



AUSTRALIAN CAPITAL TERRITORY

Crimes (Amendment) Act (No. 2) 1994

No. 75 of 1994

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AUSTRALIAN CAPITAL TERRITORY

Crimes (Amendment) Act (No. 2) 1994

No. 75 of 1994

An Act to amend the *Crimes Act 1900*

[Notified in ACT Gazette S247: 23 November 1994]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Crimes (Amendment) Act (No. 2) 1994*.

Commencement

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.
(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.
(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Principal Act

3. In this Act, “Principal Act” means the *Crimes Act 1900*.¹

Substitution

4. The heading to Division 1 of Part X of the Principal Act is omitted and the following Division and Division heading are substituted:

“Division 1—Preliminary

Interpretation

“349AA. In this Part, unless the contrary intention appears:

‘assisting officer’, in relation to a warrant, means—

- (a) a police officer assisting in executing the warrant; or
- (b) a person who is not a police officer, but who has been authorised by the relevant executing officer to assist in executing the warrant;

‘Commonwealth Crimes Act’ means the *Crimes Act 1914* of the Commonwealth;

‘conveyance’ includes an aircraft, vehicle or vessel;

‘evidential material’ means a thing relevant to an indictable offence or a thing relevant to a summary offence, including such a thing in electronic form;

‘executing officer’, in relation to a warrant, means—

- (a) the police officer named in the warrant by the issuing officer as being responsible for executing the warrant;
- (b) if that police officer does not intend to be present at the execution of the warrant—another police officer whose name has been written in the warrant by the police officer named under paragraph (a); or
- (c) another police officer whose name has been written in the warrant by the police officer named in the warrant under paragraph (b);

‘frisk search’ means—

- (a) a search of a person conducted by quickly running the hands over the person’s outer garments; and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person;

‘issuing officer’, in relation to a warrant to search premises or a person or a warrant for arrest under this Part, means—

- (a) a Judge, the Registrar or a Deputy Registrar of the Supreme Court;
- (b) a Magistrate; or
- (c) if authorised by the Chief Magistrate to issue such search warrants or arrest warrants (as the case may be)—the Registrar or a Deputy Registrar of the Magistrates Court;

‘medical practitioner’ means a person—

- (a) who is registered under the *Medical Practitioners Act 1930*; or
- (b) who is to be deemed to be registered under that Act by virtue of section 25 of the *Mutual Recognition Act 1992* of the Commonwealth;

‘offence’ means an offence against a law of the Territory;

‘ordinary search’ means a search of a person or of articles in the possession of a person that may include—

- (a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes and hat; and
- (b) an examination of those items;

‘police station’ includes—

- (a) a police station of the Territory; and
- (b) a building occupied by the Australian Federal Police;

‘premises’ includes a place and a conveyance;

‘recently used conveyance’, in relation to a search of a person, means a conveyance that the person had operated or occupied at any time within 24 hours before the search commenced;

‘seizable item’ means anything that would present a danger to a person or that could be used to assist a person to escape from lawful custody;

‘strip search’ means a search of a person or of articles in the possession of a person that may include—

- (a) requiring the person to remove all of his or her garments; and
- (b) an examination of the person’s body (but not of the person’s body cavities) and of those garments;

‘summary offence’ means an offence that is punishable on summary conviction as provided by section 33E of the *Interpretation Act 1967*;

‘thing relevant to an indictable offence’ means—

- (a) anything with respect to which an indictable offence has been committed or is suspected, on reasonable grounds, to have been committed;
- (b) anything which is suspected, on reasonable grounds, to afford evidence of the commission of an indictable offence; or
- (c) anything which is suspected, on reasonable grounds, to be intended to be used for the purpose of committing an indictable offence;

‘thing relevant to a summary offence’ means—

- (a) anything with respect to which a summary offence has been committed or is suspected, on reasonable grounds, to have been committed;
- (b) anything which is suspected, on reasonable grounds, to afford evidence of the commission of a summary offence; or
- (c) anything which is suspected, on reasonable grounds, to be intended to be used for the purpose of committing a summary offence;

‘warrant’ means a warrant under this Part;

‘warrant premises’ means premises in relation to which a warrant is in force.

Application of Part

“349AB. (1) This Part is not intended to limit or exclude the operation of any other law of the Territory relating to—

- (a) the search of persons or premises;
- (b) arrest and related matters;
- (c) the stopping, detaining or searching of conveyances; or
- (d) the seizure of things.

“(2) To avoid any doubt, it is declared that even though another law of the Territory provides power to do 1 or more of the things referred to in

subsection (1), a similar power conferred by this Part may be used despite the existence of the power under the other law.

“Division 1A—Preventative action”.

Insertion

5. After section 349D of the Principal Act, the following Divisions, Division heading and sections are inserted:

“Division 2—Search warrants

When search warrants can be issued

“349E. (1) An issuing officer may issue a warrant to search premises if the officer is satisfied by information on oath that there are reasonable grounds for suspecting that there is, or there will be within the next 72 hours, any evidential material at the premises.

“(2) An issuing officer may issue a warrant authorising an ordinary search or a frisk search of a person if the officer is satisfied by information on oath that there are reasonable grounds for suspecting that the person possesses, or will within the next 72 hours possess, any evidential material.

“(3) If the person applying for the warrant suspects that, in executing the warrant, it will be necessary to use firearms, the person shall state that suspicion, and the grounds for that suspicion, in the information.

“(4) If the person applying for the warrant is a police officer and has, at any time previously, applied for a warrant relating to the same person or premises, the person shall state in the information particulars of those applications and their outcome.

“(5) A warrant shall include statements of the following matters:

- (a) the offence to which the warrant relates;
- (b) a description of the warrant premises, or the name or description of the person to whom it relates;
- (c) the kinds of evidential material that are to be searched for under the warrant;
- (d) the name of the police officer who is to be responsible for executing the warrant (unless he or she inserts in the warrant the name of another police officer);
- (e) the period, not exceeding 7 days, for which the warrant remains in force;

- (f) subject to subsection (9), the times during which the search is authorised.

“(6) In the case of a warrant in relation to premises, the warrant shall state—

- (a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (5) (c)) found at the premises in the course of the search that the executing officer or an assisting officer believes on reasonable grounds to be—
 - (i) evidential material in relation to an offence to which the warrant relates; or
 - (ii) a thing relevant to another offence that is an indictable offence;

if the executing officer or an assisting officer believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence; and

- (b) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed if the executing officer or an assisting officer suspects on reasonable grounds that the person has any evidential material or seizable items in his or her possession.

“(7) In the case of a warrant to search a person, the warrant shall state—

- (a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (5) (c)) found, in the course of the search, on or in the possession of the person or in a recently used conveyance, being a thing that the executing officer or an assisting officer believes on reasonable grounds to be—
 - (i) evidential material in relation to an offence to which the warrant relates; or
 - (ii) a thing relevant to another offence that is an indictable offence;

if the executing officer or an assisting officer believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence; and

(b) the kind of search of a person that the warrant authorises.

“(8) Paragraph (5) (e) does not prevent the issue of successive warrants in relation to the same premises or person.

