



# COURT OF PETTY SESSIONS ACT 1960

[Consolidated as at 10 June 2013  
on the authority of the Administrator  
and in accordance with  
the Enactments Reprinting Act 1980]

---

## TABLE OF PROVISIONS

### PART 1 — PRELIMINARY

1. Short title
2. Act binds Crown and Administration
3. Saving
4. Interpretation

### PART 2 — ESTABLISHMENT OF COURT OF PETTY SESSIONS

#### *Division 1 — Appointment of Magistrates and Officers*

5. Establishment of Court of Petty Sessions
6. Appointment of Magistrates and Officers
7. Oath or affirmation
8. Constitution of Court

#### *Division 2 — Protection of Magistrates in the Execution of their Office*

9. Magistrate sued for act not within his jurisdiction
10. No action against Magistrate after order nisi to quash conviction has been granted
11. Warrant by Magistrate upon an order of a Court
12. No action for acts done under order of Supreme Court
13. No action where proceeding confirmed on appeal
14. Actions in cases prohibited
15. Limitation of action
16. Notice of actions
17. Tender and payment of money into court
18. No action against Magistrate for judicial acts in Court of Petty Sessions

- 19. Magistrate sued for acts within his jurisdiction only liable in case of malice and absence of reasonable and probable cause
- 20. Verdict for defendant
- 21. Damages

*Division 3 — Miscellaneous*

- 22. Authentication of acts of Magistrate or Clerk
- 23. Acts by a Magistrate or Clerk
- 24. Issue of warrant of execution or commitment
- 25. Warrant of execution after appeal
- 26. Summons or warrant not avoided by death of Magistrate or Clerk
- 27. Order in lieu of mandamus
- 28. Powers and functions of Magistrates
- 29. Powers and duties of Clerk
- 30. Powers and duties of Deputy Clerk
- 31. Powers and functions of bailiffs
- 32. Action by or against bailiff

**PART 3 — ADMINISTRATION**

- 33. Sittings
- 33A. Arrangement of business of Court
- 33B. Sittings outside Norfolk Island
- 34. Registry
- 35. Seal

**PART 4 — CRIMINAL PROCEEDINGS**

*Division 1 — Jurisdiction*

- 36. Criminal Jurisdiction of Court
- 37. Proceedings of Court where it considers offence should be dealt with on indictment
- 38. Ex parte order may be set aside on terms

*Division 2 — Commencement of Proceedings*

- 39. Criminal proceedings to be commenced by information
- 40. Offences for which information may be laid
- 41. Description of persons and property and of offences
- 42. Power of Court to amend information
- 43. Court may adjourn hearing where amendment made
- 44. Form of information
- 45. Limitation of proceedings

- 46. Issue of summons
- 47. Service of summons
- 48. Warrant and summons - in what cases issued
- 49. Procedure on filing of indictment
- 50. Direction of warrant
- 51. Any police officer may execute warrant
- 52. Warrants to be signed and, where so required, sealed
- 53. Form of warrant
- 54. Warrant to be in force till executed
- 55. Sunday warrants
- 56. Bail of persons arrested without a warrant

*Division 3 — Indictable Offences*

**SUBDIVISION A — INSTITUTION OF PROCEEDINGS**

- 57. Disobedience to summons
- 58. Procedure where informant proposes to tender written statements to the Court
- 58A. Written statements may be admitted in evidence
- 58B. Preliminary examination where written statements not tendered
- 59. Plea of guilty in committal proceedings
- 60. Court may discharge accused person
- 61. Proceedings where evidence sufficient to put accused on trial
- 62. Depositions of accused person may be put in evidence and he may give or call evidence on his behalf

**SUBDIVISION B — PROCEEDINGS AFTER THE HEARING OF EVIDENCE**

- 63. Discharge or committal for trial
- 64. Depositions of dead or absent persons
- 65. Evidence for defence

**SUBDIVISION C — BAIL**

....

- 70. Recognisance of witnesses, etc
- 71. Acknowledgment of recognisance
- 72. Court may commit refractory witness

## **SUBDIVISION D — MISCELLANEOUS**

- 73. Transmission of depositions, etc, to person appointed for the purpose of this section
- 74. How dealt with after transmission
- 75. Accused may obtain copies of depositions

### *Division 4 — Offences Punishable Summarily*

- 76. Dismissal or adjournment to absence of informant
- 77. Ex parte hearing in absence of defendant
- 78. Court may adjourn the cases
- 79. Both parties appearing
- 80. Proceedings at the hearing on defendant's confession
- 81. Where defendant does not admit the case
- 82. Court may proceed to hearing in absence of both or either of the parties
- 83. Conduct of summary proceedings regulated

....

### *Division 6 — Committal and Recognisances*

- 88. Place of committal or detention
- 89. Place to which committal to be made
- 90. Witnesses may be discharged on recognisance
- 91. Recognisances
- 92. Issue of warrant for non-appearance
- 93. Recognisances taken out of Court
- 94. Forfeited recognisances, how to be enforced
- 95. Arrest of principal by sureties
- 96. Conveying prisoners to goal

### *Division 7 — Surety of the Peace and for Good Behaviour*

- 97. Information asking for surety
- 98. Evidence in support
- 99. Warrant
- 100. Proceedings on appearance of defendant
- 101. Evidence
- 102. Case to be dismissed, or surety of the peace, etc, required
- 103. Notice of recognisances
- 104. Discharge
- 105. Forfeiture of recognisance
- 106. Costs

## **PART 5 — CIVIL PROCEEDINGS**

### *Division 1 — Jurisdiction*

- 107. Civil jurisdiction of Court
- 108. Jurisdiction of Court where defendant absent from the Territory
- 109. Ex parte order may be set aside on terms
- 110. Requests under Conventions regarding Legal Proceedings in Civil and Commercial Matters
- 111. Matters excepted from jurisdiction of Court
- 112. Removal of civil cases to the Supreme Court
- 113. Procedure for removal of cases

### *Division 2 — Procedure*

- 114. Civil proceedings to be commenced by plaint
- 115. Commencement of action by entry of plaint in writing
- 116. Plaint may be for one or more matters
- 117. Plaintiff may abandon excess
- 118. Infant may sue
- 119. Copy of plaint
- 120. When Magistrate may issue summons
- 121. Person to whom summons to be directed
- 122. Signature and contents of summons
- 123. Summons in blank
- 124. Service of summons
- 125. Particulars of demand and set-off
- 126. Particulars of demand for sums due to be in forms in Third Schedule
- 127. Further particulars may be ordered where necessary for purposes of defence
- 128. Particulars of set-off
- 129. Nothing to be proved that is not stated in summons
- 130. General power of amendment
- 131. Notice of defence
- 132. Proceedings at hearing when facts are admitted
- 133. Proceedings when facts not admitted
- 134. Regulation of proceedings
- 135. Proceedings where defendant does not appear
- 136. Adjournment or dismissal in absence of plaintiff
- 137. Statement of defence and evidence in certain cases to be taken in writing
- 138. Court to decide case

- 139. Plaintiff may discontinue in certain cases
- 140. Jurisdiction in case of stranger about to leave Territory
- 141. One of several person liable may be sued
- 142. Determination of Court final
- 143. Special defences to be notified to plaintiff
- 144. Proceedings where defendant's set-off exceeds plaintiff's claim

*Division 3 — Default Summonses*

- 145. Default summons
- 146. Service of default summons
- 147. Grounds of defence to be in writing lodged with the Clerk
- 148. Trial

**PART 6 — HEARING**

*Division 1 — General*

- 149. Open Court
- 150. Exclusion of strangers
- 151. Conduct of case
- 152. Where both parties present Court to hear case

*Division 2 — Evidence*

- 153. Examination to be on oath
- 154. Power to order witnesses out of Court
- 155. Husband or wife of plaintiff or defendant to be competent witness in civil proceedings
- 156. Competence of defendant and spouse in criminal proceedings
- 157. Proof of exceptions, etc
- 158. Mode of taking evidence
- 159. Power of Magistrate to summon witnesses to attend and give evidence
- 160. Service, etc of summons on witness
- 161. Warrant to attend
- 162. Warrant in the first instance
- 163. Refusal of witness to be examined
- 164. Production of documents before Magistrate
- 165. Person about to leave Territory may be ordered to be examined or produce documents
- 166. Witnesses' rights and liabilities
- 167. Depositions to be recorded and delivered to the Clerk

*Division 3 — Adjournment of Proceedings*

- 168. Court may adjourn cases
- 169. Particular cases may be adjourned
- 170. Proceedings when either party is not present at adjourned hearing
- 171. Proceedings when both parties are present at adjourned hearing
- 172. Witnesses to attend adjourned sittings
- 173. Postponement of hearing

**PART 7 — RECORDS OF CONVICTIONS, ORDERS, ETC**

- 174. Minute of decision to be made and served on defendant
- 175. Formal convictions and orders
- 176. Proceedings in case of dismissal
- 177. Copies of proceedings in summary cases
- 178. Imprisonment in first instance
- 179. Imprisonment for a subsequent offence

**PART 7A — ENFORCEMENT OF JUDGEMENTS**

*Division 1 — Preliminary*

- 180. Interpretation
- 181. Exercise of powers
- 182. Costs

*Division 1A — Imprisonment*

- 182A. Warrant of commitment

*Division 2 — Enforcement of Fines*

- 183. Interpretation
- 184. Licence suspension notices
- 184A. Evidentiary - licence suspension notices
- 184B. Warrant of commitment

*Division 3 — Enforcement of Judgements*

**SUBDIVISION 1 — GENERAL**

- 185. Orders at time of judgement
- 186. Exercise of discretion by decision makers
- 187. Manner in which orders under this Division operate to stay judgements and operation of other orders

## **SUBDIVISION 2 — EXAMINATION PROCEDURES**

- 188. Notice requiring financial information
- 189. Issue of examination summons
- 190. Examination of judgement debtor
- 191. Orders following examinations
- 192. Failure to attend in answer to summons
- 193. Examination after issue of warrant
- 194. Refusal to be examined
- 195. Clerk may adjourn examination
- 196. Report on certain examinations

## **SUBDIVISION 3 — INSTALMENT ORDERS**

- 197. Instalment orders by agreement
- 198. Instalment orders on application of judgement debtor
- 199. Hearing by Court
- 200. Judgement creditor may apply for variation or revocation
- 201. Payment to judgement creditor
- 202. Default
- 203. Notice of instalment orders

## **SUBDIVISION 4 — GARNISHEE ORDERS**

- 204. Application for garnishee order
- 205. Making of garnishee order
- 206. Form of garnishee order
- 207. Payments by garnishees
- 208. Application to vary or revoke a garnishee order
- 209. Judgement debtor subject to garnishee order may apply for instalment order
- 210. Determination of applications
- 211. No debts due or accruing
- 212. Failure to comply with garnishee order
- 213. Lien or claim of third party on debt
- 214. Excess paid by garnishee
- 215. Reduction of attached debt
- 216. Deductions by garnishees
- 217. Judgement debtor ceases employment
- 218. Prejudice to employee
- 219. Bank accounts



220. Direct crediting — veterans' pensions

....

