3) Sub-section (2) does not require a Police Officer to take steps to secure the presence of a person whom he believes to be an accomplice of the child in an offence, or to permit such a person to be present.

(4) Sub-section (2) does not prevent a Police Officer—

- (a) from interviewing a child, or asking or causing a child to do a particular thing, where the Police Officer has reasonable grounds for believing that it is necessary to do so without delay in order to avoid danger of the death of, or serious injury to, any person or serious damage to property; or
- (b) from asking or causing a child to do a particular thing that the Police Officer is authorized to ask or cause the child to do by a provision of any other law of the Commonwealth or of a law of the Australian Capital Territory, being a provision prescribed for the purposes of this paragraph.

Application of Division

30. The duties imposed on a Police Officer by this Division in relation to a person are in addition to any duties imposed on him in relation to the person by the other provisions of this Act.

Division 5—Confessions**Admissibility of confessional evidence**

31. (1) Evidence of a confession made by a person in the presence of a Police Officer is not admissible in proceedings against the person for an offence unless the court is satisfied that it was made voluntarily.

(2) For the purposes of sub-section (1), a confession that is obtained from a person in consequence of—

- (a) the use of physical violence, or a threat of physical violence, to any person; or
- (b) the making of a promise, threat or other inducement (not being physical violence or a threat of physical violence) likely to cause the person to make a confession that is untrue,

shall be deemed not to be made voluntarily.

Admissibility of oral confessions

32. (1) Subject to sub-section (10), in proceedings against a person (in this section referred to as the "accused") in a court in respect of an indictable offence, evidence by a Police Officer of a confession made by the accused in his presence, after the commencement of this Act, is not admissible on behalf of the prosecution unless the requirements of sub-section (2), (3) or (4) are complied with in respect of the interview in the course of which the confession is alleged to have been made.

(2) This sub-section is complied with in respect of an interview—

- (a) if 2 sound recordings of everything said by or to the accused during the interview were made by the one multiple sound recording apparatus; or
- (b) where a multiple sound recording apparatus is not available for use by the Police Officer referred to in sub-section (1) at the place of the interview—if one sound recording of everything said by or to the accused during the interview was made by a sound recording apparatus and a copy of that sound recording was made as soon as practicable thereafter,

and the requirements of sub-sections (5) and (6) have been observed in respect of the sound recordings.

(3) This sub-section is complied with in respect of an interview if, at the time of the interview or as soon as practicable thereafter, a record in writing

was made, either in English or in another language used by the accused in the interview, of the things said by or to the accused in the course of the interview and—

- (a) that record, with or without alteration, has been acknowledged in writing in the prescribed manner by the accused to be a full and correct record and a copy of that record as so acknowledged was given to the accused; and
- (b) if the language used by the accused in the interview was a language other than English but the record was made in English, the record was read to the accused, in the language used by him in the interview, before he acknowledged it in writing.
- (4) This sub-section is complied with in respect of an interview if—
 - (a) at the time of the interview or as soon as practicable thereafter, a record in writing was made, either in English or in another language used by the accused in the interview, of the things said by or to the accused in the course of the interview;
 - (b) as soon as practicable after the record was made, the record was read to the accused in the language used by him in the interview and a copy of the record was given to the accused;
 - (c) the accused was given the opportunity to interrupt the reading at any time for the purpose of drawing attention to any error or omission that he claimed had been made in or from the record and, at the end of the reading, the accused was given the opportunity of stating whether he claimed that there were any errors in or omissions from the record, in addition to any to which he had drawn attention in the course of the reading;
 - (d) either—
 - (i) 2 sound recordings were made by the one multiple sound recording apparatus of the reading referred to in paragraph (b) and of everything said by or to the accused as a result of compliance with paragraph (c) and the requirements of sub-sections (5) and (6) were observed in respect of those recordings; or
 - (ii) an appropriate witness was present when the requirements of paragraphs (b) and (c) were complied with and—
 - (A) a record in writing was made of anything said by or to the accused as a result of compliance with paragraph (c) while it was being said or as soon as practicable thereafter; and
 - (B) the appropriate witness signed a certificate in the prescribed form certifying that paragraphs (b) and (c) were complied with in his presence and that that record in writing is a full and correct record; and

(e) before the reading referred to in paragraph (b), an explanation, in accordance with the prescribed form, was given to the accused of the procedure that would be followed for the purposes of compliance with that paragraph and paragraphs (c) and (d).

(5) Where sound recordings are made as referred to in sub-section (2) or sub-paragraph (4) (d) (i), the Police Officer in charge of the making of the recordings shall—

- (a) hand one of the recordings to the accused;
- (b) inform the accused that the other recording will be retained by the Police and may be used in evidence; and
- (c) advise the accused to make arrangements for the safe custody by him or on his behalf of the recording handed to him so that it will be available for comparison with the recording retained by the Police and, if requested to do so by the accused, afford the accused an opportunity of making arrangements for the safe custody of the recording on his behalf.

(6) Where a sound recording has been handed to a person in accordance with sub-section (5), the Police Officer in charge of the investigation shall, upon request, provide, as soon as practicable, reasonable facilities to the accused or his lawyer to enable the recording to be reproduced in sound.

(7) For the purposes of sub-section (1), the requirements of sub-section (4) shall be taken to have been complied with in respect of an interview if, where the explanation referred to in paragraph (4) (e) is given to the accused after paragraph (4) (a) has been complied with in respect of the interview, the actions of the accused prevent the following of the procedure that would, but for this sub-section, be required to be followed for the purposes of compliance with paragraphs 4 (b), (c) and (d).

(8) In proceedings against a person in a court, the burden of satisfying the court that, in relation to evidence to which this section applies, the requirements of this section have been complied with lies on the prosecution.

(9) Subject to the power of the court to exclude evidence on the ground of unfairness to the accused or otherwise in the interests of justice or on the ground that it is evidence of a confession not shown to have been made voluntarily, the prosecution is not prevented from leading evidence of a statement constituting, or made in the course of, a confession by reason only of anything said by the accused during, or at the end of, the reading to him of a record in writing containing the statement, concerning the accuracy of the record, but this sub-section does not prevent a Judge from directing a jury with respect to the weight to be accorded to the statement as evidence.

(10) A court may admit evidence to which this section applies notwithstanding that the requirements of this section have not been complied with, or that there is insufficient evidence of compliance with those requirements, if,

having regard to the nature of, and the reasons for, the non-compliance or insufficiency of evidence and any other relevant matters, the court is satisfied that, in the special circumstances of the case, admission of the evidence would not be contrary to the interests of justice.

(11) Where a Judge permits evidence to be given before a jury in accordance with sub-section (10), the Judge shall, if he considers that the interests of justice so require, inform the jury of the non-compliance with the requirements of this section, or of the absence of sufficient evidence of compliance with those requirements, and give the jury such warning concerning the evidence as he thinks appropriate in the circumstances.

(12) A reference in this section to a multiple sound recording apparatus is a reference to a sound recording apparatus capable of making 2 or more recordings of the same sound at the one time, and, for the purposes of this section, a sound recording apparatus shall be deemed to make 2 or more recordings of the same sound at the one time if at the same time as, or immediately after, the apparatus makes one recording, it automatically makes a copy of that recording.