“(9) A warrant shall not be expressed to authorise a search at any time during the period commencing at 9 p.m. on a day and ending at 6 a.m. on the following day unless the issuing officer is satisfied that—

- (a) it would not be practicable to conduct the search at another time; or
- (b) it is necessary to do so in order to prevent the concealment, loss or destruction of evidence relating to the offence.

“(10) If the application for the warrant is made under section 349R, this section applies as if—

- (a) subsections (1) and (2) referred to 48 hours rather than 72 hours; and
- (b) paragraph (5) (e) referred to 48 hours rather than 7 days.

The things that are authorised by search warrant

“349F. (1) A warrant in force for the search of premises authorises the executing officer or an assisting officer—

- (a) to enter the warrant premises and, if the premises are a conveyance, to enter the conveyance, wherever it is;
- (b) to search for and record fingerprints found at the premises and to take samples of things found at the premises for forensic purposes;
- (c) to search the premises for the kinds of evidential material specified in the warrant, and to seize things of that kind found at the premises;
- (d) to seize other things found at the premises in the course of the search that the executing officer or an assisting officer believes on reasonable grounds to be—
 - (i) evidential material in relation to an offence to which the warrant relates; or
 - (ii) evidential material in relation to any indictable offence;

if the executing officer or an assisting officer believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence;

- (e) to seize other things found at the premises in the course of the search that the executing officer or an assisting officer believes on reasonable grounds to be seizable items; and
- (f) if the warrant so allows—to conduct an ordinary search or a frisk search of a person at or near the premises if the executing officer or an assisting officer suspects on reasonable grounds that the person has any evidential material or seizable items in his or her possession.

“(2) A warrant in force for the search of a person authorises the executing officer or an assisting officer—

- (a) to search the person as specified in the warrant, things found in the possession of the person and any recently used conveyance for things of the kind specified in the warrant;
- (b) to—
 - (i) seize things of that kind;
 - (ii) record fingerprints from things;
 - (iii) to take forensic samples from things;found in the course of the search;
- (c) to seize other things found in the course of the search on, or in the possession of, the person or in the conveyance that the executing officer or an assisting officer believes on reasonable grounds to be—
 - (i) evidential material in relation to an offence to which the warrant relates; or
 - (ii) a thing relevant to any indictable offence;if the executing officer or an assisting officer believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence; and
- (d) to seize other things found in the course of the search that the executing officer or an assisting officer believes on reasonable grounds to be seizable items.

“(3) If the warrant states that it may be executed only during particular hours, the warrant shall not be executed outside those hours.

“(4) If the warrant authorises an ordinary search or a frisk search of a person, a search of the person different to that so authorised shall not be done under the warrant.

“(5) If things are seized under a warrant, the warrant authorises the executing officer to make the things available to officers of other agencies if it is necessary to do so for the purpose of investigating or prosecuting an offence to which the things relate.

Availability of assistance and use of force in executing warrant

“349G. In executing a warrant—

- (a) the executing officer may obtain such assistance as is necessary and reasonable in the circumstances;
- (b) the executing officer, or a police officer assisting in executing the warrant, may use such force against persons and things as is necessary and reasonable in the circumstances; and
- (c) an assisting officer may use such force against things as is necessary and reasonable in the circumstances.

Details of warrant to be given to occupier etc.

“349H. (1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the executing officer or an assisting officer shall make available to that person a copy of the warrant.

“(2) If a warrant in relation to a person is being executed, the executing officer or an assisting officer shall make available to that person a copy of the warrant.

“(3) If a person is searched under a warrant in relation to premises, the executing officer or an assisting officer shall show the person a copy of the warrant.

“(4) The executing officer shall identify himself or herself to the person at the premises or the person being searched, as the case may be.

“(5) The copy of the warrant referred to in subsections (1) and (2) need not include the signature of the issuing officer or the seal of the relevant court.

Specific powers available to police officers executing warrant

“349J. (1) In executing a warrant in relation to premises, the executing officer or an assisting officer may—

- (a) for a purpose incidental to the execution of the warrant; or

- (b) if the occupier of the premises consents in writing;

take photographs (including video recordings) of the premises or of things at the premises.

“(2) If a warrant in relation to premises is being executed, the executing officer and the assisting officers may, if the warrant is still in force, complete the execution of the warrant after all of them temporarily cease its execution and leave the premises—

- (a) for not more than 1 hour; or
- (b) for a longer period if the occupier of the premises consents in writing.

“(3) If—

- (a) the execution of a warrant is stopped by an order of a court;
- (b) the order is later revoked or reversed on appeal; and
- (c) the warrant is still in force;

the execution of the warrant may be completed.

Use of equipment to examine or process things

“349K. (1) The executing officer or an assisting officer may bring to warrant premises any equipment reasonably necessary for the examination or processing of things found at the premises, in order to determine whether they are things that may be seized under the warrant.

“(2) If—

- (a) it is not practicable to examine or process them at the warrant premises; or
- (b) the occupier of the premises (or his or her representative) consents in writing;

the things may be moved to another place for examination or processing in order to determine whether they are things that may be seized under a warrant.

“(3) If things are moved to another place for the purpose of examination or processing under subsection (2), the executing officer shall, if practicable—

- (a) inform the occupier of the address of the place and the time at which the examination or processing will be carried out; and
- (b) allow the occupier (or his or her representative) to be present during the examination or processing.

“(4) The executing officer or an assisting officer may operate equipment already at warrant premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized under the warrant if the officer believes on reasonable grounds that—

- (a) the equipment is suitable for the examination or processing; and
- (b) the examination or processing can be carried out without damage to the equipment or the thing.

Use of electronic equipment at premises

“349L. (1) The executing officer or an assisting officer may operate electronic equipment at warrant premises to see whether evidential material is accessible by doing so if the officer believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

“(2) If the executing officer or an assisting officer, after operating the equipment, finds that evidential material is accessible by doing so, the officer may—

- (a) seize the equipment and any disk, tape or other associated device;
- (b) if the material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced; or
- (c) if the material can be transferred to a disk, tape or other storage device that—
 - (i) is brought to the premises; or
 - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;

operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.

“(3) Equipment may only be seized under paragraph (2) (a) if—

- (a) it is not practicable to put the material in documentary form under paragraph (2) (b) or to copy the material under paragraph (2) (c); or
- (b) possession by the occupier of the equipment could constitute an offence.

“(4) If the executing officer or an assisting officer believes on reasonable grounds that—

- (a) evidential material may be accessible by operating electronic equipment at the premises;
- (b) expert assistance is required to operate the equipment; and
- (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

“(5) The executing officer or an assisting officer shall give notice to the occupier of the premises of his or her intention to secure the equipment and of the fact that the equipment may be secured for up to 24 hours.

“(6) The equipment may be secured—

- (a) for a period not exceeding 24 hours; or
- (b) until the equipment has been operated by the expert;

whichever happens first.

“(7) If the executing officer or assisting officer believes on reasonable grounds that expert assistance will not be available within 24 hours, he or she may apply to the issuing officer for an extension of that period.

“(8) The executing officer or assisting officer shall give notice to the occupier of the premises—

- (a) that the executing officer or assisting officer intends to apply for an extension under subsection (7); and
- (b) that the occupier is entitled to be heard in relation to the application.

“(9) The occupier is entitled to be heard in relation to an application under subsection (7).