**SUBDIVISION 5 — EXECUTION AGAINST PERSONAL PROPERTY**

- 220B. General restriction on issue of writ of execution
- 220C. Issue of writs of execution
- 220D. Leave required to issue writ of execution in certain circumstances
- 220E. Priority and duration of writs
- 220F. Seizure of property for sale
- 220G. Safekeeping of seized property
- 220H. Bailiff's powers of entry, search and seizure
- 220I. Property seized not abandoned
- 220J. Exempt property
- 220K. Payment preventing execution
- 220L. Suspension of execution by the judgement creditor
- 220M. Agreements to withdraw and re-enter
- 220N. Deposit to cover costs of execution
- 220O. Conditions of sale
- 220P. Time of sale
- 220Q. Postponement
- 220R. Determining market value
- 220S. Judgement debtor may challenge market value
- 220T. Sale by public auction
- 220U. Sale by private agreement
- 220V. Terms as to payment
- 220W. Sale price to be recorded
- 220X. Purchase by bailiff or auctioneer prohibited
- 220Y. Auctioneer to account
- 220Z. Surplus sale proceeds paid to judgement debtor
- 220ZA. Costs of execution
- 220ZB. Payment of amounts raised to the Clerk
- 220ZC. Proceeds of writ
- 220ZD. Account
- 220ZE. Order for disposal
- 220ZF. Property to be returned to the judgement debtor
- 220ZG. Separate execution for costs
- 220ZH. Offences
- 220ZI. Liability of bailiffs

## **SUBDIVISION 6 — INTERLOCUTORY APPLICATIONS**

- 220ZJ. Application of this Subdivision
- 220ZK. Interlocutory applications
- 220ZL. Costs

### *Division 6 — Miscellaneous*

- 221. Mitigation of payment by Court
- 222. Scale of imprisonment for non-payment of money
- 223. Clerk to pay sums to Administrator
- 224. Accounts to be kept in the form in Second Schedule
- 225. Executors and administrators may enforce orders in civil matters
- 226. Forfeited goods may be sold
- 227. Warrant of commitment or distress not to be void for form only
- 228. Conviction, etc, to be transmitted to Registrar of Supreme Court

## **PART 8 — APPEALS FROM DECISIONS OF THE COURT OF PETTY SESSIONS**

- 229. Appeal from Court of Petty Sessions
- 230. Leave to appeal
- 231. Method of appeal
- 232. Security for appeal
- 233. Stay of proceedings on appeal
- 234. Hearing of appeal

## **PART 9 — COSTS AND FEES**

- 235. Award of costs
- 236. Court fees
- 237. Remission of fees
- 238. Solicitor's costs
- 239. Witnesses' expenses
- 240. Costs in garnishee proceedings

## **PART 10 — SECURITIES**

- 241. Securities taken in pursuance of Act
- 242. Recovery of sum due under security
- 243. Sums paid by surety may be recovered from principal
- 244. Payment enforced by security
- 245. Enforcement of recognisances

**PART 11 — MISCELLANEOUS**

- 246. Penalty for insulting or interrupting Magistrate
- 246A. Proceedings concerning children not open to the public
- 247. Forms
- 247A. Delegation
- 248. Rules and Regulations
  - Schedule 1
  - Schedule 2
  - Schedule 3





## Court of Petty Sessions Act 1960

---

An Act to establish a Court of Petty Sessions, to provide for the appointment of Magistrates, and for purposes connected therewith

### PART 1 — PRELIMINARY

#### Short title

1. This Act may be cited as the *Court of Petty Sessions Act 1960*.

#### Act binds Crown and Administration

2. (1) This Act binds the Crown in right of Norfolk Island and the Administration.  
(2) Nothing in this Act makes the Crown in any capacity, or the Administration, liable to be prosecuted for an offence.

#### Saving

3. Proceedings, whether civil or criminal, pending immediately before the commencement of this Act in the Court of Norfolk Island sitting in its limited jurisdiction may, subject to any directions given by the Chief Magistrate as to procedure, be carried on or concluded in the Court of Petty Sessions.

#### Interpretation

4. (1) In this Act, unless the contrary intention appears —  
“bailiff” means a bailiff appointed under this Act;  
“capital offence” means an offence in respect of which the punishment of death may be imposed;  
“charge of an indictable offence” means charge of an indictable offence as such and an order to a committal for trial upon a charge of an indictable offence;  
“conviction” or “summary conviction” means a conviction by the Court for an offence;

- “decision” includes a committal for trial and an admission to bail, and a conviction, order, order of dismissal or other determination;
- “defendant” means a person against whom an information is laid or a plaint is made;
- “hearing” includes the examination of a person charged with an indictable offence;
- “indictable offence” means an offence that may be prosecuted before the Supreme Court by charge or indictment;
- “indictment” means an information for an indictable offence presented by an authorised person to the Supreme Court;
- “Magistrate” means a Magistrate appointed under this Act;
- “plaintiff” means a person by whom a plaint is made;
- “police officer” means a member of the Police Force of the Territory;
- “the Chief Magistrate” means the Magistrate appointed to be the Chief Magistrate under this Act and includes a Magistrate appointed under this Act to exercise and perform the powers and functions of the Chief Magistrate;
- “the Clerk” means the Clerk of the Court and, in relation to a matter in respect of which the Deputy Clerk is empowered to exercise the powers and perform the functions of the Clerk, includes the Deputy Clerk;
- “the Deputy Clerk” means the Deputy Clerk of the Court;
- “the Court” means the Court of Petty Sessions;
- “the Judge” means the Judge of the Supreme Court and includes an acting Judge of that Court;
- “the Registrar” means the Registrar of the Supreme Court and, in relation to a matter in respect of which the Deputy Registrar of that Court is empowered to exercise the powers and perform the functions of the Registrar, includes the Deputy Registrar;
- “the Territory” means Norfolk Island.

(2) A reference in subsection 61(2) (second occurring), subsection 61(3), section 73, section 75 (wherever occurring), and subsection 167(1) (second occurring), to “depositions” is, where the depositions are recorded by any of the means specified in subsection 158(2), a reference to a transcript, certified as prescribed, of the depositions as so recorded.

## **PART 2 — ESTABLISHMENT OF COURT OF PETTY SESSIONS**

### *Division 1 — Appointment of Magistrates and Officers*

#### **Establishment of Court of Petty Sessions**

5. (1) There shall be a Court of Petty Sessions for the Territory, which shall be known as the Court of Petty Sessions of Norfolk Island.

(2) The Court is a court of record.

(3) The Court shall consist of such Magistrates as are appointed in accordance with this Act.

#### **Appointment of Magistrates and Officers**

6. (1) For the purposes of this Act, the Commonwealth Minister may appoint —

- (a) such Magistrates as are required; and
- (b) a Clerk of the Court, a Deputy Clerk of the Court and such bailiffs and other officers as are required.

(2) The Commonwealth Minister shall appoint one of the Magistrates to be the Chief Magistrate.

(3) The Administrator may appoint one of the Magistrates to exercise and perform all the powers and functions of the Chief Magistrate —

- (a) while the Chief Magistrate is absent on leave or is for any other reason unable for the time being to discharge the duties of his office; or
- (b) during any vacancy in the office of Chief Magistrate.

(4) The appointment of a Magistrate to exercise and perform the powers and functions of the Chief Magistrate during the absence, or inability to act, of the Chief Magistrate shall not be determined by the death or resignation of the Chief Magistrate, but shall continue until a new Chief Magistrate is appointed.

(5) A person appointed under subsection (1) shall hold office for such period, and upon such terms and conditions, as the Commonwealth Minister determines.

#### **Oath or affirmation**

7. (1) A person appointed under section 6 shall, before proceeding to discharge the duties of his office, take before the Administrator an oath or affirmation in the form in the First Schedule.

(2) When a person has once taken an oath or affirmation under subsection (1) on his appointment to an office under section 6 and afterwards ceases to hold that office, it is not necessary for him again to take the oath or affirmation on his again being appointed to that office.

**Constitution of Court**

8. (1) The jurisdiction of the Court may be exercised by the Chief Magistrate, or by any 3 Magistrates and a reference in this Act to the Court or to the Magistrate constituting the Court shall, unless the contrary intention appears, be read as a reference to the Court constituted by the Chief Magistrate or by 3 Magistrates.