(13) A reference in this section to an interview shall be read as including a reference to any occasion on which anything is said by the accused in the presence of a Police Officer.

(14) In this section, "appropriate witness" means—

- (a) a Magistrate;
- (b) a person included in a prescribed class of persons;
- (c) a lawyer advising the accused; or
- (d) a relative or friend of the accused who is present at the reading referred to in paragraph (4) (b) at the request or with the approval of the accused.

Division 6—Other Investigative Action

Interpretation

33. In this Division, unless the contrary intention appears—

"relevant act", in relation to an offence, means an act done in connection with the commission of the offence or believed by the Police Officer in charge of investigating the offence to have been done in connection with the commission of the offence;

"relevant person", in relation to a relevant act, means a person, or one of the persons, seen doing the relevant act;

"suspect", in relation to a relevant act, means a person who the Police Officer in charge of investigating the offence to which the relevant act relates considers may be the relevant person, or one of the relevant persons;

"witness", in relation to a relevant act, means a person who saw another person, or other persons, doing the relevant act.

Fingerprints, photographs, &c.

34. (1) A Police Officer who holds the rank of sergeant or a higher rank or is for the time being in charge of a Police Station may take, or cause to be taken, prints of the hands, fingers, feet or toes, recordings of the voice, samples of the handwriting, or photographs, of a person who is in lawful custody in respect of an offence if—

- (a) the Police Officer believes on reasonable grounds that it is necessary to do so for the purpose of establishing who the person is or of identifying the person as the person who committed the offence or of providing evidence of, or relating to, the offence;
- (b) the Police Officer believes on reasonable grounds that the person has committed another offence and the prints, recordings, samples or photographs are to be taken for the purpose of identifying the person as the person who committed the other offence or of providing evidence of, or relating to, the other offence; or
- (c) the Police Officer has the consent in writing of the person to do so.

(2) Except as provided in sub-section (1) or in accordance with an approval under sub-section (3), or for the purposes of section 32 or sub-section 36 (5) or of an application under section 65, a Police Officer shall not—

- (a) take, or cause to be taken, prints, recordings, samples or photographs of the kind referred to in sub-sections (1) and (3) in respect of a person who is in custody in respect of an offence or is at a Police Station; or
- (b) require any other person to submit to the taking of any such print, recording, sample or photograph.

(3) A Police Officer referred to in sub-section (1) may—

- (a) make application to a Magistrate in person; or
- (b) if it is impracticable for him to make application to a Magistrate in person—make application to a Magistrate by telephone,

for approval to take, or cause to be taken, prints of the hand, fingers, feet or toes of a person in lawful custody in respect of an offence, or of a person against whom proceedings have been instituted by summons in respect of an offence, or to take, or cause to be taken, recordings of the voice, samples of the handwriting, or photographs, of such a person.

(4) The Magistrate to whom application is made under sub-section (3) may, if he thinks it proper in all the circumstances, give his approval, in writing, to the taking of the prints, recordings, samples or photographs, as the case may be.

(5) Where a Magistrate gives his approval in relation to an application made to him under sub-section (3) by telephone, the Magistrate shall cause the instrument giving approval to be forwarded to the applicant.

(6) A Police Officer may use such reasonable force as may be necessary in acting in accordance with sub-section (1) or in pursuance of an approval of a Magistrate under sub-section (4).

(7) In this section "Magistrate" does not include a person by virtue only of his being a Justice.

Identification by means of photographs

35. (1) Where a suspect is in custody in respect of an offence, a Police Officer investigating the offence shall not show a photograph of a person, or a series of photographs of persons, to a witness to a relevant act for the purpose of ascertaining, or obtaining evidence of, the identity of a relevant person unless—

- (a) the suspect has refused to take part in an identification parade; or
- (b) the holding of an identification parade would be unfair to the suspect or impracticable in all the circumstances.

(2) Where a Police Officer investigating an offence shows a photograph of a person, or a series of photographs of persons, to a witness to a relevant act for a purpose referred to in sub-section (1), the Police Officer—

- (a) shall not, in doing so, act unfairly towards a suspect or suggest to the witness that a particular photograph is the photograph of a suspect or of a person who is being sought by the police in respect of an offence;
- (b) shall keep, or cause to be kept, a record identifying each photograph or series of photographs that is shown to the witness;
- (c) shall, upon application by a suspect, provide the suspect with a copy of the record so kept; and
- (d) shall afford a suspect, upon application, an opportunity to inspect each photograph or series of photographs shown to a witness.

(3) Where a suspect is in custody in respect of an offence, a Police Officer investigating the offence shall not show a picture of the kind known as an "Identikit" picture or a picture of a similar kind, or a series of pictures of that kind or of a similar kind, to a witness to a relevant act for the purpose of assisting the witness to describe the features of a relevant person.

(4) Where, after a Police Officer investigating an offence has shown to a witness to a relevant act a picture, or a series of pictures, for the purpose referred to in sub-section (3), a suspect comes into custody in respect of the offence, the Police Officer in charge of the investigation of the offence shall, unless it is impracticable to do so, cause the witness to attend an identification parade in relation to the suspect.

(5) Where, after the witness to a relevant act has been shown a picture, or a series of pictures, for the purpose referred to in sub-section (3), a person is charged with the offence, the Police Officer in charge of investigating the offence

shall, upon application by that person, provide him with particulars of the picture, or series of pictures, that was or were shown to the witness and the comments (if any) of the witness concerning that picture or those pictures.

(6) Where a suspect is in custody in respect of an offence and a Police Officer investigating the offence believes on reasonable grounds that a person other than the suspect is a relevant person, in relation to a relevant act, in relation to the offence—

- (a) sub-section (1) shall not be taken to prevent a Police Officer from taking action referred to in that sub-section for the purpose of ascertaining, or obtaining evidence of, the identity of that other person; and
- (b) sub-section (3) shall not be taken to prevent a Police Officer from taking action referred to in that sub-section for the purpose of assisting a witness to the relevant act to describe the features of a relevant person other than the suspect.

Identification parades

36. (1) A Police Officer investigating an offence shall not cause or permit an identification parade to be held for the purpose of ascertaining whether a witness to a relevant act can identify a suspect as the relevant person unless the suspect has agreed to the holding of the parade and has been informed by a Police Officer both in writing in a language in which he is reasonably fluent and, if practicable, orally in such a language—

- (a) that he is entitled to refuse to agree to the holding of the parade;
- (b) that, if he does not agree to the holding of the parade and take part in the parade, evidence may be given, in any proceedings with respect to the offence, of any identification of him by a witness as a result of having seen a photograph, or a series of photographs, or of having seen him otherwise than during an identification parade;
- (c) that, if he does take part in the identification parade, evidence may be given, in any proceedings with respect to the offence, of any identification made by a witness, and of any doubts expressed by a witness, during or immediately following the holding of the parade and of any unfairness in the conducting of the parade; and
- (d) that he may have present during the holding of the parade a lawyer or other person of his choice if arrangements can be made for the lawyer or other person to be present within a reasonable time.