“(10) This Division applies to the issuing of an extension on an application under subsection (7) in the same way as it applies to the issue of a warrant, with necessary changes.

Compensation for damage to electronic equipment

“349M. (1) If—

- (a) damage is caused to equipment as a result of it being operated under section 349K or 349L; and
- (b) the damage resulted from—
 - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or

- (ii) insufficient care being exercised by the person operating the equipment;

compensation for the damage is payable to the owner of the equipment.

“(2) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises or the occupier’s employees or agents, if they were available at the time, had provided any warning or guidance as to the appropriate operation of the equipment in the circumstances.

Copies of seized things to be provided

“349N. (1) If a police officer seizes from warrant premises—

- (a) a document, film, computer file or other thing that can be readily copied; or
- (b) a storage device the information in which can be readily copied;

the officer shall, if requested to do so by the occupier of the premises (or another person apparently representing the occupier), give a copy of the thing or the information to the occupier or that person as soon as practicable after the seizure.

“(2) Subsection (1) does not apply if—

- (a) the seized item was seized under paragraph 349L (2) (b) or (c); or
- (b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

Occupier entitled to be present during search

“349P. (1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the person is, subject to Part 1C of the Commonwealth Crimes Act, entitled to observe the search being conducted.

“(2) The right to observe the search being conducted ceases if the person impedes the search.

“(3) This section does not prevent 2 or more areas of the premises being searched at the same time.

Receipts for things seized under warrant

“349Q. (1) If a thing is seized under a warrant or moved under subsection 349K (2), the executing officer or an assisting officer shall provide a receipt for the thing.

“(2) If 2 or more things are seized or moved, they may be covered by a single receipt.

Warrants by telephone or other electronic means

“349R. (1) A police officer may make an application to an issuing officer for a warrant by telephone, telex, facsimile or other electronic means—

- (a) in an urgent case; or
- (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

“(2) The issuing officer may require communication by voice to the extent that is practicable in the circumstances.

“(3) An application under this section shall include all information required to be provided in an ordinary application for a warrant, but the application may, if necessary, be made before the information is sworn.

“(4) If an application is made to an issuing officer under this section and the issuing officer, after considering the information and having received and considered such further information (if any) as the issuing officer required, is satisfied that—

- (a) a warrant in the terms of the application should be issued urgently; or
- (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;

the issuing officer may complete and sign the same form of warrant that would be issued under section 349E.

“(5) If the issuing officer decides to issue the warrant, the issuing officer is to inform the applicant, by telephone, telex, facsimile or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.

“(6) The applicant shall then complete a form of warrant in terms substantially corresponding to those given by the issuing officer, stating on the form the name of the issuing officer and the day on which and the time at which the warrant was signed.

“(7) The applicant shall, not later than the day after the day of expiry of the warrant or the day after the day on which the warrant was executed, whichever is the earlier, give or transmit to the issuing officer the form of warrant completed by the applicant and, if the information referred to in subsection (3) was not sworn, that information duly sworn.

“(8) The issuing officer is to attach to the documents provided under subsection (7) the form of warrant completed by the issuing officer.

“(9) If—

- (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and
- (b) the form of warrant signed by the issuing officer is not produced in evidence;

the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

Restrictions on personal searches

“349S. A warrant may not authorise a strip search or a search of a person’s body cavities.

“Division 3—Stopping and searching conveyances

Searches without warrant in emergency situations

“349T. (1) This section applies if a police officer suspects, on reasonable grounds, that—

- (a) a thing relevant to an indictable offence is in or on a conveyance;
- (b) it is necessary to exercise a power under subsection (2) in order to prevent the thing from being concealed, lost or destroyed; and
- (c) it is necessary to exercise the power without the authority of a search warrant because the circumstances are serious and urgent.

“(2) Where this section applies, the police officer may—

- (a) stop and detain the conveyance;
- (b) search the conveyance and any container in or on the conveyance, for the relevant thing; and
- (c) seize the thing if he or she finds it there.

“(3) If, in the course of searching for the relevant thing, the police officer finds any evidential material, the police officer may seize the material if he or she suspects, on reasonable grounds, that—

- (a) it is necessary to seize it in order to prevent its concealment, loss or destruction; and
- (b) it is necessary to seize it without the authority of a search warrant because the circumstances are serious and urgent.

“(4) The police officer shall exercise his or her powers under this section subject to section 349U.

How a police officer exercises a power under section 349T

“349U. In exercising a power under section 349T in relation to a conveyance, a police officer—

- (a) may use such assistance as is necessary;
- (b) shall search the conveyance in a public place or in some other place to which members of the public have ready access;
- (c) shall not detain the conveyance for longer than is necessary and reasonable to search it and any container found in or on the conveyance; and
- (d) may use such force as is necessary and reasonable in the circumstances, but shall not damage the conveyance or any container found in or on the conveyance by forcing open a part of the conveyance or container unless—
 - (i) any person apparently in charge of the conveyance has been given a reasonable opportunity to open that part or container; or
 - (ii) it is not possible to give any such person that opportunity.

“Division 4—Arrest and related matters

Requirement to furnish name etc.

“349V. (1) Where—

- (a) a police officer has reason to believe that an offence has been or may have been committed;
- (b) believes on reasonable grounds that a person may be able to assist him or her in inquiries in relation to that offence; and
- (c) the name or address (or both) of that person is unknown to the officer;

the officer—

- (d) may request the person to provide his or her name or address (or both) to the officer; and
- (e) if making such a request—shall inform the person of the reason for the request.

“(2) If a police officer—

- (a) makes a request of a person under subsection (1);
- (b) informs the person of the reason for the request; and
- (c) complies with subsection (3) if the person makes a request under that subsection;

the person shall not, without reasonable excuse—

- (d) refuse or fail to comply with the request; or
- (e) give a name or address that is false in a material particular.

“(3) If a police officer who makes a request of a person under subsection (1) is requested by the person to provide to the person—

- (a) his or her name or the address of his or her place of duty;
- (b) his or her name and that address; or
- (c) if he or she is not in uniform and it is practicable for the police officer to provide the evidence—evidence that he or she is a police officer;

the police officer shall not—

- (d) refuse or fail to comply with the request; or
- (e) give a name or address that is false in a material particular.

“(4) As soon as possible after making such a request, the police officer shall make a written record of the grounds for his or her belief.

Penalty: \$500.

Power of arrest without warrant by police officers

“349W. (1) A police officer may, without warrant, arrest a person for an offence if the police officer believes on reasonable grounds that—

- (a) the person has committed or is committing the offence; and
- (b) proceedings by summons against the person would not achieve 1 or more of the following purposes:
 - (i) ensuring the appearance of the person before a court in respect of the offence;
 - (ii) preventing a repetition or continuation of the offence or the commission of another offence;
 - (iii) preventing the concealment, loss or destruction of evidence relating to the offence;

- (iv) preventing harassment of, or interference with, a person who may be required to give evidence in proceedings in respect of the offence;
- (v) preventing the fabrication of evidence in respect of the offence;
- (vi) preserving the safety or welfare of the person.

“(2) Where—

- (a) a person has been arrested under subsection (1) in connection with an offence; and
- (b) before the person is charged with the offence, the police officer in charge of the investigation into the offence does not have, or ceases to have, reasonable grounds to believe that—
 - (i) the person committed the offence; or
 - (ii) holding the person in custody is necessary to achieve any of the purposes referred to in paragraph (1) (b);

the person shall forthwith be released from custody in respect of the offence.