(2) Where the Court is constituted by 3 Magistrates —

- (a) the Magistrates shall, before proceeding to exercise the jurisdiction of the Court, elect one of their number to preside over the Court, unless the Chief Magistrate is one of the Magistrates, in which case he shall preside;
- (b) if the Magistrates are not in agreement as to any matter or question before the Court, the decision of the majority of them on that matter or question shall be deemed to be the decision of the Court; and
- (c) where any act is required to be performed by the Court or the Magistrate constituting the Court, the act may be performed by the presiding Magistrate and an act so performed shall be deemed to have been performed by the Court or the Magistrate constituting the Court, as the case may be.

*Division 2 — Protection of Magistrates in the Execution of their Office*

**Magistrate sued for act not within his jurisdiction**

9. (1) A person injured by an act done by a Magistrate in a matter in which by law he has not jurisdiction or in which he has exceeded his jurisdiction, or by an act done under any conviction or order made or warrant issued by a Magistrate in any such matter, may maintain in the Supreme Court an action against the Magistrate without alleging in his statement of claim that the act complained of was done maliciously and without reasonable and probable cause.

(2) An action referred to in subsection (1) is not maintainable for anything done under any such conviction or order until after the conviction or order has been quashed or set aside upon appeal.

(3) An action referred to in subsection (1) is not maintainable for anything done under any such warrant which was issued by the Magistrate to procure the appearance of the person charged and which has been followed by a conviction or order in the same matter, until after the conviction or order has been so quashed or set aside.

(4) If a warrant referred to in subsection (3) has not been followed by a conviction or order, or if it is a warrant upon an information of an alleged indictable offence, and if a summons was issued previously to the warrant being issued, and the summons was served upon the person charged either personally or by leaving it for him with some person at his last known or usual place of abode or business, and he did not appear according to the exigency of the summons, in that case an action is not maintainable against the Magistrate for anything done under the warrant.



**No action against Magistrate after order nisi to quash conviction has been granted**

10. Where an order to show cause why a conviction or order should not be quashed has been granted, an action is not maintainable against the Magistrate constituting the Court by which the conviction or order in question was made in respect of any proceeding taken under, or matter arising out of, the conviction or order.

**Warrant by Magistrate upon an order of a Court**

11. Where a conviction or order is made by the Court and a warrant of execution or of commitment is granted thereon by a Magistrate in good faith and without collusion, an action in respect of any defect in the conviction or order or any want of jurisdiction in the Court making the conviction or order is maintainable only against the Magistrate constituting the Court that made the conviction or order.

**No action for acts done under order of Supreme Court**

12. Where a Magistrate does an act in obedience to an order of the Supreme Court or the Judge, an action is not maintainable against him for obeying the order and doing the act thereby required.

**No action where proceeding confirmed on appeal**

13. Where a warrant of execution or of commitment is granted by a Magistrate upon a conviction or order which, either before or after the granting of the warrant, is confirmed upon appeal, an action is not maintainable against the Magistrate who granted the warrant for anything done under it by reason of any defect in the conviction or order.

**Actions in cases prohibited**

14. If an action which by this Act is declared to be not maintainable is brought against a Magistrate, the Judge, upon application of the defendant, and upon affidavit of the facts, may set aside or stay the proceedings in the action with or without costs.

**Limitation of actions**

15. An action shall not be brought against a Magistrate for anything done by him in the execution of his office unless it is commenced within 6 months next after the act complained of was committed, or within 2 months next after the conviction or order under which the act complained of was done, or which followed upon the warrant under which the act was done, has been quashed or set aside, whichever is the later period.

**Notice of actions**

16. Any such action shall not be commenced against a Magistrate until at least one month after a notice in writing of the intended action has been delivered to him or left for him at his usual place of abode by the party intending to commence the action, or by his solicitor or agent, in which notice of the cause of action and the Court in which it is intended to be brought shall be clearly and explicitly stated, and upon the back of the notice shall be endorsed the name and place of abode of the party intending to sue, and also the name and place of abode or of business of his solicitor or agent, if the notice is served by a solicitor or agent.

**Tender and payment of money into court**

17. (1) In every such case, after notice of action has been so given and before the action is commenced, the Magistrate to whom the notice is given may tender to the party complaining, or to his solicitor or agent, such sum of money as he thinks fit by way of amends for the injury complained of in the notice, and, after the action has been commenced, and at any time before issue joined therein, the defendant, if he has not made the tender, or in addition to the tender, shall be at liberty to pay into court such sum of money as he thinks fit.

(2) If the Court at the trial is of opinion that the plaintiff is not entitled to damages beyond the sum so tendered or paid into court, judgment shall be given for the defendant, and the sum of money (if any) so paid into court, or so much of the sum as is sufficient to pay or satisfy the defendant's costs in that behalf, shall thereupon be paid out of court to him, and the residue (if any) shall be paid to the plaintiff.

(3) If, when money is so paid into court, the plaintiff elects to accept the money in satisfaction of his damages in the action, he may apply to the Judge for an order for the payment of the money out of court to him, with or without costs, and the Judge may make the order, and thereupon the action shall be determined and the order shall be a bar to any other action for the same cause.

**No action against Magistrate for judicial acts in Court of Petty Sessions**

18. Subject to section 19, an action shall not be brought in the Court of Petty Sessions against a Magistrate in respect of anything done by him in the execution of his office.

**Magistrate sued for acts within his jurisdiction only liable in case of malice and absence of reasonable and probable cause**

19. In an action against a Magistrate for any act done by him in the execution of his duty as a Magistrate with respect to any matter within his jurisdiction as a Magistrate, it must be expressly alleged in the statement of claim that the act was done maliciously and without reasonable and probable cause, and if the allegations are denied, and at the trial of the action the plaintiff fails to prove them, judgment shall be given for the defendant.

**Verdict for defendant**

20. If, at the trial of any action against a Magistrate, the plaintiff —

- (a) does not prove that the action was brought within the time limited by section 15;
- (b) does not prove that such notice as is prescribed by section 16 was given one month before the action was commenced; or
- (c) does not prove the cause of action stated in the notice.

judgment shall be given for the defendant.

**Damages**

21. Where the plaintiff in an action against a Magistrate proves the levying or payment of any penalty or sum of money under a conviction or order as part of the damages that he seeks to recover, or proves that he was imprisoned under the conviction or order, and seeks to recover damages in respect of the levying or payment or imprisonment, if it is proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum which he was so ordered to pay, and, in case of imprisonment, that he has undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for non-payment of the sum which he was so ordered to pay, he is not entitled to recover the amount of the penalty or sums so levied or paid, or any sum beyond the sum of one cent as damages for the imprisonment, or any costs of the suit.

*Division 3 — Miscellaneous***Authentication of acts of Magistrate or Clerk**

22. Every summons, warrant, conviction and order (not being by law authorised to be made by word of mouth only) shall be under the hand of the Magistrate or Clerk issuing or making it.

**Acts by a Magistrate or Clerk**

23. (1) Any Magistrate out of court or the Clerk may receive an information or a plaint and grant a summons or warrant on the information or plaint and may issue his summons or warrant to compel the attendance of witnesses and do all other necessary acts and matters preliminary to the hearing.

(2) Without affecting the generality of subsection (1), where it is provided in any law in force in the Territory that an information or plaint may be laid or made before, or a summons or warrant may be issued by, a Court, a Justice of the Peace or a Clerk of Petty Sessions, the information or plaint may be laid or made, and the summons or warrant may be issued by, a Magistrate or the Clerk.

**Issue of warrant of execution or commitment**

24. After a case has been heard and determined, a Magistrate or the Clerk may issue a warrant of execution or commitment thereon.

**Warrant of execution after appeal**

25. After an appeal against a conviction or order has been decided against the appellant, a Magistrate or the Clerk may issue a warrant of execution or commitment for execution of the conviction or order as if no appeal had been brought.

**Summons or warrant not avoided by death of Magistrate or Clerk**

26. A warrant or summons issued by a Magistrate or the Clerk shall not be avoided by reason of the Magistrate or Clerk dying or ceasing to hold office.

**Order in lieu of mandamus**

**27. (1)** Where a Magistrate or the Clerk refuses to do any act relating to the duties of his office as a Magistrate or Clerk, the party requiring the act to be done may apply to the Supreme Court, upon affidavit of the facts, for an order calling upon the Magistrate or Clerk and also the party to be affected by the act to show cause why the act should not be done, and if, after due service of the order, good cause is not shown against it, the Supreme Court may make the order absolute, with or without payment of costs.

**(2)** A Magistrate or the Clerk, upon being served with an order absolute, shall obey the order, and do the act required by it to be done.

**Powers and functions of Magistrates**

**28.** Where, in pursuance of any law in force in the Territory, any thing is required or permitted to be done before, to or by a Justice of the Peace, it may be done before, to or by a Magistrate.

**Powers and duties of Clerk**

**29. (1)** When, in any law in force in the Territory, any power, duty or thing is respectively expressed to be exercisable, performed or done by a Clerk of a Court of Petty Sessions, the power, duty or thing may be exercised, performed or done by the Clerk.

**(2)** Subject to subsection (1) and to the provisions of any other law conferring powers or functions upon him, the Clerk shall have such powers (including the power to administer oaths) and functions as are conferred upon him by this Act and by rules or Regulations made under this Act.

**Powers and duties of Deputy Clerk**

**30. (1)** The Deputy Clerk may exercise and perform all the powers and functions of the Clerk —

- (a) during any absence of the Clerk from duty or from the Territory;
- (b) during any vacancy in the office of Clerk; and
- (c) subject to the direction and control of the Clerk, at any other time.

**(2)** Where the exercise of a power or the performance of a function by the Clerk, or the operation of a provision of this Act or a provision of any other law in force in the Territory, is dependent upon the opinion, belief or state of mind of the Clerk in relation to a matter, that power or function may, subject to subsection (1), be exercised or performed by the Deputy Clerk, or the provision may operate, as the case may be, upon the opinion, belief or state of mind of the Deputy Clerk in relation to that matter.