(2) A Police Officer who informs a suspect as provided in sub-section (1) shall ask the person to sign an acknowledgment, in accordance with the prescribed form, of the fact that he has been so informed and of the date on which and the time at which he was so informed.

(3) Where it is necessary, in any proceedings, for a court to determine whether a Police Officer has informed a person as provided in sub-section (1)

and an acknowledgment referred to in sub-section (2), signed by the person, has not been produced in evidence, the court shall assume, unless the contrary is proved, that the person was not so informed.

(4) Where a Police Officer holds an identification parade in relation to a suspect, in relation to a relevant act, for the purpose referred to in sub-section (1), the Police Officer—

- (a) shall arrange and conduct the parade in such a manner as will not unfairly prejudice the suspect; and
- (b) shall, as far as he is able to do so, ensure that nothing in the arranging and conducting of the parade, or in what happens during the conducting of the parade, suggests, or is likely to suggest, to the witness to the relevant act which of the persons included in the parade is the suspect.

(5) Where an identification parade is held, the Police Officer responsible for conducting the parade shall cause at least one photograph, if practicable in colour, to be taken of the parade while it is being conducted, unless a videotape recording of the parade is taken.

(6) The Police Officer responsible for conducting an identification parade shall cause to be recorded particulars of what happens during the parade (including particulars of any words spoken by the witness and of any doubts expressed, and of any gestures made, by the witness) and of the name, address and occupation of each of the persons (apart from the suspect) who are included in the parade and consent to the recording of those particulars.

(7) A suspect in relation to whom an identification parade is held is entitled, upon request to a Police Officer, to be provided with—

- (a) if a photograph of the parade has been taken in pursuance of sub-section (5)—a copy of that photograph;
- (b) if a videotape recording of the parade has been taken—reasonable facilities to enable the videotape recording to be reproduced in images and, if practicable, sound; and
- (c) a copy of a record made in pursuance of sub-section (6), other than the names, addresses and occupations of persons included in the parade.

Searches of arrested persons

37. (1) A Police Officer may, upon lawfully taking a person into custody in respect of an offence, search the person or the clothing that he is wearing and any property under his immediate control if the Police Officer believes on reasonable grounds that it is necessary to do so—

- (a) for the purpose of ascertaining whether there is concealed on the person or in his clothing or in that property a weapon or other article capable of being used to inflict bodily injury or to assist him to escape from custody; or
- (b) for the purpose of preventing the concealment, loss or destruction of evidence of, or relating to, the offence.

(2) Sub-section (1) does not authorize a Police Officer to remove, or to require a person to remove, any of the clothing that he is wearing.

(3) A Police Officer may seize—

- (a) any weapon or other article referred to in paragraph (1) (a); or
- (b) any thing that he has reasonable grounds to believe is a thing referred to in paragraph 56 (1) (a), (b) or (c) in relation to an offence,

found as a result of a search in accordance with sub-section (1).

(4) Nothing in this section shall be taken to prevent or restrict the search of a person or of clothing worn by, or property under the immediate control of, a person, upon the admission of the person as an inmate of a gaol, lock-up or like place after having been charged with an offence.

Medical examinations

38. (1) A Police Officer may arrange for a medical practitioner to examine a person in lawful custody in respect of an offence for the purpose of securing evidence of, or relating to, the offence if, and only if, the Police Officer believes on reasonable grounds that the examination is likely to provide such evidence and—

- (a) the person has given his consent in writing; or
- (b) a Magistrate has approved in writing the examination under sub-section (4).

(2) A Police Officer may arrange for a medical practitioner to take a specimen from a person in lawful custody in respect of an offence for the purpose of having the specimen analysed or otherwise examined if, and only if, the Police Officer believes on reasonable grounds that analysis or other examination of the specimen is likely to provide evidence of, or relating to, the offence and—

- (a) the person has given his consent in writing; or
- (b) a Magistrate has approved in writing the taking of the specimen under sub-section (4).

(3) A Police Officer may—

- (a) make application to a Magistrate in person; or
- (b) if it is impracticable for him to make application to a Magistrate in person—make application to a Magistrate by telephone,

for an approval for the purposes of sub-section (1) or (2).

(4) The Magistrate to whom application is made under sub-section (3) may, if he is satisfied that the Police Officer has reasonable grounds for the belief referred to in sub-section (1) or (2), whichever is applicable, give his approval.

(5) Where a Magistrate gives his approval in relation to an application made to him under sub-section (3) by telephone, the Magistrate shall cause the instrument giving approval to be forwarded to the applicant.

(6) Before arranging for a medical practitioner to examine a person in lawful custody or to take a specimen from such a person, a Police Officer shall

inquire whether the person wishes to have a medical practitioner of his own choice present during the examination or the taking of the specimen and, if he states that he does so wish, shall—

- (a) provide reasonable facilities to enable the person to arrange for a medical practitioner of his choice to be so present; and
- (b) unless it would be impracticable to do so—arrange for the examination to be made, or the specimen to be taken, at a time when the medical practitioner chosen by the person can be present.

(7) Sub-section (6) does not apply in relation to a person in lawful custody in respect of an offence where a Police Officer believes on reasonable grounds that, if the examination of, or the taking of a specimen from, the person, by a medical practitioner is delayed until a time when a medical practitioner chosen by the person can be present, evidence of, or relating to, the offence may be lost or destroyed or may otherwise disappear.

(8) A Police Officer may use such reasonable force as is necessary in order to take a person to a medical practitioner for the purpose of an examination of the person in accordance with sub-section (1), or the taking of a specimen from the person in accordance with sub-section (2), by the medical practitioner.

(9) Where, in accordance with this section, a medical practitioner has examined a person in custody in respect of an offence or taken a specimen from such a person and—

- (a) no proceedings in respect of the offence, or a related offence, are instituted against the person within 12 months after the examination was made or the specimen was taken; or
- (b) such proceedings are instituted within that time but the court acquits the person of the offence,

the person having the custody of the report of the examination or the report of the analysis or other examination of the specimen, and any Police Officer having the custody of a copy of such a report, shall cause it to be destroyed.

(10) A person (including a Police Officer) shall not make, or cause or permit to be made, a copy of a report referred to in sub-section (9) after the time when the report is required by that sub-section to be destroyed.

Penalty: \$1,000 or imprisonment for 6 months.

(11) Where a person in lawful custody is examined by a medical practitioner in accordance with sub-section (1), or a specimen is taken from such a person in accordance with sub-section (2), the person shall, upon application to a Police Officer, be provided with a copy of the report of the medical practitioner furnished in respect of the examination or of the report of the analysis or other examination of the specimen.

(12) Where a medical practitioner—

- (a) makes an examination of a person; or
- (b) takes a specimen from a person,

in pursuance of arrangements duly made by a Police Officer under this section, proceedings do not lie against the medical practitioner, or against any other person acting under his direction or otherwise assisting him, in respect of anything reasonably done by the medical practitioner or by the other person for the purpose of making the examination or of taking the specimen.