“(3) A police officer may, without warrant, arrest a person whom he or she believes on reasonable grounds has escaped from lawful custody to which the person is still liable in respect of an offence.

Arrest without warrant in possession

“349X. (1) This section applies where—

- (a) a warrant has been issued for the arrest of a person; and
- (b) a police officer encounters the person or is otherwise in a position to arrest the person but is not carrying the warrant at the time.

“(2) Where this section applies, the police officer may—

- (a) arrest the person; and
- (b) in the case of a warrant for the arrest of a person for the commission of an offence—take the person (and any property found in the person’s possession) before a Magistrate to be dealt with according to law.

“(3) In this section—

‘warrant’ means an arrest warrant or a warrant of commitment issued under a law of the Territory, the Commonwealth, a State or another Territory.

Arrest of prisoner unlawfully at large

“349Y. (1) A police officer may, without warrant, arrest a person whom the police officer believes on reasonable grounds to be a prisoner unlawfully at large.

“(2) The police officer shall, as soon as practicable after the arrest, take the person before a Magistrate.

“(3) If the Magistrate is satisfied that the person is a prisoner unlawfully at large, the Magistrate may issue a warrant—

- (a) authorising a police officer to convey the person to a prison or other place of detention specified in the warrant; and
- (b) directing that the person, having been conveyed to that place in accordance with the warrant, be detained there to undergo the term of imprisonment or other detention that the person is required by law to undergo.

“(4) In this section—

‘prisoner unlawfully at large’ means a person who is at large (otherwise than because the person has escaped from lawful custody) at a time when the person is required by law to be detained under a law of the Territory, a State, or another Territory.

Power of arrest without warrant of person on bail

“349Z. (1) A police officer may, without warrant, arrest a person who has been admitted to bail in the Territory, a State or another Territory, subject to conditions, if the officer believes on reasonable grounds that the person—

- (a) has failed to comply with a bail condition; or
- (b) will not comply with a bail condition.

“(2) Where a police officer arrests a person under subsection (1), the officer shall cause the person to be brought before a court as soon as is practicable.

“(3) Where a person is brought before a court under subsection (2), the court may—

- (a) in the case of a person originally admitted to bail in the Territory—exercise the same powers in relation to the person in relation to bail (or dispensing with bail) as it has in relation to other accused persons in custody; or
- (b) in the case of a person originally admitted to bail in a State or another Territory—

- (i) release the person unconditionally;
- (ii) admit the person to bail subject to such conditions as the court thinks fit; or
- (iii) remand the person in custody for a reasonable time pending the obtaining of a warrant for the arrest of the person from the State or Territory in which the person was admitted to bail.

“(4) A release referred to in subparagraph (3) (b) (i) does not affect the operation of the bail order or the conditions of the bail imposed in the other State or Territory.

Arrest for breach of bail conditions by person outside the Territory

“349ZA. (1) This section applies where a police officer believes on reasonable grounds that—

- (a) a person who has been admitted to bail in the Territory subject to conditions has breached those conditions; and
- (b) the person is in a State or another Territory.

“(2) Where this section applies, an issuing officer may, upon the information of the police officer—

- (a) issue a warrant to arrest the person in that State or other Territory and bring him or her before a court in the Territory; or
- (b) issue a summons for the person’s appearance before a court in the Territory.

Arrest without warrant for offences committed outside the Territory

“349ZB. (1) This section applies to an offence against the law of a State or another Territory consisting of an act or omission which, if it occurred in the Territory, would constitute an indictable offence.

“(2) A police officer may, without warrant, at any hour of the day or night, arrest a person whom he or she believes on reasonable grounds to have committed an offence to which this section applies.

“(3) Where a police officer arrests a person under subsection (2), the officer shall cause the person to be brought before a Magistrate as soon as is practicable.

“(4) Where a person is brought before a Magistrate under subsection (3), the Magistrate may—

- (a) discharge the person; or

- (b) commit the person to custody, or admit the person to bail, pending—
 - (i) the execution under a law of the Commonwealth of a warrant for the person's arrest; or
 - (ii) the person's discharge or release under subsection (7).

“(5) A police officer may exercise any power under this Division in relation to a person arrested under this section as if the person had been arrested and was being held in custody in relation to the commission of an offence against a law of the Territory.

“(6) Where a person is committed to custody under this section and a warrant for the person's apprehension is subsequently presented for execution, he or she shall be delivered in accordance with the terms of the warrant to the custody of the person executing it.

“(7) Where—

- (a) a person is admitted to bail under this section; and
- (b) before the person has complied with conditions of that bail, a warrant for his or her arrest is executed under a law of the Commonwealth;

the person is to be taken, at the time the warrant is executed, to be released from that bail and to have complied with the bail conditions, other than any condition with which the person had (before that time) failed to comply without reasonable excuse.

“(8) Where—

- (a) a person has been committed to custody or admitted to bail under this section; and
- (b) a warrant for the arrest of the person is not executed within 7 days after the person is committed to custody or admitted to bail;

a Magistrate may, by order, discharge the person from custody or release the person from bail, as the case requires.

“(9) In this section—

‘warrant’ means a warrant issued under a law of the Territory, the Commonwealth, a State or another Territory and includes a provisional warrant.

Power of arrest without warrant by other persons

“349ZC. (1) A person who is not a police officer may, without warrant, arrest another person if he or she believes on reasonable grounds that the other person is committing or has just committed an offence.

“(2) A person who arrests another person under subsection (1) shall, as soon as practicable after the arrest, arrange for the other person, and any property found on the other person, to be delivered into the custody of a police officer.

Warrants for arrest

“349ZD. (1) An issuing officer shall not issue a warrant for the arrest of a person for an offence as a result of an information laid before the officer unless—

- (a) the information is on oath;
- (b) subject to subsection (3), the informant has given the issuing officer an affidavit setting out the reasons why the warrant is sought, including the following reasons:
 - (i) the reasons why it is believed that the person committed the offence;
 - (ii) the reasons why it is claimed that proceedings by summons would not achieve 1 or more of the purposes set out in paragraph 349W (1) (b);
- (c) if the issuing officer has requested further information concerning the reasons for which the issue of the warrant is sought—that information has been provided to the officer; and
- (d) the issuing officer is satisfied that there are reasonable grounds for the issue of the warrant.

“(2) If the issuing officer issues a warrant, he or she shall write on the affidavit which of the reasons specified in the affidavit, and any other reasons, the officer has relied on as justifying the issue of the warrant.

“(3) Paragraph (1) (b) does not apply where the issuing officer is informed that the warrant is sought for the purpose of making a request for the extradition of a person from a foreign country.

Power to enter premises to arrest offender

“349ZE. (1) Subject to subsection (3), if—

- (a) an officer has, under a warrant, power to arrest the person for an offence; and
- (b) the officer believes on reasonable grounds that the person is on any premises;

the police officer may enter the premises, using such force as is necessary and reasonable in the circumstances, at any time of the day or night for the purpose of searching the premises for the person or arresting the person.