**Powers and functions of bailiffs**

**31. (1)** A bailiff may exercise and perform all the powers and functions conferred upon a bailiff by any law in force in the Territory and is entitled to all the privileges and immunities conferred, and is subject to all the duties and liabilities imposed, upon a bailiff by any such law.

(2) Without limiting the generality of subsection (1), a bailiff is charged with the service and execution of all summonses, orders, warrants, precepts, commands and other process of the Court that are directed to him, and shall —

- (a) make such return of process to the Court, together with the manner of the execution of the process, as he is required to do by the process;
- (b) take, receive and detain all persons who are committed to his custody by the Court; and
- (c) discharge all such persons when directed by the Court to discharge them or when required by law to do so.

#### **Action by or against bailiff**

32. When a bailiff is a party to a cause in the Court, all summonses, orders, warrants, precepts, commands and other process in the cause that should in the ordinary course be directed to him shall be directed to such disinterested person as the Clerk appoints, and the person so appointed shall execute and return the process in such manner as a bailiff would have been required to do if the process had been directed to him.

### **PART 3 — ADMINISTRATION**

#### **Sittings**

33. (1) The sittings of the Court shall be held at such places in the Territory as the Chief Magistrate thinks fit.

(2) The times of the sittings of the Court shall be determined by the Chief Magistrate.

(3) The Court may, at any stage of a proceeding, order that the proceeding be continued at a place in the Territory and time specified in the order, and may from time to time vary any such order.

#### **Arrangement of business of Court**

33A. The Chief Magistrate is responsible for ensuring the orderly and expeditious discharge of the business of the Court and may, subject to this Act and to such consultation with the other Magistrates as is appropriate and practicable, make arrangements as to the Magistrates who are to constitute the Court in particular matters or classes of matters.

#### **Sittings outside Norfolk Island**

33B. (1) Subject to this section, the Court may sit in the Australian Capital Territory or New South Wales for the purpose of hearing and determining a matter in the exercise of its criminal jurisdiction if the Chief Magistrate is satisfied that the nature of the proceedings is such that it would be contrary to the interests of justice for the proceedings to be conducted in Norfolk Island.

(2) Where the Chief Magistrate is satisfied that a matter pending in the exercise of the Court's criminal jurisdiction is a matter the hearing of which, or the continuation of the hearing of which, at a sitting of the Court in Norfolk Island would be contrary to the interests of justice, the Chief Magistrate may —

- (a) at any time when the matter is before the Court for hearing at a sitting of the Court in Norfolk Island, order that the hearing of the matter be adjourned and be continued at a sitting of the Court to be held at a place in the Australian Capital Territory or New South Wales specified in the order; or
- (b) at any time when the matter is not before the Court for hearing, order that the matter be heard or continued at a sitting of the Court to be held at a place in the Australian Capital Territory or New South Wales specified in the order, and may also revoke any order previously made with respect to the hearing or continuation of the hearing of the matter at a sitting of the Court in Norfolk Island.

(3) Where a matter is before the Court for hearing at a place in the Australian Capital Territory or New South Wales, the Chief Magistrate may order that the hearing of the matter be adjourned and be continued at a sitting of the Court to be held —

- (a) at the place or at another place in the Australian Capital Territory or New South Wales; or
- (b) in Norfolk Island.

(4) Where the Chief Magistrate has ordered that a matter be heard or continued at a sitting of the Court to be held at a place in the Australian Capital Territory or New South Wales, the Chief Magistrate may, at any time when the matter is not before the Court for hearing, revoke that order and order that the matter be heard or continued at a sitting of the Court to be held at another place in the Australian Capital Territory or New South Wales, or in Norfolk Island.

(5) Where the Chief Magistrate makes an order under this section relating to the hearing of a matter, the Chief Magistrate may give directions concerning the service of a copy of the order upon the parties to the matter other than the party, if any, at whose instance the order was made.

(6) In considering whether the nature of proceedings is such that it would be contrary to the interests of justice for the proceedings to be conducted in Norfolk Island, the Chief Magistrate is to have regard to —

- (a) whether there is a real risk that the interests of the defendant would be prejudiced if the proceedings were to be conducted in Norfolk Island;
- (b) whether, having regard to the interests of the parties, and of persons who are, or are likely to be, witnesses in the proceedings, the convenience of conducting the proceedings in the Australian Capital Territory or New South Wales is likely to be substantially greater than would be the case if the proceedings were to be conducted in Norfolk Island; and
- (c) any other relevant consideration.

(7) If, under this section, proceedings are ordered to be held or continued in the Australian Capital Territory or New South Wales or, under subsection (3) or (4), in Norfolk Island, the authority of the Court to discharge a person upon the person entering into a recognisance conditioned for the person's appearance at a time and place specified in the recognisance extends to the imposition of a condition that the person appear at a place in the Australian Capital Territory or New South Wales or in Norfolk Island.

(8) If such a condition is imposed, and at the time of the imposition of the condition the person in respect of whom the condition is imposed is not present in the place at which, under the condition, the person is to appear, the condition is of no effect unless, at a reasonable time before the hearing, the Administration pays or offers to pay to the person —

- (a) a sum of money reasonably adequate for the conveyance, accommodation and subsistence of the person; or
- (b) such sum as the Chief Magistrate directs.

(9) Nothing in this section applies to proceedings for an offence that is punishable only by a pecuniary penalty.

### **Registry**

**34.** The Commonwealth Minister shall establish a registry of the Court.

### **Seal**

**35. (1)** The Court shall have a Seal of the Court for sealing summonses and other instruments or documents issued out of the Court and required to be sealed.

(2) The Seal shall be of such design, and shall contain such inscription, as is approved by the Commonwealth Minister.

(3) Until the Seal referred to in subsection (1) is provided, summonses and other instruments or documents issued out of the Court and required to be sealed shall be sealed in such manner as the Chief Magistrate directs.

(4) The Seal referred to in subsection (1) shall be kept at such place and in such custody as the Chief Magistrate directs.

(5) The Court shall also, for the purposes of authentication, have a seal or stamp, of a kind approved by the Commonwealth Minister, with which office copies, certificates, reports and other documents requiring authentication may be sealed or stamped.

(6) The seal or stamp referred to in subsection (5) shall be kept at such place and in such custody as the Chief Magistrate directs.

(7) All Courts and persons acting judicially shall take judicial notice of the Seal of the Court referred to in subsection (1) or the seal or stamp referred to in subsection (5) affixed on a document or a copy of a document and, in the absence of proof to the contrary, shall presume that it was affixed by proper authority.

**PART 4 — CRIMINAL PROCEEDINGS***Division 1 — Jurisdiction***Criminal Jurisdiction of Court**

**36.** Where, by a law in force in the Territory —

- (a) an offence is punishable on summary conviction;
- (b) a person is made liable to a penalty or punishment or to pay a sum of money for any offence, act or omission and no other provision is made for the trial of the person committing the offence; or
- (c) jurisdiction is conferred upon —
  - (i) a Court of Petty Sessions, a court of summary jurisdiction, a Children's Court or a court constituted by a Magistrate, a Police Magistrate, a Stipendiary Magistrate, a Special Magistrate or a Justice or Justices; or
  - (ii) a Magistrate, a Police Magistrate, a Stipendiary Magistrate, a Special Magistrate or a Justice or Justices,

the Court has jurisdiction to hear and determine in a summary manner under the provisions of this Act all matters arising under that law.

**(2)** Without limiting the generality of the provisions of subsection (1), the jurisdiction of the Court includes jurisdiction —

- (a) to deal with and impose punishments in respect of contempt of the Court;
- (b) to impose punishment and penalties as provided by any law; and
- (c) to award costs in all matters brought before the Court, including matters dismissed for want of jurisdiction.

**Proceedings of Court where it considers offence should be dealt with on indictment**

**37.** If, in the case of an information with respect to an offence that is punishable either summarily or upon indictment, it appears to the Court, upon the close of the case for the prosecution, that the offence ought to be dealt with on indictment, the Court shall abstain from adjudication on the case and shall deal with the case for the purpose of committal for trial only.

**Ex parte order may be set aside on terms**

**38.** A conviction made when one party does not appear may, on application to the Court, be set aside on such terms as to costs or otherwise as the Court thinks just, and the Court may, upon service of such reasonable notice as the Court directs upon the other party, proceed to hear and determine the information in respect of which the conviction was made, or may adjourn the hearing and determination of the information to such time and place as the Court thinks fit, and may direct such notice as the Court thinks fit of the adjourned hearing to be given to any party.



*Division 2 — Commencement of Proceedings***Criminal proceedings to be commenced by information**

**39.** A criminal proceeding before the Court shall be commenced by an information, which shall be laid by the informant in person.

**Offences for which information may be laid**

**40. (1)** An information may be laid before a Magistrate in any case where a person has committed or is suspected of having committed, in the Territory, an indictable offence or an offence that may be dealt with summarily.

**(2)** An information shall be for one offence only.

**Description of persons and property and of offences**

**41. (1)** Such description of persons or things as would be sufficient in an indictment is sufficient in an information.

**(2)** The description of an offence in the words of the Act, law, order, by-law, Regulation or other instrument creating the offence, or in similar words, is sufficient in law.

**Power of Court to amend information**

**42. (1)** If, at the hearing of an information or summons, an objection is taken to an alleged defect in the information or summons in substance or form or if objection is taken to any variance between the information or summons and the evidence adduced at the hearing of the information or summons, the Court may, subject to subsection (2), make such amendment in the information or summons as appears to it to be desirable or to be necessary to enable the real question in dispute to be determined.

**(2)** The Court shall not make such an amendment where it considers that the amendment cannot be made without injustice to the defendant.