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(13) Nothing in this section—

- (a) prevents a medical practitioner from examining, or taking a specimen from, a person in lawful custody at the request of that person or for the purpose of treating him for an illness or injury;
- (b) affects the power of a court to exclude evidence obtained through unreasonable force or inhuman treatment; or
- (c) affects the operation of any other law of the Commonwealth or of a law of the Australian Capital Territory, being a law relating to the medical examination of, or the taking of a specimen from, a person, that is prescribed for the purposes of this paragraph.

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(14) In this section—

“Magistrate” does not include a person by virtue only of his being a Justice;
 “specimen”, in relation to a person, includes a sample of, or taken from, the body of the person.

Application of Division

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39. This Division shall not be taken to prohibit a Police Officer from taking investigative action of a kind not referred to in this Division, where the taking of that action is not inconsistent with a provision of this Division.

PART IV—RIGHTS OF PERSONS CHARGED WITH OFFENCES

Division 1—Interpretation

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Interpretation

40. (1) For the purposes of this Part—

- (a) a person shall not be taken to have been charged by a Police Officer with an offence unless or until particulars of the charge have been entered in a Police Station charge book; and
- (b) a person shall be taken to have been summoned in respect of an offence at the time of issue of the summons against him in respect of the offence.

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(2) Where a person who is charged by a Police Officer with an offence is handed over into the custody of a Police Officer of a State or of the Northern Territory before being granted or refused bail under this Part, that handing over does not affect the continued application of this Part to and in relation to him and, for the purposes of the continued application of this Part accordingly, a reference in this Part to a Police Officer shall, unless the contrary intention appears, be read as including a reference to a Police Officer of a State or of the Northern Territory.

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Division 2—General

Persons arrested to be charged

41. As soon as practicable after a person is arrested for an offence by a Police Officer, the Police Officer shall charge the person, or cause the person to be charged, with the offence.

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Release of persons in lawful custody

42. Nothing in this Part shall be taken to prevent the release of a person in lawful custody at any time without being charged with an offence, whether or not a summons has been, or is to be, issued against him in respect of an offence.

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Persons charged to be cautioned

43. Immediately after a Police Officer charges a person with an offence, the Police Officer shall caution the person, or cause him to be cautioned, in a language in which the person is reasonably fluent, in writing, and also, if practicable, orally, that he is not obliged to answer any questions, or to do any thing, asked of him by a Police Officer and that anything said by him may be used in evidence.

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Questioning of persons charged with offences

44. (1) A Police Officer shall not, after a person is charged with, or summoned in respect of, an offence, ask the person any question relating to the offence other than—

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- (a) a question with respect to an ambiguity in an answer previously made by the person to a question asked of him by a Police Officer, being a question asked before he was charged with, or summoned in respect of, the offence or duly asked in accordance with this section after he was so charged;
- (b) a question with respect to an ambiguity in a statement made by the person, whether before or after he was charged with, or summoned in respect of, the offence; or
- (c) a question necessary to assist the Police Officer in dealing with an emergency.

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(2) Sub-section (1) shall not be taken to prevent a Police Officer from asking a person who has been charged with, or summoned in respect of, an offence, whether he wishes to make a statement with respect to any information or other evidence of, or relating to, the offence, that, at the time when the person was so charged or summoned, was not in the possession of any Police Officer concerned in the investigation of the offence, but nothing in this sub-section shall be taken to permit a Police Officer to ask such a person any further question other than a question with respect to an ambiguity in a statement referred to in this sub-section.

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(3) Immediately before a Police Officer asks a person who has been charged with, or summoned in respect of, an offence any questions relating to the offence, the Police Officer shall draw the attention of the person to the caution referred to in section 43.

(4) Where a person who has been charged with, or summoned in respect of, an offence voluntarily proposes to make, or commences to make, a statement to a Police Officer in relation to the offence (including a statement referred to in sub-section (2)), the Police Officer shall caution the person in a language in which he is reasonably fluent, in writing, and also, if practicable, orally, before the person commences to make the statement or, if it is not practicable to do so, as soon as practicable after the person commences to make the statement, that he is not obliged to make any statement.

Persons charged with same offence

45. (1) Where, after 2 or more persons have been charged with the same offence, one of those persons furnishes to a Police Officer a written statement in relation to the offence, not being a statement made jointly with the other person, or all the other persons, charged with the offence, the Police Officer to whom the statement is furnished may cause a copy of the statement to be furnished to the other person, or to each of the other persons, as the case may be, charged with the offence who did not join in making the statement, but shall not, subject to sub-section (2), read the statement to him or invite him, either orally or otherwise, to comment on the statement.

(2) Where a person to whom a copy of a statement is furnished in accordance with sub-section (1) is unable for any reason to read the statement, the Police Officer shall—

- (a) if the person is unable to read the statement because he is not reasonably fluent in the language in which it is written, cause the statement to be translated into a language in which the person is reasonably fluent and cause a copy of the translation to be furnished to the person; or
- (b) in any other case, if the person consents, read the statement, or cause the statement to be read, to the person.

(3) Where a person to whom a copy of a statement is furnished in accordance with sub-section (1) voluntarily proposes to make, or commences to make, a statement to a Police Officer in relation to the offence by way of comment on the first-mentioned statement, the Police Officer shall caution the person in a language in which the person is reasonably fluent, in writing, and also, if practicable, orally, before he commences to make the statement or, if it is not practicable to do so, as soon as practicable after he commences to make the statement, that he is not obliged to make any statement.

(4) In this section, a reference to a written statement includes a record in writing that complies with sub-section 32 (3).

Division 3—Release and Bail

Bail—general

46. (1) A Police Officer who charges a person with an offence shall, if practicable, forthwith bring the person or cause the person to be brought before a court or Magistrate to be dealt with according to law.

(2) Where the Police Officer does not bring the person before a court or Magistrate forthwith, the Police Officer—

(a) shall inform the person, or cause the person to be informed, in a language in which the person is reasonably fluent, in writing and also, if practicable, orally—

(i) that he may apply for bail;

(ii) that he may communicate with a lawyer of his choice in connection with the making of such an application; and

(iii) that he may communicate with any other person of his choice in connection with the provision of bail,

and, if the person asks for facilities to do so, shall provide the person with reasonable facilities to enable him so to communicate with a lawyer or other person;

(b) shall furnish to the person, in a language in which the person is reasonably fluent, in writing, and also, if practicable, orally, particulars of the matters that are relevant to the granting of bail and of the conditions subject to which bail may be granted; and

(c) if the person applies for bail, shall, if he is authorized to grant bail, consider whether bail should be granted to the person, or, if he is not so authorized, bring the person before an authorized Police Officer, who shall consider whether bail should be granted.

(3) For the purposes of this Division, a Police Officer who holds the rank of sergeant or a higher rank or is the Police Officer for the time being in charge of a Police Station is authorized to grant bail, and a reference in this Division to an authorized Police Officer is a reference to a Police Officer so authorized.

(4) If, before an authorized Police Officer has complied, or complied fully, with the requirements of paragraphs (2) (a) and (b) or sub-section 47 (1), he is satisfied that it would be proper to grant bail subject only to the condition referred to in paragraph 49 (a), he may proceed to grant bail accordingly.