“(2) Subject to subsection (3), if—

- (a) an officer has the power under section 349W to arrest the person without warrant for an offence;
- (b) the offence is indictable; and
- (c) the police officer believes on reasonable grounds that the person is on any premises;

the police officer may enter the premises, using such force as is necessary and reasonable in the circumstances, at any time of the day or night for the purpose of searching the premises for the person or arresting the person.

“(3) A police officer shall not enter a dwelling house under subsection (1) or (2) at any time during the period commencing at 9 p.m. on a day and ending at 6 a.m. on the following day unless the executing officer believes on reasonable grounds that—

- (a) it would not be practicable to arrest the person, either at the dwelling house or elsewhere, at another time; or
- (b) it is necessary to do so in order to prevent the concealment, loss or destruction of evidence relating to the offence.

“(4) In subsection (3)—

‘dwelling house’ includes a conveyance, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.

Use of force in making arrest

“349ZF. (1) A person shall not, in the course of arresting another person for an offence, use more force, or subject the other person to greater indignity, than is necessary and reasonable to make the arrest or to prevent the escape of the other person after the arrest.

“(2) Without limiting the operation of subsection (1), a police officer shall not, in the course of arresting a person for an offence do anything that is likely to cause the death of, or grievous bodily harm to, the person, unless—

- (a) the officer believes on reasonable grounds that it is necessary to do so to protect life or to prevent serious injury to the officer or another person; and
- (b) if the person is attempting to escape arrest by fleeing—the person has, if practicable, been called on to surrender and the officer believes on reasonable grounds that the person cannot be apprehended in any other manner.

Persons to be informed of grounds of arrest

“349ZG. (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 the other person is being arrested.

“(2) It is sufficient if the other person is informed of the substance of the offence, and it is not necessary that this be done in language of a precise or technical nature.

- “(3) Subsection (1) does not apply to the arrest of the other person if—
- (a) the other person should, in the circumstances, know the substance of the offence for which he or she is being arrested; or
 - (b) the other person’s actions make it impracticable for the person making the arrest to inform the other person of the offence for which he or she is being arrested.

Power to conduct frisk search of arrested person

“349ZH. A police officer who arrests a person for an offence, or who is present at such an arrest, may, if the police officer suspects on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying any seizable items—

- (a) conduct a frisk search of the person at or soon after the time of arrest; and
- (b) seize any seizable items found as a result of the search.

Power to conduct ordinary search of arrested person

“349ZJ. A police officer who arrests a person for an offence, or who is present at such an arrest, may, if the police officer suspects on reasonable grounds that the person is carrying—

- (a) evidential material in relation to that or another offence; or

- (b) a seizable item;

conduct an ordinary search of the person at or soon after the time of arrest, and seize any such thing found as a result of the search.

Power to conduct search of arrested person's premises

“349ZK. A police officer who arrests a person at premises for an offence, or who is present at such an arrest, may seize things in plain view at those premises that the police officer believes on reasonable grounds to be—

- (a) evidential material in relation to any offence; or
- (b) seizable items.

Power to conduct ordinary search

“349ZL. (1) Where—

- (a) a person has been brought to a police station following arrest for an offence; and
- (b) an ordinary search of the person has not been conducted;

a police officer may conduct an ordinary search of the person.

“(2) Where—

- (a) a person is in lawful custody following arrest for an offence; and
- (b) a police officer suspects on reasonable grounds that the person is carrying—

- (i) evidential material in relation to that or another offence; or
- (ii) a seizable item;

the police officer may conduct an ordinary search of the person.

“(3) Where a person arrested for an offence is searched under this section and as a result of the search is found to be carrying—

- (a) evidential material in relation to that or another offence; or
- (b) a seizable item;

the police officer conducting the search may seize that thing.

Power to conduct strip search

“349ZM. (1) Subject to this section, if a person arrested for an offence is brought to a police station, a police officer may conduct a strip search of the person.

“(2) A strip search may be conducted if—

- (a) a police officer suspects on reasonable grounds that the person has in his or her possession—
 - (i) evidential material in relation to that or another offence; or
 - (ii) a seizable item; or
- (b) the police officer suspects on reasonable grounds that a visual inspection of the person's body will provide evidence of the person's involvement in an offence;

and—

- (c) the police officer suspects on reasonable grounds that it is necessary to conduct a strip search of the person in order to recover that thing or to discover that evidence; and
- (d) a police officer of the rank of superintendent or higher has approved the conduct of the search.

“(3) Subject to section 349ZN, a strip search may also be conducted if the person consents in writing.

“(4) Subject to section 349ZN, a strip search may be conducted in the presence of a medical practitioner who may assist in the search.

“(5) The approval may be obtained by telephone, telex, facsimile or other electronic means.

“(6) A police officer who gives or refuses to give an approval for the purposes of paragraph (2) (d) shall make a record of the decision and of the reasons for the decision.

“(7) Such force as is necessary and reasonable in the circumstances may be used to conduct a strip search under subsection (2).

“(8) Any item of a kind referred to in paragraph (2) (a) that is found during a strip search may be seized.

Rules for conduct of strip search

“349ZN. (1) A strip search—

- (a) shall be conducted in a private area;
- (b) subject to subsection (6), shall be conducted by a police officer who is of the same sex as the person being searched;
- (c) subject to subsections (3) and (4), shall not be conducted in the presence or view of a person who is of the opposite sex to the person being searched;

- (d) shall not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search;
- (e) shall not be conducted on a person who is under 10;
- (f) if the person being searched is at least 10 but under 18, or is incapable of managing his or her affairs;
 - (i) may only be conducted if the person has been arrested and charged or if a court orders that it be conducted; and
 - (ii) shall be conducted in the presence of a parent or guardian of the person being searched or, if that is not acceptable to the person, in the presence of another person (other than a police officer) who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person;
- (g) shall not involve a search of a person's body cavities;
- (h) shall not involve the removal of more garments than the police officer conducting the search believes on reasonable grounds to be necessary to determine whether the person has in his or her possession the item searched for or to establish the person's involvement in the offence; and
- (i) shall not involve more visual inspection than the police officer believes on reasonable grounds to be necessary to establish the person's involvement in the offence.

“(2) In deciding whether to make an order referred to in paragraph (1) (f), the court shall have regard to—

- (a) the seriousness of the offence;
- (b) the age or any disability of the person; and
- (c) such other matters as the court thinks fit.

“(3) A strip search may be conducted in the presence of a medical practitioner of the opposite sex to the person searched if a medical practitioner of the same sex as the person being searched is not available within a reasonable time.

“(4) Paragraph (1) (c) does not apply to a parent, guardian or personal representative of the person being searched if the person being searched has no objection to the person being present.

“(5) If any of a person's garments are seized as a result of a strip search, the person shall be provided with adequate clothing.

“(6) Where a strip search of a person is to be conducted and no police officer of the same sex as that person is available to conduct the search, any other person—

- (a) of the same sex as the person to be searched; and
- (b) who has been requested to conduct the search by a police officer;

may conduct the search.

“(7) No action or proceeding, civil or criminal, lies against a person who conducts a strip search in pursuance of a request under subsection (6) in respect of a strip search that would have been lawful if conducted by a police officer.