**Court may adjourn hearing where amendment made**

**43.** Where an amendment in an information or summons has been made under section 42 and the Court considers that the defendant has been misled by the form in which the information or summons has been made out, it may adjourn the hearing of the case for such period as it thinks fit and may make such order as to the costs of the adjournment as it thinks proper.

**Form of information**

**44. (1)** Where it is intended to issue a warrant in the first instance against the party charged, the information shall be in writing and on oath made by the informant.

**(2)** Where it is intended to issue a summons instead of a warrant in the first instance, the information need not be in writing or on oath, but may be made verbally, and without oath, whether or not any law under which the information is laid requires it to be in writing.

**Limitation of proceedings**

**45.** Subject to any express provision contained in the law creating an offence, proceedings for an offence may be commenced —

- (a) where the offence is a capital offence or the maximum term of penal servitude or imprisonment in respect of the offence, in the case of a first conviction, exceeds 6 months - at any time after the commission of the offence;
- (b) where the maximum term of penal servitude or imprisonment in respect of the offence, in the case of a first conviction, does not exceed 6 months - at any time within one year after the commission of the offence; and
- (c) where the punishment provided in respect of the offence is a pecuniary penalty and no term of penal servitude or imprisonment is mentioned - at any time within one year after the commission of the offence.

**Issue of summons**

**46. (1)** Where an information is laid before a Magistrate, the Magistrate may issue a summons.

**(2)** A summons, other than a summons to give evidence or to produce documents, shall state shortly the offence or matter of the information, shall name or otherwise describe the person against whom it is issued and shall require him to appear at a certain time and place before the Court to answer to the information and to be further dealt with according to law.

**(3)** A summons or process shall not be signed in blank.

**Service of summons**

**47. (1)** A summons issued in respect of an information may be served upon the person to whom it is directed by —

- (a) delivering a copy of the summons to that person; or
- (b) by leaving a copy of the summons at the last known or usual place of abode or business of that person with some other person who is apparently an inmate of, or employed at, that place and apparently over the age of 16 years.

**(2)** Service of a summons under subsection (1) shall be effected at least 72 hours before the time appointed in the summons for the hearing of the information.

**(3)** If it appears to the Court, a Magistrate or the Clerk, by statement on oath or by affidavit, that, from any cause, service in accordance with subsections (1) and (2) cannot be effected, the Court, a Magistrate or the Clerk may extend the time for hearing.

**(4)** Service of a summons in accordance with this section may be proved by the oath of the person who served it or by affidavit or otherwise.

**Warrant and summons - in what cases issued**

**48. (1)** Where an information against a person is laid before a Magistrate as provided by this Act and the matter of the information is substantiated by the oath of the informant or a witness, the Magistrate may, if the person is not then in custody, issue a warrant in the first instance for the arrest of that person and for bringing him before the Court to answer to the information and to be further dealt with according to law.

(2) The Magistrate, if he thinks fit, instead of issuing a warrant in the first instance for the arrest of the person charged, may proceed by summons and issue a summons against him accordingly.

(3) Notwithstanding the issue of a summons, a Magistrate may issue a warrant at any time before or after the time mentioned in the summons for the appearance of the defendant.

#### **Procedure on filing of indictment**

49. (1) Where an indictment in respect of an offence committed in the Territory has been filed in the Supreme Court against a person, the Registrar shall, at any time after the end of the then sittings of that Court if the person so indicted has not already appeared and pleaded to the indictment, upon application by or on behalf of the prosecutor, grant to the prosecutor or person applying on his behalf a certificate that the indictment has been filed.

(2) Upon production of the certificate to a Magistrate, the Magistrate shall —

- (a) where the person so indicted is, at the time of the application for the certificate, and of the production of the certificate, confined in prison for an offence other than that charged in the indictment, upon proof upon oath that the person so confined in prison is the person charged and named in the indictment, issue a warrant directed to the gaoler of the prison in which the person is so confined, commanding him to detain the person in his custody until, by Her Majesty's writ of habeas corpus, he is removed from custody for the purpose of being tried upon the indictment, or until he is otherwise removed or discharged out of custody by due course of law; and
- (b) in any other case, issue a warrant to apprehend the person so indicted and to cause him to be brought before the Court to be dealt with according to law.

(3) When a person apprehended under such a warrant is brought before the Court, the Court shall, upon proof upon oath that the person is the person charged and named in the indictment, and without further inquiry, commit him for trial or admit him to bail as provided by this Act.

#### **Direction of warrant**

50. A warrant to apprehend a defendant may be directed either to any police officer by name or generally to all police officers within the Territory, without naming them, or to both.

#### **Any police officer may execute warrant**

51. When a warrant is directed to all police officers, any police officer may execute the warrant as if it were directed specially to him by name.

#### **Warrants to be signed and, where so required, sealed**

52. A warrant shall be in writing and shall be signed by the Magistrate issuing the warrant and, where expressly provided by any law of the Territory, sealed with the seal of the Magistrate.

**Form of warrant**

**53.** A warrant shall state shortly the offence or matter of the information on which it is founded, and shall name or otherwise describe the person against whom it is issued, and it shall order the police officers to whom it is directed to apprehend the defendant, and to bring him before the Court to answer to the information and to be further dealt with according to law.

**Warrant to be in force till executed**

**54.** A warrant need not be returnable at any particular time, and remains in force until executed.

**Sunday warrants**

**55.** A Magistrate may grant or issue a warrant upon an information of an indictable offence, or a search warrant, on a Sunday as on any other day.

**Bail of persons arrested without a warrant**

**56. (1)** A person taken into custody for an offence without a warrant shall be brought before the Court as soon as practicable after he is taken into custody.

**(2)** If it is not practicable to bring the person before the Court within 24 hours after he is so taken into custody, the police officer in whose custody the person is shall, except where the offence appears to the police officer to be of a serious nature, discharge the person upon his entering into a recognisance with or without sureties, for a reasonable amount to appear before the Court at the day, time and place named in the recognisance.

*Division 3 — Indictable Offence***SUBDIVISION A — INSTITUTION OF PROCEEDINGS****Disobedience to summons**

**57.** Where a person charged with an indictable offence against whom a summons has been issued does not appear before the Court at the time and place mentioned in the summons, and it is made to appear to the Court, by oath, that the summons was duly served upon him a reasonable time before the time appointed in the summons for appearing to it, the Court, upon oath being made before it substantiating the matter of the information to its satisfaction, may issue its warrant for the arrest of the defendant and to bring him before the Court to answer to the information and to be further dealt with according to law.

**Procedure where informant proposes to tender written statements to the Court**

**58. (1)** If a person is alleged to have committed an indictable offence, the informant, not later than 28 days, or such shorter period as the Court may approve, before the date fixed for the taking of the preliminary examination, may give the person notice in writing —

- (a) informing him or her of the time and place of the preliminary examination; and
- (b) stating that the Court will be asked to admit written statements as evidence without requiring the attendance of the persons who made the statements; and
- (c) setting out the terms of this section and section 58A.

(2) A notice under subsection (1) is not duly given unless it is accompanied by —

- (a) a copy of the information; and
- (b) a list of persons who have made written statements which the informant proposes to tender to the Court at the preliminary examination; and
- (c) a copy of each of those statements; and
- (d) a list of the documents and things which the informant proposes to tender to the Court at the preliminary examination; and
- (e) if a thing, not being a document, cannot adequately be described in that list, a photograph of that thing; and
- (f) a copy of each document mentioned in the list,

**(“the accompanying documents”).**

(3) A notice and accompanying documents may be given to the accused person in any manner in which a summons issued in respect of an information may be served under any provision of this Act.

(4) The giving of a notice and accompanying documents under subsection (3) may be proved in the same manner as the service of a summons.

(5) If a notice has been given to an accused person under this section —

- (a) the informant, not later than seven days, or such shorter period as the Court may approve, before the date set down for the preliminary examination, must file with the Clerk a copy of the notice and accompanying documents; and
- (b) the Clerk must, before the preliminary examination, provide the notice and accompanying documents to the Magistrate constituting the Court for the preliminary examination.

(6) The informant must, at the request of the accused person or a legal practitioner representing the accused person, before the preliminary examination permit the accused person or the legal practitioner to inspect the documents and things mentioned in the list (if any) referred to in paragraph (2)(d).

**Written statements may be admitted in evidence**

**58A. (1)** Subject to this section, if an informant has duly given notice to an accused person under section 58, the Court at the preliminary examination may admit a written statement included in the accompanying documents as evidence of the matters stated in the statement in which case the statement will be taken to be the deposition of the person who made it.

(2) A written statement must not be admitted in evidence by a Court unless —

- (a) it is made in the form of a statutory declaration; and
- (b) it contains a statement that the person who made it —
  - (i) has attained the age of 18 years; or
  - (ii) has attained the age of 14 years but not 18 years; and
- (c) it contains a statement that before he or she signed it, the person who made it read the statement or had it read to him or her.

(3) A written statement that, but for this subsection, would be admissible under subsection (1) will not be admissible if the accused person, not later than 14 days before the date set down for the preliminary examination, gives written notice to the informant that he or she requires the attendance at the preliminary examination of the person who made the statement.

(4) The accused person must also file with the Clerk a copy of a written notice referred to in subsection (3).

(5) An accused person who has given notice under subsection (3) may, at any time before the preliminary examination, notify the informant in writing that he or she withdraws that notice and this section will apply as if the notice under subsection (3) had not been given.

(6) Despite the failure of an accused person to give notice under subsection (3), the accused person may object at the preliminary examination to a written statement being tendered in evidence and the Court may, if it thinks fit, uphold the objection and require the person who made the statement to attend and give evidence to the Court.

(7) If under this section the Court admits a written statement, the Court may, of its own motion, require the person that made the statement to attend before the Court to give evidence.