Police bail

47. (1) An authorized Police Officer who is required to consider whether to grant bail to a person charged with an offence shall forthwith, but after affording the person, or a lawyer assisting the person, and any Police Officer (other than himself) concerned with investigating the offence, opportunities to make submissions to him concerning any matters specified in sub-section 48 (1) that are relevant to the granting of bail, decide whether, having regard only to the information before him concerning those matters and to sub-sections (2) and (3) of this section, to grant the person bail.

- (2) An authorized Police Officer—
- (a) shall not grant bail to a person otherwise than subject to the condition specified in paragraph 49 (a); and
- (b) may, subject to sub-section (3), grant bail to a person subject to such other conditions specified in section 49 as he considers appropriate. 5
- (3) An authorized Police Officer, in granting bail to a person—
- (a) shall not impose a condition specified in a paragraph of section 49 (other than paragraph (a)), unless he is of the opinion that the imposition of the condition is necessary to secure one or more of the following purposes: 10
- (i) the attendance of the person before a court to answer the charge;
- (ii) the protection from bodily injury of the person charged or of other persons connected with the charge;
- (iii) the prevention of the person charged from interfering with evidence, intimidating witnesses or hindering inquiries into the charge; and 15
- (b) shall not, except at the request of the person charged, impose a condition specified in a particular paragraph of section 49 (other than paragraph (a)) unless he is of the opinion that there is substantial doubt whether the imposition of a condition or conditions under an earlier paragraph or paragraphs of that section would secure the purposes referred to in paragraph (a) of this sub-section. 20
- (4) Where an authorized Police Officer decides to grant bail to a person subject to conditions that include a condition specified in a particular paragraph of section 49 (other than paragraph (a)) otherwise than in accordance with a request of the person as referred to in paragraph (3) (b) of this section, he shall record his reasons for deciding that the imposition of a condition or conditions under an earlier paragraph or paragraphs of that section would be unlikely to secure the purposes specified in paragraph (3) (a) of this section. 25
- (5) Where an authorized Police Officer decides to refuse to grant bail, he shall record his reasons for so deciding. 30

Criteria for granting police bail

48. (1) For the purposes of sub-section 47 (1), the matters relevant to the granting of bail by an authorized Police Officer to a person charged with an offence are— 35
- (a) the following matters related to the probability of the person appearing in court in respect of the offence if granted bail: 35
- (i) the background and community ties of the person having regard to the nature of his residence, employment and family situation and to his police record, if known; 40

- (ii) the circumstances in which the offence was committed, the nature and seriousness of the offence, the strength of the evidence against the person and other information relevant to the likelihood of his absconding;
- (b) the following matters related to the interests of the person: 5
- (i) the period that the person may be obliged to spend in custody if bail is refused and the conditions under which he would be held in custody;
- (ii) the need of the person to be free for the purposes of preparing for his appearance before a court and obtaining legal advice and for other purposes; 10
- (iii) the need of the person for physical protection, whether the need arises because he is incapacitated by intoxication, injury or the use of drugs or arises from other causes; and
- (c) the following matters related to the protection of the community: 15
- (i) the likelihood of the person interfering with evidence, intimidating witnesses or hindering police inquiries; and
- (ii) if the person has been convicted of an offence or offences—the likelihood, having regard to that conviction or those convictions, of the person committing an offence or offences while released on bail. 20

(2) In paragraph (1) (c), a reference to an offence includes a reference to an offence against a law of a State, of a Territory (including an external Territory) or of a country other than Australia.

25 Conditions of police bail

49. The conditions referred to in sub-section 47 (2) in relation to a person charged with an offence are—

- (a) that he undertake, in writing, to appear before a specified court at a specified place, date and time, or at such other place, date and time as are, before the first-mentioned time, notified to him by a Police Officer; 30
- (b) that he undertake, in writing, to observe specified requirements as to his conduct while released on bail (which may include a requirement to report periodically at a specified place);
- (c) that another person acceptable to the authorized Police Officer acknowledge, in writing, that he is acquainted with the person charged and regards him as a responsible person who is likely to appear in court to answer the charge; 35
- (d) that the person charged, or another person acceptable to the authorized Police Officer, undertake in writing to pay to the Commonwealth a specified sum if the person charged fails to appear in court in accordance with his undertaking referred to in paragraph (a); 40
- (e) that the person charged, or another person acceptable to the authorized Police Officer, undertake in writing to pay to the Commonwealth a

specified sum, and give security acceptable to the authorized Police Officer for the payment of that sum, if the person charged fails to appear in court in accordance with his undertaking referred to in paragraph (a); and

- (f) that the person charged, or another person acceptable to the authorized Police Officer, deposit with the authorized Police Officer a specified sum to be forfeited to the Commonwealth if the person charged fails to appear in court in accordance with his undertaking referred to in paragraph (a).

Notification of bail decision and of right to review

50. (1) Where an authorized Police Officer decides, under sub-section 47 (1), to refuse bail to a person, he shall forthwith inform the person of his decision and also inform the person that—

- (a) he is entitled to be furnished, upon request to a Police Officer, with a copy of the reasons recorded in accordance with sub-section 47 (5);
- (b) he is entitled to request a Police Officer, at any time before he is brought before a court in connection with the offence, to provide facilities for him to apply to a Magistrate for bail; and
- (c) he is entitled to communicate with, and have the assistance of, a lawyer in connection with such an application.

(2) Where an authorized Police Officer decides, under sub-section 47 (1), to grant bail to a person subject to a condition or conditions other than the condition referred to in paragraph 49 (a), he shall forthwith inform the person of his decision and also inform the person that he is entitled to be furnished, upon request to a Police Officer, with a copy of the reasons recorded in accordance with sub-section 47 (4) and that, if he remains in custody because he is unable or unwilling to comply, or arrange for compliance, with that condition, or any of those conditions, as the case may be—

- (a) he is entitled to request a Police Officer, at any time before he is brought before a court in connection with the offence, to provide facilities for him to apply to a Magistrate for bail; and
- (b) he is entitled to communicate with, and have the assistance of, a lawyer in connection with such an application.

(3) A Police Officer shall, upon request by a person who is in custody and has been refused bail under sub-section 47 (1), or has been granted bail under that sub-section subject to any condition or conditions other than the condition referred to in paragraph 49 (a) and is unable or unwilling to comply, or arrange for compliance, with that condition, or any of those conditions, as the case may be, provide the person with reasonable facilities to communicate with a lawyer in connection with matters concerning bail and shall, upon the request of such a person, furnish to the person a copy of the reasons recorded in accordance with sub-section 47 (4) or (5), as the case may be.

Review of police bail

51. (1) Where an authorized Police Officer refuses, under section 47, to grant bail to a person charged with an offence, or grants bail to such a person but the person is unable or unwilling to comply, or arrange for compliance, with any condition (not being the condition specified in paragraph 49 (a)) subject to which bail was granted, the person shall be brought before a court to be dealt with according to law as soon as it is practicable to do so and not later than the first sitting of a court at a place to which it is practicable to take the person to be so dealt with.

(2) A person who is in custody waiting to be brought before a court in accordance with sub-section (1) may, at any time, request a Police Officer for facilities to make an application for bail, and, if he does so, the Police Officer shall, as soon as practicable after the request, bring him in person before a Judge or Magistrate having power to grant bail to him or arrange for him to make application for bail to such a Judge or Magistrate by telephone.