Taking fingerprints, recordings, samples of handwriting or photographs

“349ZP. (1) In this section and in sections 349ZQ and 349ZR—

‘identification material’, in relation to a person, means prints of the person’s hands, fingers, feet or toes, recordings of the person’s voice, samples of the person’s handwriting or photographs (including video recordings) of the person, but does not include tape recordings made for the purposes of section 23U or 23V of the Commonwealth Crimes Act.

“(2) A police officer shall not—

- (a) take identification material from a person who is in lawful custody in respect of an offence except in accordance with this section; or
- (b) require any other person to submit to the taking of identification material, but nothing in this paragraph prevents such a person consenting to the taking of identification material.

“(3) If a person is in lawful custody in respect of an offence, a police officer who is of the rank of sergeant or higher or who is for the time being in charge of a police station may take identification material from the person, or cause identification material from the person to be taken, if—

- (a) the person consents in writing;
- (b) the police officer believes on reasonable grounds that it is necessary to do so to—
 - (i) establish who the person is;
 - (ii) identify the person as the person who committed the offence; or
 - (iii) provide evidence of, or relating to, the offence; or

- (c) the police officer suspects on reasonable grounds that the person has committed another offence and the identification material is 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.

“(4) A police officer may use such force as is necessary and reasonable in the circumstances to take identification material from a person under this section.

“(5) Subject to this section, a police officer shall not take identification material from a suspect who—

- (a) is incapable of managing his or her affairs; and
- (b) has not been arrested and charged;

unless a court orders that the material be taken.

“(6) In deciding whether to make such an order, the court shall have regard to—

- (a) the seriousness of the offence;
- (b) the age or any disability of the person; and
- (c) such other matters as the court thinks fit.

“(7) The taking of identification material from a person who is incapable of managing his or her affairs shall be done in the presence of—

- (a) a parent or guardian of the person; or
- (b) if the parent or guardian of the person is not acceptable to the person, another person (other than a police officer) who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person.

“(8) Despite this section, identification material may be taken from a person who—

- (a) is not a suspect; and
- (b) is incapable of managing his or her affairs;

if a court orders that the material be taken.

“(9) In deciding whether to make such an order, the court shall have regard to the matters set out in subsection (6).

“(10) Despite this section, identification material may be taken from a person who—

- (a) is at least 18;

- (b) is capable of managing his or her affairs; and
- (c) is not a suspect;

if the person consents in writing.

“(11) A police officer may only take identification material from a person under 18 in accordance with section 36 of the *Children’s Services Act 1986*.

Destruction of identification material

“349ZQ. (1) If—

- (a) identification material is taken under section 349ZP;
- (b) a period of 12 months has elapsed since the material was taken; and
- (c) proceedings in respect of an offence to which the identification material relates have not been instituted or have been discontinued;

the material shall be destroyed as soon as practicable.

“(2) If identification material has been taken from a person under section 349ZP and—

- (a) the person is found to have committed an offence to which the identification material relates, but no conviction is recorded; or
- (b) the person is acquitted of such an offence and—
 - (i) no appeal is lodged against the acquittal; or
 - (ii) an appeal is lodged against the acquittal and the acquittal is confirmed or the appeal is withdrawn;

the identification material shall be destroyed as soon as practicable, unless an investigation or proceedings in relation to another offence to which the identification material relates is pending.

“(3) On application by a police officer, a Magistrate may, if satisfied that there are special reasons for doing so in relation to particular identification material, extend—

- (a) the period of 12 months referred to in subsection (1); or
- (b) that period as previously extended under this subsection.

Offence of refusing to allow identification material to be taken

“349ZR. (1) If a person is convicted of an offence, the Judge or Magistrate presiding at the proceedings at which the person was convicted may order—

- (a) the person to attend a police station; or

- (b) that a police officer be permitted to attend on the person in a place of detention;

within 1 month after the conviction to allow impressions of the person's fingerprints or a photograph of the person to be taken in accordance with the order.

“(2) A person shall not, without reasonable excuse, refuse or fail to allow impressions or a photograph to be taken pursuant to an order under subsection (1).

Penalty: \$10, 000 or imprisonment for 12 months, or both.

Identification parades—general

“349ZS. (1) This section applies to identification parades held in relation to offences.

“(2) Subject to subsection (3) and to section 349ZT, an identification parade—

- (a) may be held if the suspect agrees; or
- (b) shall be held if—
 - (i) the suspect has requested that an identification parade be held; and
 - (ii) it is reasonable in the circumstances to do so.

“(3) An identification parade shall not be held unless the suspect has been informed that—

- (a) he or she is entitled to refuse to take part in the parade;
- (b) if he or she refuses to take part in the parade without reasonable excuse, evidence of that refusal and of any identification of the suspect by a witness as a result of having seen a photograph or of having seen the suspect otherwise than during an identification parade may be given in any subsequent proceedings in relation to an offence; and
- (c) in addition to any requirement under section 349ZT, a legal representative or other person of the suspect's choice may be present while the person is deciding whether to take part in the parade, and during the holding of the parade, if arrangements for that person to be present can be made within a reasonable time.

“(4) The giving of the information referred to in subsection (3) shall be recorded by a video recording or an audio recording.

“(5) An identification parade shall be arranged and conducted in a manner that will not unfairly prejudice the suspect.

“(6) Without limiting the intent of subsection (5), an identification parade shall be arranged and conducted in accordance with the following rules:

- (a) the parade shall consist of at least 9 persons;
- (b) each of the persons who is not the suspect shall—
 - (i) resemble the suspect in age, height and general appearance; and
 - (ii) not have features that will be visible during the parade that are markedly different from those of the suspect as described by the witness before viewing the parade;
- (c) unless it is impracticable for another police officer to arrange or conduct the parade, no police officer who has taken part in the investigation relating to the offence may take part in the arrangements for, or the conduct of, the parade;
- (d) no person in the parade is to be dressed in a way that would obviously distinguish him or her from the other participants;
- (e) if it is practicable to do so, numbers should be placed next to each participant in order to allow the witness to make an identification by indicating the number of the person identified;
- (f) the parade may take place so that the witness can view the parade without being seen if the witness requests that it take place in such a manner and—
 - (i) a legal representative or other person of the suspect’s choice is present with the witness; or
 - (ii) the parade is recorded by a video recording;
- (g) nothing is to be done that suggests or is likely to suggest to a witness which member of the parade is the suspect;
- (h) if the witness so requests, members of the parade may be required to speak, move or adopt a specified posture but, if this happens, the witness shall be reminded that the members of the parade have been chosen on the basis of physical appearance only;
- (i) the suspect may select where he or she wishes to stand in the parade;
- (j) if more than 1 witness is to view the parade—

- (i) each witness shall view the parade alone;
 - (ii) the witnesses are not to communicate with each other at a time after arrangements for the parade have commenced and before each of them has viewed the parade; and
 - (iii) the suspect may change places in the parade after each viewing;
- (k) each witness shall be told that—
- (i) the suspect may not be in the parade; and
 - (ii) if he or she is unable to identify the suspect with reasonable certainty he or she shall say so;
- (l) the parade shall be recorded by a video recording if it is practicable to do so and, if that is done, a copy of the video recording shall be made available to the suspect or his or her legal representative as soon as it is practicable to do so;
- (m) if the parade is not recorded by a video recording—
- (i) the parade shall be photographed in colour;
 - (ii) a print of a photograph of the parade that is at least 250mm X 200mm in size shall be made available to the suspect or his or her legal representative; and
 - (iii) the police officer in charge of the parade shall take all reasonable steps to record everything said and done at the parade and shall make a copy of the record available to the suspect or his or her legal representative;
- (n) the suspect may have present during the holding of the parade a legal representative or other person of his or her choice if arrangements for that person to be present can be made within a reasonable time.
- “(7) The following questions are to be decided according to the common law:
- (a) whether or not evidence of a suspect having refused to take part in an identification parade is admissible;
 - (b) if evidence of such a refusal is admissible, what inferences (if any) may be drawn by a court or jury from the refusal;
 - (c) whether, after such a refusal, evidence of alternative methods of identification is admissible.