(8) If it appears to the Court that any part of a written statement tendered in evidence under this section is inadmissible according to the rules of evidence, the Court may, if the statement is otherwise admissible, admit the statement but must —

- (a) identify the part of the statement that is inadmissible; and
- (b) write on that part of the statement the words “ruled inadmissible” or words to that effect.

(9) If the Court admits a written statement under this section, the informant, or a legal practitioner representing the informant, may call the person who made the statement to give oral evidence and that person and any other witnesses, not being witnesses called by the accused person, who attend before the Court —

- (a) must be examined in the presence or hearing of the accused person and, if the accused person so desires, in the presence of a legal practitioner representing the accused person; and
- (b) may be cross-examined by the accused person or a legal practitioner representing the accused person.

**Preliminary examination where written statements not tendered**

**58B.** If a person is alleged to have committed an indictable offence and a notice has not been given to that person in accordance with section 58, the Court must, in the presence or hearing of the accused person, and, if the accused person so desires, in the presence of a legal practitioner representing the accused person, take a preliminary examination or statement on oath of any persons who know the facts and circumstances of the case, and the accused person or a legal practitioner representing the accused person may cross examine those persons.

**Plea of guilty in committal proceedings**

**59. (1)** A person who appears or is brought before the Court charged with an indictable offence, not being an offence punishable by death or imprisonment for life, may at any stage of the proceedings plead guilty to the charge and, upon the accused person so pleading guilty, the Court shall proceed in accordance with this section.

**(2)** The Court may accept or reject the plea, but the rejection of the plea at any stage of the proceedings does not prevent the accused person from pleading guilty in pursuance of this section at a later stage of the proceedings and the Court may accept or reject the plea at that later stage.

**(3)** Where the Court rejects the plea, the proceedings before the Court shall continue as if the plea had not been made.

**(4)** Where the Court accepts the plea and —

- (a) the offence is one that, under any law in force in the Territory is punishable either on indictment or on summary conviction;
- (b) the offence is one that may be dealt with summarily without the consent of the accused person;
- (c) the offence is one that may be dealt with summarily if the accused person consents to its being so dealt with and the accused person does so consent; or
- (d) the offence is one that may, upon the request of the prosecutor, be dealt with summarily and the prosecutor requests that it be so dealt with,

and it appears to the Court that it is proper to deal with the case summarily, the Court may, without hearing further evidence, sentence or otherwise deal with the accused person and finally dispose of the charge and all incidental matters.

**(5)** Where the Court accepts the plea and —

- (a) it does not appear to the Court that it is proper to deal with the case summarily;
- (b) the offence is one that is punishable only on indictment;
- (c) the offence is one that may be dealt with summarily if the accused person consents to its being so dealt with and the accused person does not so consent; or
- (d) the offence is one that may, upon the request of the prosecutor, be dealt with summarily and the prosecutor does not so request,

the Court shall commit the accused person to such sittings of the Supreme Court as the Court directs and the Supreme Court shall deal with the accused person in accordance with subsections (6) to (9).

(6) The Supreme Court shall, where it appears to the Supreme Court from the information or evidence given to or before it that the facts in respect of which the accused person was charged before the Court do not support the charge to which the accused person pleaded guilty or where the accused person or counsel for the Crown requests that an order be made under this subsection, and may, where for any other reason it sees fit so to do, order that the proceedings before the Court at which the accused pleaded guilty be continued at a time or place specified in the order.

(7) Except where an order is made in pursuance of subsection (6), the Supreme Court has the same powers of sentencing or otherwise dealing with the accused person and of finally disposing of the charge and of all incidental matters as it would have had if the accused person, on arraignment at any sittings of the Court, had pleaded guilty to the offence charged on an indictment.

(8) The procedure relating to committal for trial applies, as nearly as may be, to a committal under subsection (5) and bail may be granted as on a committal for trial, but a person shall not be bound over to give evidence on a committal under that subsection unless the Court otherwise orders.

(9) Where an order is made by the Supreme Court under subsection (6) that proceedings before the Court at which an accused person pleaded guilty be continued at a time and place specified in the order —

- (a) those proceedings shall be continued in all respects as if the accused person had not pleaded guilty and as if those proceedings had been adjourned by the Court to the time and place so specified; and
- (b) the Supreme Court may exercise any power that the Court might have exercised under Division 5 of this Part if the order had been an order made by the Court adjourning the proceedings to the time and place so specified, and the provisions of Division 5 of this Part apply to and in respect of the accused person.

#### **Court may discharge accused person**

**60.** When all evidence offered by the prosecution against a person charged with an indictable offence has been taken, the Court must —

- (a) if the Court is not of the opinion referred to in paragraph (b) — immediately order the accused person, if in custody, to be discharged from custody in respect of that offence; or
- (b) if the Court is of the opinion, having regard to all the evidence before it, that the evidence is capable of satisfying a reasonable jury properly instructed beyond reasonable doubt that the accused person has committed an indictable offence — proceed in the manner set out in this Act.



**Proceedings where evidence sufficient to put accused on trial**

**61. (1)** If the Court is of the opinion, having regard to all the evidence before it, that the evidence is capable of satisfying a reasonable jury properly instructed beyond reasonable doubt that the accused person has committed an indictable offence, the Court shall charge the accused person with the offence and —

- (a) if it appears to the Court that the case may be properly dealt with summarily, and —
  - (i) the offence is one that under any law in force in the Territory is punishable either on indictment or on summary conviction;
  - (ii) the offence is one that may be dealt with summarily without the consent of the accused person;
  - (iii) the offence is one that may be dealt with summarily if the accused person consents to its being so dealt with and the accused person does so consent; or
  - (iv) the offence is one that may, upon the request of the prosecutor, be dealt with summarily and the prosecutor requests that it be so dealt with,

the Court shall ask the accused person if he has any cause to show why he should not be convicted or why an order should not be made against him and thereupon the Court shall proceed to hear and determine the charge in the manner provided by this Act for hearing and determining an information, but, if the defendant does not admit the truth of the charge, the depositions of the witnesses who gave evidence for the prosecution shall be deemed to be evidence given on the hearing of the charge; and

- (b) in any other case, shall say to the accused person these words, or words to the like effect: “Having heard the evidence do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial. You are clearly to understand that you have nothing to hope from any promise or favour, and nothing to fear from any threat that may have been held out to you to induce you to make any admission or confession of your guilt; but whatever you now say may be given in evidence against you upon your trial, notwithstanding any such promise or threat.”.

**(2)** The depositions of the accused person in answer to questions asked by the Court in pursuance of subsection (1) shall be recorded in accordance with the provisions of section 158 and shall be kept with the depositions of the witnesses.

**(3)** The depositions of the accused person and of the witnesses shall be transmitted to the Commonwealth Crown Solicitor.

**Depositions of accused person may be put in evidence and he may give or call evidence on his behalf**

- 62.** (1) Upon the trial of the accused person, depositions made by him may —
- (a) if recorded in the manner specified in subsection 158(1), be read as evidence without further proof unless it is proved that the Magistrate by whom the depositions purport to have been signed did not in fact sign them; or
  - (b) if recorded by one of the means specified in subsection 158(2), be read as evidence if it is proved that the record is a correct record of the depositions and that the transcript is a correct transcript of that record.
- (2) After the defendant has made a statement, or if he does not make a statement, the Court shall ask him if he desires to give evidence himself or to call any witnesses on his behalf.
- (3) Any evidence then given by or on behalf of the defendant shall be taken by the Court in manner provided by this Act in respect of evidence for the prosecution, and the prosecutor shall be at liberty to cross-examine the defendant and any witness who gives evidence on his behalf and to adduce evidence in reply.
- (4) Nothing in this Act prevents the prosecutor in any case from giving in evidence any admission or confession or other statement of the defendant made at any time which by law would be admissible as evidence against the defendant.

**SUBDIVISION B — PROCEEDINGS AFTER THE HEARING OF EVIDENCE**

**Discharge or committal for trial**

- 63.** When all the evidence for the prosecution and the defence has been taken —
- (a) if the Court is of the opinion, having regard to all the evidence before it, that a reasonable jury properly instructed would not convict the defendant of an indictable offence — it must immediately order the defendant, if he or she is in custody, to be discharged as to the information then under inquiry; and
  - (b) if the Court is not of the opinion referred to in paragraph (a) — it must commit the defendant to trial for the offence before the Supreme Court and either —
    - (ii) commit the defendant to gaol or a lock-up to be there safely kept until the sittings of the Court before which the defendant is to be tried; or until the defendant is delivered by due course of law or admitted to bail as provided in this Act; or
    - (ii) admit the defendant to bail in accordance with Subdivision C.

**Depositions of dead or absent persons**

**64.** Where, upon the trial of a person who has previously been charged before the Court with an indictable offence and committed for trial, it is proved —

- (a) that a witness whose depositions were taken at the hearing of the charge before the Court is dead or so ill as not to be able to travel;
- (b) that the depositions of the witness were taken in the presence of the accused person; and
- (c) that the accused person or his counsel, solicitor or agent had a full opportunity of cross-examining the witness,

the depositions may —

- (d) if recorded in the manner specified in subsection 158(1), be read as evidence at the trial of the accused person without further proof unless it is proved that the Magistrate by whom the depositions purport to have been signed did not in fact sign them; or
- (e) if recorded by one of the means specified in subsection 158(2), be read as evidence at the trial of the accused person if it is proved that the record is a correct record of the depositions and that the transcript is a correct transcript of that record.

**Evidence for defence**

**65.** Where a person is charged with an indictable offence as such, the Court is bound to hear any evidence tendered on his behalf tending to show that he is not guilty of the offence with which he is charged.

**SUBDIVISION C — BAIL**

....