(3) A Police Officer shall not—

- (a) bring a person before a Judge in person, or arrange for a person to make application for bail to a Judge by telephone if it is practicable to bring him before a Magistrate in person or arrange for him to make application for bail to a Magistrate by telephone;
- (b) arrange for a person to make application for bail to a Judge by telephone if it is practicable to bring him before a Judge in person; or
- (c) arrange for a person to make application for bail to a Magistrate by telephone if it is practicable to bring him before a Magistrate in person.

(4) Where a person makes application for bail to a Judge or Magistrate by telephone, the Judge or Magistrate shall deal with the application in accordance with law as if the application were made in his presence, except that he shall allow submissions to be made to him by telephone where it is not practicable for them to be made in his presence.

(5) In this section, "Magistrate" does not include a person by virtue only of his being a Justice.

Bail in respect of several offences

52. (1) Where a person is charged with 2 or more offences at the same time—

- (a) a Police Officer considering whether to grant bail to the person shall decide, at the one time, whether to grant bail to the person in respect of all the charges;
- (b) an application for bail in accordance with sub-section 51 (2) may be made in respect of all the charges, but not otherwise; and
- (c) any bail that is granted to the person shall be granted in respect of all the charges and separate conditions shall not be imposed in respect of each charge.

(2) For the purposes of applying sections 47, 48, 49 and 51 in relation to a person who is charged with 2 or more offences at the same time, references in those sections to an offence shall be read as references to those offences.

Deposit of money and security for bail

53. (1) Where bail is granted to a person subject to a condition that a sum be deposited with a Police Officer, or where a sum is to be deposited in accordance with sub-section (2), the sum may be deposited in cash or, at the discretion of the Police Officer, by cheque or other prescribed means.

(2) A person who has given a security to a Police Officer in relation to the release of a person (in this sub-section referred to as the "defendant") on bail may, at any time, deposit with the Police Officer the sum that he is liable to forfeit if the defendant fails to appear in court when required to do so for the purpose of answering to the relevant charge and, if the first-mentioned person so deposits an amount, he is entitled to have the security returned to him.

Revocation of bail

54. (1) Where an authorized Police Officer believes on reasonable grounds that a person who has been released on bail granted by a Police Officer—

- (a) is absconding; or
- (b) has failed to comply with, or is about to fail to comply with, an undertaking given by him as a condition of his release,

the Police Officer may revoke the bail, and the person may then be arrested by a Police Officer.

(2) Where, in accordance with sub-section 53 (1), a sum has been deposited by cheque in relation to the release of a person on bail and the cheque is dishonoured by non-payment, an authorized Police Officer may revoke the bail, and the person may then be arrested by a Police Officer.

Breaches of conditions of bail

55. (1) Subject to sub-sections (2) and (3), where a person who has been released on bail granted by a Police Officer wilfully fails to comply with an undertaking in accordance with paragraph 49 (a) or (b) given by him as a condition of his release, the person commits an offence punishable, upon conviction, by a penalty not exceeding the maximum penalty that could be imposed on him upon conviction for the offence in respect of which he was released on bail.

(2) Where a person who has been released on bail granted by a Police Officer in respect of 2 or more offences wilfully fails to comply with an undertaking referred to in sub-section (1), that sub-section applies as if the reference to the offence in respect of which he was released on bail were a reference to the offence that the court considers, having regard to the penalties that may be imposed for those offences, to be the more or most serious of those offences.

(3) A court shall not impose on a person who is convicted of an offence under sub-section (1) a fine exceeding \$1,000 or a period of imprisonment exceeding 6 months.

(4) The regulations may make provision for the enforcement of undertakings given in accordance with conditions referred to in paragraphs 49 (d), (e) and (f).

PART V—SEARCH AND SEIZURE

Interpretation

56. (1) For the purposes of this Part, a thing is connected with a particular offence if it is—

- (a) a thing with respect to which the offence has been committed;
- (b) a thing that will afford evidence of the commission of the offence; or
- (c) a thing that was used, or is intended to be used, for the purpose of committing the offence.

(2) A reference in this Part to an offence shall be read as including a reference to an offence that there are reasonable grounds for believing has been, or is to be, committed.

Search and seizure

57. (1) A Police Officer may search a person or the clothing that is being worn by, or property in the immediate control of, a person, and may seize any thing that he believes on reasonable grounds to be connected with an offence that is found in the course of the search, if, and only if, the search and seizure is made by the Police Officer—

- (a) in pursuance of a warrant issued under this Part;
- (b) in accordance with section 37 upon taking the person into lawful custody in respect of an offence;
- (c) in circumstances of seriousness and urgency, in accordance with sub-section 60 (1);
- (d) upon stopping the person in accordance with sub-section 60 (2);
- (e) after obtaining the consent of the person to the search;
- (f) in pursuance of an order made by a court; or
- (g) under a provision of another law of the Commonwealth or of a Territory, including such a law as modified by section 62.

(2) A Police Officer may enter upon land, or upon or into premises or a vessel or vehicle, and may search for and seize any thing that he believes on reasonable grounds to be connected with an offence that is found on the land, or on or in the premises or vessel or vehicle if, and only if, the search and seizure is made by the Police Officer—

- (a) in pursuance of a warrant issued under this Part;

- (b) in circumstances of seriousness and urgency, in accordance with sub-section 60 (1);
- (c) in pursuance of the power to enter upon or into the vessel or vehicle conferred by sub-section 60 (3);
- (d) after obtaining the consent of the occupier of the land or premises or of the person in charge of the vessel or vehicle to the entry;
- (e) in accordance with an order made by a court; or
- (f) under a provision of another law of the Commonwealth or of a Territory, including such a law as modified by section 62.

Search warrants

58. (1) Where an information on oath is laid before a Magistrate alleging that there are reasonable grounds for suspecting that a thing or things of a particular kind connected with a particular offence may be concealed on a person or in the clothing that is being worn by, or in any property in the immediate control of, a person, and the information sets out those grounds, the Magistrate may issue a search warrant authorizing a Police Officer named in the warrant, with such assistance as he thinks necessary, to search the person or the clothing that is being worn by, or property in the immediate control of, the person, if necessary by force, and seize any thing of that kind that he may find in the course of the search that he believes on reasonable grounds to be connected with the offence.

(2) Where an information on oath is laid before a Magistrate alleging that there are reasonable grounds for suspecting that there may be upon any land or upon or in any premises, vessel or vehicle, a thing or things of a particular kind connected with a particular offence, and the information sets out those grounds, the Magistrate may issue a search warrant authorizing a Police Officer named in the warrant, with such assistance as he thinks necessary and if necessary by force—

- (a) to enter upon the land or upon or into the premises, vessel or vehicle;
- (b) to search the land, premises, vessel or vehicle for things of that kind; and
- (c) to seize any thing of that kind found upon the land or upon or in the premises, vessel or vehicle that he believes on reasonable grounds to be connected with that offence.