“(8) If a witness is, under the supervision of a police officer, to attempt to identify a suspect otherwise than during an identification parade, the police officer shall ensure that the attempted identification is done in a manner that is fair to the suspect.

Identification parades for suspects under 18 etc.

“349ZT. (1) An identification parade shall not be held for a suspect who is under 10.

“(2) An identification parade must not be held for a suspect who is incapable of managing his or her affairs unless a court orders that it be held.

“(3) An identification parade must not be held for a suspect who—

- (a) is at least 10 but under 18; and
- (b) is capable of managing his or her affairs;

unless 1 of the following paragraphs applies:

- (c) the suspect agrees to or requests in writing the holding of the parade and a parent or guardian of the suspect agrees in writing to the holding of the parade or, if the parent or guardian is not acceptable to the suspect, another person (other than a police officer) who is capable of representing the interests of the suspect and who, as far as is practicable in the circumstances, is acceptable to the suspect agrees in writing to the holding of the parade;
- (d) if—
 - (i) 1 of those persons agrees in writing to the holding of the parade but the other does not; and
 - (ii) a court orders that the parade be held.

“(4) In deciding whether to make an order under subsection (2) or (3), the court shall have regard to—

- (a) the seriousness of the offence;
- (b) the age or any disability of the person; and
- (c) such other matters as the court thinks fit.

“(5) An identification parade for a suspect who is under 18 or who is incapable of managing his or her affairs shall be held in the presence of—

- (a) a parent or guardian of the suspect; or
- (b) if the parent or guardian is not acceptable to the suspect, another person (other than a police officer) who is capable of representing the interests of the suspect and who, as far as is practicable in the circumstances, is acceptable to the suspect.

Identification by means of photographs

“349ZU. (1) If a suspect is in custody in respect of an offence or is otherwise available to take part in an identification parade, a police officer investigating the offence shall not show photographs, or composite pictures or pictures of a similar kind, to a witness for the purpose of establishing, or obtaining evidence of, the identity of the suspect unless—

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

“(2) If a police officer investigating an offence shows photographs or pictures to a witness for the purpose of establishing, or obtaining evidence of, the identity of a suspect, whether or not the suspect is in custody, the following rules apply:

- (a) the police officer shall show to the witness photographs or pictures of at least 9 different persons;
- (b) each photograph or picture of a person who is not the suspect shall be of a person who—
 - (i) resembles the suspect in age and general appearance; and
 - (ii) does not have features visible in the photograph or picture that are markedly different from those of the suspect as described by the witness before viewing the photographs or pictures;
- (c) the police officer shall not, in doing so, act unfairly towards the suspect or suggest to the witness that a particular photograph or picture is the photograph or picture of the suspect or of a person who is being sought by the police in respect of an offence;
- (d) if practicable, the photograph or picture of the suspect shall have been taken or made after he or she was arrested or was considered as a suspect;
- (e) the witness shall be told that a photograph or picture of the suspect may not be amongst those being seen by the witness;
- (f) the police officer shall keep, or cause to be kept, a record identifying each photograph or picture that is shown to the witness;
- (g) the police officer shall notify the suspect or his or her legal representative in writing that a copy of the record is available for the suspect;

- (h) the police officer shall retain the photographs or pictures shown, and shall allow the suspect or his or her legal representative, upon application, an opportunity to inspect the photographs or pictures.

“(3) If—

- (a) a photograph or picture of a person who is suspected in relation to the commission of an offence is shown to a witness;
- (b) the photograph was taken or the picture made after the suspect was arrested or was considered to be a suspect;
- (c) proceedings in relation to the offence referred to in paragraph (a) or another offence arising out of the same course of conduct for which the photograph was taken or picture made are brought against the suspect before a jury; and
- (d) the photograph or picture is admitted into evidence;

the jury shall be informed that the photograph was taken or the picture made after the suspect was arrested or was considered as a suspect.

“(4) If a suspect is in custody in respect of an offence, a police officer investigating the offence shall not show a composite picture or a picture of a similar kind to a witness for the purpose of assisting the witness to describe the features of the suspect.

“(5) If, after a police officer investigating an offence has shown to a witness a composite picture or a picture of a similar kind for the purpose referred to in subsection (4)—

- (a) a suspect comes into custody in respect of the offence; and
- (b) an identification parade is to be held in relation to the suspect;

the police officer in charge of the investigation of the offence may, unless doing so would be unfair to the suspect or be unreasonable in the circumstances, request the witness to attend the identification parade and make the necessary arrangements for the witness to attend.

“(6) If, after the witness has been shown a composite picture or a picture of a similar kind for the purpose referred to in subsection (4), a person is charged with the offence, the police officer in charge of investigating the offence shall, upon application by that person or his or her legal representative, provide him or her with particulars of any such picture shown to the witness and the comments (if any) of the witness concerning the picture.

“(7) If a suspect is in custody in respect of an offence and a police officer investigating the offence wishes to investigate the possibility that a

person other than the suspect committed the offence, subsection (4) does not prevent a police officer from taking action referred to in that subsection for the purpose of assisting a witness to describe the features of a person other than the suspect.

Identification procedures where there is more than 1 suspect

“349ZV. A police officer shall undertake a separate identification process for each of 2 or more suspects if—

- (a) the officer is attempting to ascertain—
 - (i) which of the suspects committed an offence; or
 - (ii) if the suspects may have been jointly involved in the offence—the identities of the suspects; and
- (b) for that purpose, the officer intends to conduct an identification parade or to identify a person by showing a photograph or a picture of a suspect to a person.

Descriptions

“349ZW. (1) If a description of a suspect is given to a police officer in relation to an offence, the police officer shall ensure that a record of the description is made and that the record is retained until any proceedings in respect of the offence are completed.

“(2) Subject to subsection (4), a police officer shall, if requested to do so by a person who has been charged with an offence, provide the person with the name of every person who, to the knowledge of the police officer, claims to have seen, at or about the time of the commission of the offence, a person who is suspected of being involved in its commission.

“(3) If—

- (a) a record of a description of a person is made under subsection (1); and
- (b) the person is charged with an offence to which the description relates;

a police officer must notify the person or his or her legal representative in writing that a copy of the record, and of any other record of a description that the police officer knows about of a person who is suspected of being involved in the commission of the offence, is available for the person.

“(4) If the police officer suspects on reasonable grounds that providing the name of a person under subsection (2) could—

- (a) place the person in danger; or
- (b) expose the person to harassment or unreasonable interference;

the police officer is not required to provide the name of the person.