**Recognisance of witnesses, etc**

**70. (1)** The Court may bind by recognisance a witness examined before it to appear at the Court at which the defendant is to be tried and then and there to give evidence against the defendant.

**(2)** The recognisance shall specify the surname and Christian names, the place of residence and the occupation of each person who enters into it.

**Acknowledgment of recognisance**

**71.** Such a recognisance shall be duly acknowledged by each person who enters into it, and shall be subscribed by the Magistrate before whom it is acknowledged, and a notice of the recognisance signed by the Magistrate shall at the same time be given to each person bound by the recognisance.

**Court may commit refractory witness**

72. (1) If a witness refuses to enter into a recognisance, the Court may by warrant commit him to gaol, there to be safely kept until after the trial of the defendant, unless in the meantime the witness duly enters into the recognisance before a Magistrate.

(2) If the defendant is not committed for trial for the offence with which he is charged, or if the duly appointed officer declines to file an information against the defendant for the offence, the Court, upon being duly informed of the fact, may order the keeper of the gaol where the witness is in custody to discharge him from custody, and the keeper shall thereupon forthwith discharge him accordingly, as to that warrant.

**SUBDIVISION D — MISCELLANEOUS****Transmission of depositions, etc, to person appointed for the purpose of this section**

73. Where a defendant is committed for trial or for sentence, the Court shall, as soon as practicable after the conclusion of the case before it, transmit to the person appointed for the purpose of this section by the Minister in accordance with a resolution of the Legislative Assembly all informations, examinations, depositions, statements, recognisances and other documents sworn, taken or acknowledged in the case.

**How dealt with after transmission**

74. (1) After the transmission of the documents and before the day of trial, the person appointed for the purpose of section 73 by the Minister in accordance with a resolution of the Legislative Assembly shall have and be subject to the same duties and liabilities with respect to the documents upon a certiorari directed to him, or upon a rule or order directed to him in lieu of that writ, as the Court would have had and been subject to upon a certiorari to it if the documents had not been transmitted.

(2) The person referred to in subsection (1), shall, at any time after the opening of the Supreme Court at the sitting at which the trial is to be had, deliver or cause to be delivered the documents or any of them to the proper officer of the Supreme Court, if the Supreme Court so directs.

**Accused may obtain copies of depositions**

75. (1) Where —

- (a) a person charged with an indictable offence is directed by the Court to be tried; and
- (b) that person, at any time after the examinations in his case have been concluded and before the next sitting of the Supreme Court, makes application to the officer having the custody of the depositions on which he has been directed to be tried and of the evidence given on the cross-examination or the examination of any witnesses that have been cross-examined or called and examined by or on behalf of that person,

the officer shall give to him copies of the depositions and evidence.

(2) A gaoler or officer having in his custody a person who makes an application under subsection (1) shall cause the application to be conveyed to the officer having the custody of the depositions and evidence.

*Division 4 — Offences Punishable Summarily***Dismissal or adjournment in absence of informant**

76. If upon the day and at the place appointed by the summons for hearing and determining an information of an offence punishable summarily, the defendant attends voluntarily in obedience to the summons, or is brought before the Court by virtue of a warrant, and the informant (having had notice of the day and place) does not appear by himself, his counsel, solicitor or agent, the Court shall dismiss the information unless for some reason it thinks proper to adjourn the hearing of the information to some other day.

**Ex parte hearing in absence of defendant**

77. If at the time and place so appointed the defendant does not appear when called, and proof is made to the Court of due service of the summons upon the defendant in the manner prescribed by section 47, the Court may either —

- (a) proceed ex parte to hear and determine the case in the absence of the defendant; or
- (b) upon oath being made before it, substantiating the matter of the information to its satisfaction, issue its warrant for the arrest of the defendant and to bring him before the Court to answer to the information and be further dealt with according to law.

**Court may adjourn the case**

78. Where the Court upon the non-appearance of the defendant issues its warrant, it shall adjourn the hearing of the information until the defendant is arrested, and if the defendant is afterwards arrested under the warrant, he shall be detained in safe custody until he can be brought up before the Court at a convenient time and place of which the informant shall have due notice.

**Both parties appearing**

79. If both parties appear either personally or by counsel, solicitor or agent, the Court shall proceed to hear and determine the information.

**Proceedings at the hearing on defendant's confession**

80. Where the defendant is present at the hearing, the substance of the information shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted, or why an order should not be made against him, and if he admits the truth of the information and does not show sufficient cause why he should not be committed or why an order should not be made against him, the Court may convict him or make an order against him accordingly.

**Where defendant does not admit the case**

81. (1) If the defendant does not admit the truth of the information, the Court shall proceed to hear the informant and his witnesses, the defendant and his witnesses and, if the defendant has given evidence other than as to his general character, such witnesses as the informant may examine in reply.

(2) After hearing what each party has to say, and the evidence so adduced, the Court shall consider the whole matter and determine it, and shall convict or make an order upon the defendant or dismiss the information, as justice requires.

**Court may proceed to hearing in absence of both or either of the parties**

82. If at the time or place to which a hearing or further hearing is adjourned, either or both of the parties does not or do not appear personally or by counsel, solicitor or agent, the Court may proceed to the hearing or further hearing as if the party or parties were present, or, if the informant does not appear, the Court may dismiss the information with or without costs.

**Conduct of summary proceedings regulated**

83. The defendant or his counsel, solicitor or agent may address the Court after all the evidence for the informant and the evidence (if any) for the defendant and for the informant in reply has been given, and the informant or his counsel, solicitor or agent shall have a closing address.

....

*Division 6 — Committal and Recognisance***Place of committal or detention**

88. Where the Court commits a defendant by way of remand or upon adjournment, or at any time before the decision, it may commit to a gaol, a lock-up, any other place of security or such other safe custody as it thinks fit.

**Place to which committal to be made**

89. Where the Court commits a witness or person sought to be made a witness, and when it commits a defendant after the decision, it shall commit to a gaol or lock-up.

**Witnesses may be discharged on recognisance**

90. A witness, other than a witness committed under section 163, or person sought to be made a witness may be discharged upon recognisance.

**Recognisances**

91. Where the Court is authorised to discharge the defendant, witness or other person, upon recognisance, it may order his discharge upon his entering into a recognisance, with or without a surety or sureties at its discretion, conditioned for his appearance at the time and place to which the hearing is adjourned or which is named in the recognisance.

**Issue of warrant for non-appearance**

92. If the defendant, witness or other person does not appear at the time and place mentioned in the recognisance, the Court may adjourn the hearing, and may issue a warrant for his apprehension in accordance with the provisions of Division 2 of this Part.

**Recognisances taken out of Court**

93. Where, in relation to a recognisance, the Court has fixed the amount in which the principal and sureties (if any) are to be bound, the recognisance, notwithstanding anything in this or any other Act, need not be entered into before the Court, but may be entered into by the parties before any Magistrate or before the Clerk, or before a police officer, or where any one of the parties is in gaol, before the keeper of the gaol, and thereupon all the consequences of law shall ensue, and the provisions of this Act with respect to recognisances taken before the Court shall apply, as if the recognisance had been entered into before the Court in accordance with the provisions of section 91.

**Forfeited recognisances, how to be enforced**

94. Where the conditions, or any of them, in a recognisance are not complied with, any Magistrate may certify upon the back of the recognisance in what respect the conditions have not been observed, and transmit it to the proper officer, to be proceeded upon in like manner as other recognisances, and that certificate shall be deemed to be sufficient evidence of the recognisance having been forfeited.

**Arrest of principal by sureties**

95. (1) Where a recognisance is conditioned for the appearance of a person on a certain day before the Court, or to take his trial before, or to receive sentence from, the Supreme Court, if the sureties bound by the recognisance have reasonable grounds for suspecting that the person will not voluntarily surrender himself, they may, before the day so appointed, apprehend their principal and bring him before the Court or deliver him into the custody of the keeper of the gaol named in the warrant of committal, as the case may be.

(2) A police officer shall, if required by the sureties, assist them in the apprehension.

**Conveying prisoners to gaol**

96. The person to whom a warrant of commitment is directed shall convey the person named or described in the warrant to the gaol or other place mentioned in the warrant, and there deliver him together with the warrant to the keeper of the gaol or place, who shall thereupon give the person delivering the prisoner into his custody a receipt for the prisoner, setting forth the state and condition in which the prisoner was when he was delivered into the custody of the keeper.

*Division 7 — Surety of the Peace and for Good Behaviour***Information asking for surety**

97. This Division applies —

- (a) where an information in writing is laid before a Magistrate that a person (in this Division referred to as “the defendant”) —
  - (i) has threatened to do any bodily injury to the informant, his wife or child or any person under his care or charge, to burn or damage his house or otherwise to commit a breach of the peace towards him, his wife or child or any such other person or to procure others to do such an injury or such damage or commit such a breach of the peace; or

- (ii) has indicated by his language or conduct an intention to do such an injury or such damage or commit such a breach of the peace or to procure such an injury or such damage to be done or such a breach of the peace to be committed,

and that the informant is in fear of the defendant and therefore asks that the defendant may be required to find sufficient sureties to keep the peace; and

- (b) where an information in writing on oath is laid before a Magistrate that a person is a person of evil fame and that the informant therefore asks that the defendant may be required to find sufficient sureties to be of good behaviour.

### **Evidence in support**

**98.** Upon the laying of an information referred to in section 97, the Magistrate may receive corroborating affidavits of other persons in support of the matters stated in the information.

### **Warrant**

**99. (1)** The Magistrate may issue a summons requiring the defendant's attendance before the Court, and may, if he thinks fit, and if the information is laid on oath, issue a warrant in the first instance.

**(2)** If the Magistrate is satisfied that the information is laid from malice or for vexation only, he may refuse to issue any process.

**(3)** A summons issued under this section may be served at any time before the date upon which the defendant is summoned to appear.