(3) A Magistrate shall not issue a warrant under sub-section (1) or (2) unless—

- (a) the informant or some other person has given to the Magistrate, either orally or by affidavit, such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(4) There shall be stated in a warrant issued under this section—

- (a) in the case of a warrant issued under sub-section (1)—
 - (i) a statement of the purpose for which the warrant is issued, which shall include a reference to the nature of the offence in relation to which the search is authorized;
 - (ii) a description of the kind of things authorized to be seized; and
 - (iii) a date, not being later than one month after the date of issue of the warrant, upon which the warrant ceases to have effect; and
- (b) in the case of a warrant issued under sub-section (2)—
 - (i) a statement of the purpose for which the warrant is issued, which shall include a reference to the nature of the offence in relation to which the entry and search are authorized;
 - (ii) whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night;
 - (iii) a description of the kind of things authorized to be seized; and
 - (iv) a date, not being later than one month after the date of issue of the warrant, upon which the warrant ceases to have effect.

(5) If, in the course of searching, in accordance with a warrant issued under this Part, for things connected with a particular offence, being things of a kind specified in the warrant, a Police Officer finds any thing that he believes on reasonable grounds to be connected with the offence, although not of a kind specified in the warrant, or to be connected with another offence, and he believes on reasonable grounds that it is necessary to seize that thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or in committing the other offence, the warrant shall be deemed to authorize him to seize that thing.

(6) A Police Officer acting in accordance with a warrant issued under sub-section (1) may remove, or require a person to remove, any of the clothing that the person is wearing.

(7) A female shall not be searched under this section except by a female.

Search warrants may be granted by telephone

59. (1) Where, by reason of circumstances of urgency, he considers it necessary to do so, a Police Officer may make application for a search warrant to a Magistrate, by telephone, in accordance with this section.

(2) Before so making application, a Police Officer shall prepare an information of a kind referred to in sub-section 58 (1) or (2) that sets out the grounds on which the issue of the warrant is being sought, but may, if it is necessary to do so, make the application before the information has been sworn.

(3) Where a Magistrate is, upon application made under sub-section (1), satisfied—

- (a) after having considered the terms of the information prepared in accordance with sub-section (2); and

- (b) after having given to him such further information (if any) as he requires concerning the grounds on which the issue of the warrant is being sought,

that there are reasonable grounds for issuing the warrant, the Magistrate shall complete and sign such a search warrant as he would issue under section 58 if the application had been made to him in accordance with that section.

(4) Where a Magistrate signs a warrant under sub-section (3)—

- (a) the Magistrate shall inform the Police Officer of the terms of the warrant signed by him and the date on which and the time at which it was signed, and record on the warrant his reasons for granting the warrant; and
- (b) the Police Officer shall complete a form of warrant in the terms furnished to him by the Magistrate and write on it the name of the Magistrate and the date on which and the time at which the warrant was signed.

(5) Where a Police Officer completes a form of warrant in accordance with sub-section (4), the Police Officer shall, not later than the day next following the date of expiry of the warrant, forward to the Magistrate who signed the warrant the form of warrant completed by him and the information duly sworn in connection with the warrant.

(6) Upon receipt of the documents referred to in sub-section (5), the Magistrate shall attach to them the warrant signed by him and deal with the documents in the manner in which he would have dealt with the information if the application for the warrant had been made to him in accordance with section 58.

(7) A form of warrant duly completed by a Police Officer in accordance with sub-section (4) is, if it is in accordance with the terms of the warrant signed by the Magistrate, authority for any search, entry or seizure that the warrant so signed authorizes.

(8) Where it is material, in any proceedings, for a court to be satisfied that a search, entry or seizure was authorized in accordance with this section, and the warrant signed by a Magistrate in accordance with this section authorizing the search, entry or seizure is not produced in evidence, the court shall assume, unless the contrary is proved, that the search, entry or seizure was not authorized by such a warrant.

(9) In this section, "Magistrate" does not include a person by virtue only of his being a Justice.

Searches in emergencies

60. (1) A Police Officer may—

- (a) search a person or the clothing that is being worn by, and property in the immediate control of, a person suspected by him to be carrying any thing connected with an offence; or

- (b) enter upon any land, or upon or into any premises, vessel or vehicle, on or in which he believes on reasonable grounds that any thing connected with an offence is situated,

and may seize any such thing that he finds in the course of that search, or upon the land or upon or in the premises, vessel or vehicle, as the case may be—

- (c) if the Police Officer believes on reasonable grounds that it is necessary to do so in order to prevent the concealment, loss or destruction of any thing connected with an offence; and
- (d) the search or entry is made in circumstances of such seriousness and urgency as to require and justify immediate search or entry without the authority of an order of a court or of a warrant issued under this Part.

(2) A Police Officer who believes on reasonable grounds that a person is, without lawful authority or reasonable excuse, carrying an offensive weapon or is carrying any thing connected with an offence (being a serious offence) may stop that person and seize any such weapon or thing that is found on the person.

(3) A Police Officer who believes on reasonable grounds that an offensive weapon, or any thing connected with an offence (being a serious offence), is upon or in a vessel or vehicle, may enter upon or into the vessel or vehicle and seize any such weapon or thing found on or in the vessel or vehicle and may for that purpose stop and search the vessel or vehicle.

(4) In sub-sections (2) and (3), "offensive weapon" means any article made or adapted for use for causing bodily injury, or intended by the person carrying it for such use by him.

Consent to search

61. (1) Before obtaining the consent of a person for the purposes of section 57, a Police Officer shall inform the person that he may refuse to give his consent.

(2) A Police Officer who obtains the consent of a person for the purposes of section 57 shall ask the person to sign an acknowledgment, in accordance with the prescribed form—

- (a) of the fact that he has been informed that he may refuse to give his consent;
- (b) of the fact that he has voluntarily given his consent; and
- (c) of the date on which, and the time at which, he gave his consent.

(3) A search or entry by a Police Officer by virtue of the consent of a person is not lawful unless the person concerned voluntarily consented to the search or entry.

(4) Where it is material, in any proceedings, for a court to be satisfied of the voluntary consent of a person for the purposes of section 57 and an acknowledgment, in accordance with sub-section (2), signed by the person has not been produced in evidence, the court shall assume, unless the contrary is proved, that the person did not voluntarily give such a consent.

Modification of Acts and Ordinances conferring power to search and seize

62. Where a provision of another law of the Commonwealth, or of a law of the Australian Capital Territory, being a provision in force immediately before the commencement of this Act, authorizes a Police Officer—

- (a) to search any person or property and seize any thing; or
- (b) to enter upon any land, or upon or into any premises, vehicles or vessels, and seize any thing,

and the purpose for which the Police Officer may so act is not expressly stated in the law, the provision has effect, on and after the commencement of this Act, as if it authorized a Police Officer so to act only for the purposes of the law in which the provision is included.

PART VI—ENTRAPMENT**Entrapment**

63. (1) A Police Officer shall not induce, or cause another person to induce, a person to commit an offence either alone or with the Police Officer or any other person.

(2) Sub-section (1) does not apply if the Police Officer has reasonable grounds to believe that the person would, without the inducement, have been ready and willing to commit an offence of the kind committed on the occasion on which it was committed.