Taking of forensic samples

“349ZX. (1) This section applies where a person is in lawful custody upon a charge of committing an offence which is—

- (a) of such a nature; and
- (b) alleged to have been committed under such circumstances;

that there are reasonable grounds for believing that an examination of his or her person will afford evidence as to the commission of the offence.

“(2) Where this section applies, a medical practitioner acting at the request of a police officer of or above the rank of sergeant, and any person acting in good faith in his or her aid and under his or her direction, may conduct such an examination of the person so in custody as is reasonable in order to ascertain the facts which may afford such evidence.

“(3) No action or proceeding, civil or criminal, lies against a person who conducts, or assists in conducting, an examination in pursuance of a request under subsection (2).

“(4) Material may only be taken from the body of a person under 18 in accordance with section 36 of the *Children’s Services Act 1986*.

“Division 5—General

Assisting officers—search and arrest of persons

“349ZY. An assisting officer who is not a police officer is not authorised by this Part to assist in searching or arresting a person.

Conduct of ordinary searches and frisk searches

“349ZZ. An ordinary search or a frisk search of a person under this Part shall, if practicable, be conducted by a person of the same sex as the person being searched.

Announcement before entry

“349ZZA. (1) Subject to subsection (3), a police officer shall, before any person enters premises under a warrant or to arrest a person—

- (a) announce that he or she is authorised to enter the premises; and
- (b) give any person at the premises an opportunity to allow entry to the premises.

“(2) A police officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure—

- (a) the safety of a person (including a police officer); or
- (b) that the effective execution of the warrant or the arrest is not frustrated.

“(3) This section does not apply to an entry made under section 349C.

Offence of making false statements in warrants

“349ZZB. A person shall not make, in an application for a warrant, a statement that the person knows to be false or misleading in a material particular.

Penalty: Imprisonment for 2 years.

Offences relating to telephone warrants

“349ZZC. A person shall not—

- (a) state in a document that purports to be a form of warrant under section 349R the name of an issuing officer unless that officer issued the warrant;
- (b) state on a form of warrant under that section a matter that, to the person’s knowledge, departs in a material particular from the form authorised by the issuing officer;
- (c) purport to execute, or present to a person, a document that purports to be a form of warrant under that section that the person knows—
 - (i) has not been approved by an issuing officer under that section; or
 - (ii) to depart in a material particular from the terms authorised by an issuing officer under that section; or
- (d) give to an issuing officer a form of warrant under that section that is not the form of warrant that the person purported to execute.

Penalty: Imprisonment for 2 years.

Retention of things which are seized

“349ZZD. (1) Subject to any contrary order of a court, if a police officer seizes a thing under Division 2, 3 or 4 of this Part, the police officer shall return it if—

- (a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or

- (b) if the thing was seized under section 349T—
 - (i) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
 - (ii) the period of 60 days after its seizure ends;
 whichever first occurs;

unless the thing is forfeited or forfeitable to the Territory or is the subject of a dispute as to ownership.

“(2) If a thing is seized under section 349T, at the end of the 60 days specified in subsection (1) the police officer shall take reasonable steps to return the thing to the person from whom it was seized or to the owner if that person is not entitled to possess it unless—

- (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings);
- (b) the police officer may retain the thing because of an order under section 349ZZE; or
- (c) the police officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of the Territory) to retain, destroy or dispose of the thing.

Magistrates Court may permit a thing to be retained

“349ZZE. (1) If a thing is seized under section 349T, and—

- (a) before the end of 60 days after the seizure; or
- (b) before the end of a period previously specified in an order of a court under this section;

proceedings in respect of which the thing may afford evidence have not commenced, the police officer may apply to the Magistrates Court for an order that he or she may retain the thing for a further period.

“(2) If the court is satisfied that it is necessary for the police officer to continue to retain the thing—

- (a) for the purposes of an investigation as to whether an offence has been committed; or
- (b) to enable evidence of an offence to be secured for the purposes of a prosecution;

the court may order that the police officer may retain the thing for a period specified in the order.

- “(3) Before making the application, the police officer shall—
- (a) take reasonable steps to discover who has an interest in the retention of the thing; and
 - (b) if it is practicable to do so, notify each person who the police officer believes to have such an interest of the proposed application.

Law relating to legal professional privilege not affected

“349ZZF. This Part does not affect the law relating to legal professional privilege.

Laws relating to taking forensic samples not affected

“349ZZG. Nothing in this Part is intended to limit or exclude the operation of a law of the Territory relating to the taking of forensic samples (excluding identification material as defined in section 349ZP).”.

Repeal

6. Sections 352, 352A, 353 and 353A of the Principal Act are repealed.

Provision of interpreters in the investigation of summary offences

7. Section 354 of the Principal Act is amended by omitting from subsection (4) the definitions of “Commonwealth Crimes Act”, “indictable offence” and “summary offence”.

Division heading

8. The heading to Division 2 of Part X of the Principal Act is omitted and the following Part heading substituted:

“PART XA—INVESTIGATION OF EXTRA-TERRITORIAL OFFENCES”.

Further amendments

9. The Principal Act is amended as set out in Schedule 1.

Repeal of *Police Act 1927*

10. The Acts specified in Schedule 2 are repealed.

Consequential amendments

11. The Acts specified in Schedule 3 are amended as set out in that Schedule.

SCHEDULE 1

Section 9

FURTHER AMENDMENTS

The following provisions are amended by omitting “Division” and substituting “Part”:

Subsection 358A (1) (first occurring), subsection 358A (1) (definition of “search warrant”), subsection 358A (2) and paragraph 358E (1) (a).

SCHEDULE 2

Section 10

REPEAL OF ACTS*Police Act 1927**Police Act 1930**Police Act 1932**Police Act 1934**Police Act 1943**Police Act 1947**Police Act 1950**Police Act 1954**Police Act 1955**Police Act 1956**Police Act 1958**Police Act 1960**Police Act 1964**Police Act 1966**Police Act 1967**Police Act 1970**Police Act 1972**Police Act (No. 2) 1972**Police Act 1974**Police Act 1975**Police (Amendment) Act 1979**Police (Amendment) Act 1981**Police (Amendment) Act 1986*

SCHEDULE 3

Section 11

CONSEQUENTIAL AMENDMENTS

Bail Act 1992

Sections 53 and 54—

Repeal the sections.

Crimes (Offences Against the Government) Act 1989

After section 17—

Insert the following section:

Personation of police officers

“17A. (1) A person other than a police officer shall not—

- (a) hold himself or herself out as a police officer;
- (b) wear a uniform or badge of a police officer; or
- (c) wear any clothing or badge so closely resembling the uniform or badge of a police officer as would be likely to deceive.

“(2) A person other than a police officer of the rank of detective shall not—

- (a) hold himself or herself out as a detective; or
- (b) carry on or assist in a business under the description of a detective business or agency.

Penalty: \$5,000 or imprisonment for 6 months, or both.”.

NOTE

1. Reprinted as at 31 January 1994. See also Acts Nos. 38 and 46, 1994.

NOTE ABOUT SECTION HEADING

On the day on which section 358E of the *Crimes Act 1900* is amended by this Act, the heading to that section is altered by omitting “**Division**” and substituting “**Part**”.

[Presentation speech made in Assembly on 13 October 1994]

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