(3) This section shall not be taken to render lawful anything that would otherwise be unlawful.

PART VII—POLICE RECORDS**Accuracy and security of police records**

64. (1) It is the duty of the Commissioner to take, and to cause to be taken, such reasonable measures as are necessary to ensure the accuracy and security of the records of the Australian Federal Police.

(2) A Police Officer shall not, directly or indirectly, except in the performance, in accordance with this Act and the regulations, of his duties as a Police Officer—

- (a) make a copy of, or take an extract from, any of the records of the Australian Federal Police relating to an offence; or
- (b) communicate to another person any information acquired by him from any of those records or otherwise acquired by him in the performance of, and for purposes connected with the performance of, his duties as a Police Officer.

Penalty: \$1,000 or imprisonment for 6 months.

(3) A person shall not, directly or indirectly, seek to obtain any information from a Police Officer, or cause a Police Officer to communicate any information of the kind referred to in paragraph (2) (b) to another person, knowing that the communication of the information by the Police Officer to the person or to the other person would not be in the performance of his duties as a Police Officer.

Penalty: \$1,000 or imprisonment for 6 months.

(4) In this section, "Police Officer" includes a person who has been a Police Officer and a person whose services are, or have been, made available to the Australian Federal Police in connection with the performance of its functions.

Access to criminal history records

65. (1) A person may make application in accordance with this section for a certificate concerning himself under sub-section (3).

(2) An application under sub-section (1)—

- (a) shall, subject to paragraph (b), be made by furnishing the application, in writing, to a Police Officer at a Police Station or other office of the Australian Federal Police and permitting the Police Officer to take the applicant's fingerprints for identification purposes in connection with the application; or
- (b) shall, if the applicant is, by reason of his serving a term of imprisonment or for some other prescribed reason, unable to attend at a Police Station or other office of the Australian Federal Police, be made in the prescribed manner.

(3) A person who makes application under sub-section (1) is entitled, upon payment of the prescribed fee, to have issued to him by the Commissioner, within 21 days after the application is made, a certificate—

- (a) setting out particulars of any prescribed information concerning the applicant that is contained in the records of the Australian Federal Police; or
- (b) stating that there is no prescribed information concerning him contained in the records of the Australian Federal Police,

as the case may be.

(4) A person shall not make a copy of fingerprints taken for the purposes of an application under sub-section (1).

Penalty: \$1,000 or imprisonment for 6 months.

(5) A certificate under sub-section (3)—

- (a) subject to paragraph (b), shall be issued to the applicant in person at the Police Station or other office at which the application was furnished to a Police Officer, and not otherwise, and shall be accompanied by the fingerprints that were taken in accordance with paragraph (2) (a); or
- (b) if the application was made in accordance with paragraph (2) (b), shall be issued to the applicant in the prescribed manner.

(6) In this section, "prescribed information", in relation to a person, means information of a kind prescribed by the regulations for the purposes of this section, being information concerning any proceedings instituted against the person for offences, or concerning any penalties imposed on the person for offences.

Persons not to be required to produce certificates in connection with employment

66. (1) An employer shall not require his employee to produce to any person, for a purpose connected with his employment, a certificate issued to the employee under section 65 or to communicate to any person, for such a purpose, the contents of such a certificate.

Penalty: \$1,000 or imprisonment for 6 months.

(2) A person shall not require another person who has made application for any employment to produce to any person, for a purpose connected with the application, a certificate issued to the applicant under section 65, or to communicate to any person, for such a purpose, the contents of a certificate so issued.

Penalty: \$1,000 or imprisonment for 6 months.

(3) This section binds the Crown in right of a State and of the Northern Territory as well as the Crown in right of the Commonwealth, but nothing in this section renders the Crown liable to prosecution for an offence.

Destruction of recordings and other records

67. (1) Where proceedings are not instituted against a person in respect of an offence in connection with the investigation of which prints, recordings, samples or photographs to which section 34 applies were taken of, or in relation to, the person—

- (a) within the period of 12 months after the prints, recordings, samples or photographs were taken; or
- (b) if that period is extended under sub-section (3)—within that period as from time to time so extended,

the Commissioner shall cause the prints, recordings, samples or photographs to be destroyed.

(2) Where proceedings are instituted against a person in respect of an offence in connection with the investigation of which prints, recordings, samples or photographs to which section 34 applies were taken of, or in relation to, the person—

- (a) within the period of 12 months after the prints, recordings, samples or photographs were taken; or
- (b) if that period is extended under sub-section (3)—within that period as, from time to time, so extended,

but the court acquits the person, the Commissioner shall cause the prints, recordings, samples or photographs to be destroyed.

(3) A Magistrate may, upon application by the Commissioner, and upon being satisfied, by information on oath, that there are special reasons for doing so, extend, in respect of any print, recording, sample or photograph referred to in sub-section (1) or (2), the period referred to in that sub-section, or that period as previously extended under this sub-section.

(4) The regulations may make provision for and in relation to applications under this section, including the procedure before a Magistrate.

(5) In this section, "Magistrate" does not include a person by virtue only of his being a Justice.

Copies of recordings, prints, &c.

68. Where, at any time after the Commissioner is required by section 67 to cause any prints, recordings, samples or photographs to be destroyed, a Police Officer makes, or causes or permits to be made, a copy or record of, or of any part of, those prints, recordings, samples or photographs, the Police Officer commits an offence punishable, upon conviction, by a fine not exceeding \$1,000 or by imprisonment for a period not exceeding 6 months.

PART VIII—EXCLUSION OF EVIDENCE

Exclusion of evidence illegally obtained

69. (1) Where, in proceedings in a court in respect of an offence, upon objection being taken to the admission of evidence on the ground that the evidence was obtained in contravention of, or in consequence of a contravention of, a provision of this Act in relation to a person, the court is satisfied, on the balance of probabilities but having regard to any provision of this Act relating to proof of particular matters, that the evidence was so obtained, the court shall not admit the evidence unless, in the opinion of the court, admission of the evidence would substantially benefit the public interest in the administration of criminal justice without unduly prejudicing the rights and freedoms of any person.

(2) The matters that a court may have regard to in deciding whether to admit evidence in accordance with sub-section (1) include—

- (a) the seriousness of the offence, the urgency and difficulty of detecting the offender and the need to preserve evidence of the facts;
- (b) the nature and seriousness of the contravention referred to in sub-section (1);
- (c) the effect (if any) of the contravention referred to in sub-section (1) on the cogency of the evidence so obtained; and
- (d) the extent to which the evidence might have been obtainable lawfully.

(3) This section is in addition to, and not in substitution for, any other law or rule under which a court may refuse to admit evidence in proceedings.

(4) Sub-section (3) shall not be taken to authorize a court, in proceedings in respect of an offence, to refuse to admit a statement in evidence on the ground that a Police Officer had contravened the rules known as the Judges' Rules.

(5) Nothing in this section derogates from the application of section 31 or 32.

PART IX—REGULATIONS

Regulations

70. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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1981

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

CRIMINAL INVESTIGATION BILL 1981

EXPLANATORY MEMORANDUM

(CIRCULATED BY AUTHORITY OF THE ATTORNEY-GENERAL)