### **Proceedings on appearance of defendant**

**100.** The Court before which the defendant appears or is brought up may require him forthwith to show cause why he should not enter into a recognisance and find sureties to keep the peace or be of good behaviour, as the case may be.

### **Evidence**

**101.** The defendant may thereupon produce evidence in contradiction of the allegations stated in the information or to show that the information is laid from malice or for vexation only.

### **Case to be dismissed, or surety of the peace, etc, required**

**102.** After hearing the evidence produced, the Court may dismiss the case, or may require the defendant forthwith, or at some time to be specified by the Court, to enter into a recognisance with or without sureties, in such reasonable amount as the Court thinks fit, to keep the peace or be of good behaviour, as the case may be, for such time as it thinks fit, and in default may commit the defendant to gaol for such time as the Court thinks fit, not exceeding 6 months, unless in the meantime the required recognisance is given.

### **Notice of recognisances**

**103.** Notice of such a recognisance shall be given to the parties bound in the same manner as of other recognisances.



**Discharge**

**104.** If the defendant is in gaol under commitment for want of sureties at the time he enters into a recognisance, the Magistrate taking the recognisance shall issue a warrant to the keeper of the gaol to discharge him.

**Forfeiture of recognisance**

**105. (1)** Where a recognisance to keep the peace or be of good behaviour is entered into by any person as principal or surety, the Court may —

- (a) upon application made to it to declare the recognisance forfeited; and
- (b) upon proof —
  - (i) of a conviction of the principal bound by the recognisance of any offence that is in law a breach of the condition of the recognisance; and
  - (ii) that a notice in writing signed by the person seeking to put the recognisance in force has, 7 clear days before the date of making the application, been personally served upon or left at the usual place of abode of the person or each of the persons (if more than one) bound by the recognisance specifying that an application will be made to declare the recognisance forfeited,

declare the recognisance forfeited and may make an order for payment to the Clerk of the sum or part of the sum due under the recognisance by the persons bound by it, whether as principals or sureties.

**(2)** An order made under subsection (1) may be enforced as if it were an order made by the Clerk on a plaintiff.

**Costs**

**106.** Costs may be awarded upon proceedings under this Division in the same manner and to the same extent, and are recoverable by the same process, as upon an information in respect of an offence punishable on summary conviction.

**PART 5 — CIVIL PROCEEDINGS***Division 1 — Jurisdiction***Civil jurisdiction of Court**

**107.** In addition to any jurisdiction conferred on the Court by any other law in force in the Territory, the Court has, subject to this Act, jurisdiction to hear and determine civil claims in respect of a sum or matter at issue that does not exceed, or the value of which does not exceed, \$10,000.

**Jurisdiction of Court where defendant absent from the Territory**

**108. (1)** Subject to subsection (2), the Court has jurisdiction notwithstanding that the defendant is not within the Territory.

**(2)** Where, in an action for the recovery of any damages, debt or demand, the defendant is not within the Territory, the Court has jurisdiction only when —

- (a) the debt or demand sued for, or the liability for damages, arose within the Territory; or
- (b) the defendant has given an engagement or promise in writing to pay the debt or sum at a specified place in the Territory.

**Ex parte order may be set aside on terms**

**109.** An order made when one party does not appear may, on application to the Court, be set aside on such terms as to costs or otherwise as the Court thinks just, and the Court may, upon service of such reasonable notice as the Court directs upon the other party, proceed to hear and determine the plaint in respect of which the order was made, or may adjourn the hearing and determination of the plaint to such time and place as the Court thinks fit, and may direct such notice as the Court thinks fit of the adjourned hearing to be given to any party.

**Requests under Conventions regarding Legal Proceedings in Civil and Commercial Matters**

**110.** The Court has jurisdiction to make any order or take any action that is necessary in order to comply with a request received from the Consular or other authority of a foreign country with which a Convention regarding Legal Proceedings in Civil and Commercial Matters has been made and extended to the Territory for the service of documents in the Territory or for the taking of evidence in the Territory.

**Matters excepted from jurisdiction of Court**

**111. (1)** Subject to subsection (2), the Court does not have jurisdiction to hear and determine an action in which the title to land, or the validity of a devise, bequest or limitation under a will or settlement, is in question.

**(2)** If the title to land incidentally comes in question in an action, the Court has jurisdiction to decide the claim that it is the immediate object of the action to enforce, but the judgment of the Court is not evidence of title between the parties or their privies in another action in that Court or in proceedings in another Court.

**Removal of civil cases to the Supreme Court**

**112. (1)** Subject to any rules or Regulations under this Act, the Judge may, on the application of either party to a civil action made to him before the action comes before the Court for hearing, grant leave for the removal of the action into the Supreme Court on such terms and conditions as to costs or otherwise as the Judge thinks fit.

(2) Where the Court has so granted leave, all proceedings in the action in the Court shall be discontinued and the Clerk shall transmit to the Registrar all documents relating to the action as are filed of record in the Court.

(3) Upon receipt of the documents, the Supreme Court shall proceed in the action as if it had been originally commenced in the Supreme Court and all subsequent proceedings in the action shall be according to the practice and procedure of that Court.

**Procedure for removal of cases**

**113.** Where an application is made under section 112 —

- (a) the application shall —
  - (i) be in writing signed by the applicant or his solicitor or agent;
  - (ii) set out the grounds on which the applicant claims that leave should be granted;
  - (iii) be lodged (together with 2 copies) with the Clerk; and
  - (iv) be accompanied by the fee prescribed by rules or Regulations under this Act;
- (b) the applicant may lodge with the application affidavits in support;
- (c) on receipt of the application, the Clerk shall forthwith transmit one copy to the other party to the action and one copy with any affidavits lodged in pursuance of paragraph (b) to the Registrar, and the action shall then be stayed;
- (d) on receipt of the application, the Registrar shall forthwith transmit to the Judge a copy of the application with any affidavits lodged in pursuance of paragraph (b);
- (e) the Judge shall consider every application so transmitted and may make an order either granting leave for the removal of the action into the Supreme Court or that the action be continued in the Court of Petty Sessions;
- (f) if the Judge makes an order granting leave for the removal of the action, the Registrar shall post a copy of the order to each party to the action;
- (g) if the Judge makes an order that the action be continued in the Court of Petty Sessions, the Registrar shall forthwith serve a copy of the order on the Clerk and the Clerk shall forthwith appoint a return day for the summons (if any) issued in the action and post a copy of the order to each party to the action with a notice specifying the day appointed as the return day for the summons;
- (h) the stay of the action shall cease on the day on which the copy of the order is posted to the applicant in pursuance of paragraph (g); and
- (i) time shall not run for filing a notice of intention to defend or of the grounds of defence or for any proceeding under this Act in the action while the action is stayed in pursuance of this section.

*Division 2 — Procedure***Civil proceedings to be commenced by plaintiff**

**114.** A civil proceeding before the Court shall be commenced by a plaintiff, which shall be made by the plaintiff in person, or by his counsel, solicitor or agent.

**Commencement of action by entry of plaintiff in writing**

**115. (1)** An action for recovery of damages or a debt or demand, liquidated or unliquidated, shall be commenced by the entry of a plaintiff made in writing.

**(2)** Notwithstanding anything contained in subsection (1), any moneys recoverable under any law in force in the Territory may be recovered in the manner provided in that law for the recovery of those moneys.

**Plaint may be for one or more matters**

**116. (1)** A plaintiff may be for one or more matters of plaintiff, but, except where otherwise provided, the sums claimed in respect of all such matters shall not exceed, in the aggregate, \$10,000.

**(2)** Where 2 or more matters of plaintiff are joined in one plaintiff, the matters of plaintiff shall be by and against the same parties and in the same right.

**(3)** Where the Court considers that the joinder of 2 or more matters of plaintiff is inexpedient or inconvenient, it may order such separate trials as it thinks fit.

**Plaintiff may abandon excess**

**117. (1)** A person having a civil claim in respect of a sum exceeding \$10,000 may abandon the excess over that amount and that claim may then be heard and determined by the Court.

**(2)** A judgment of the Court in respect of a claim to which subsection (1) applies —

**(a)** shall not be given for a sum exceeding \$10,000; and

**(b)** shall be in full discharge of all demands in respect of the claim.

**(3)** Where the Court is, at any stage of a proceeding, of opinion that a cause of action in respect of a civil claim has been split or divided in order that the Court may have jurisdiction to hear and determine the claim, it shall dismiss the proceeding in respect of that cause of action.

**Infant may sue**

**118.** A person under the age of 18 years may proceed before the Court for the recovery of a sum of money due to him in respect of any cause of action for wages or piece-work or for work as a servant in all respects as if he were of full age.

**Copy of plaintiff**

**119.** Any person against whom a plaintiff has been made may receive free of charge from the Clerk a copy of the plaintiff.

**When Magistrate may issue summons**

**120.** Where a plaintiff is made to a Magistrate as to a matter within the limits of the jurisdiction of the Court, the Magistrate may issue a summons.

**Person to whom summons to be directed**

**121.** A summons to answer to a plaint shall —

- (a) be directed to the person named in the plaint as the person against whom the plaint is made;
- (b) require that person to appear, at a time and place mentioned in the summons, before the Court to answer to the plaint;
- (c) set out the plaintiff's address for service; and
- (d) before the hearing is proceeded with, be lodged with the Clerk, to be kept and preserved by the Clerk.

**Signature and contents of summons**

**122.** A summons shall be signed by the Magistrate or Clerk issuing it, and, unless it is a summons to give evidence or to produce documents, shall state shortly the cause of the plaint and shall name or otherwise describe the person against whom it is issued.

**Summons in blank**

**123.** A summons or process shall not be signed in blank.

**Service of summons**

**124. (1)** A summons issued in respect of a plaint, not being a default summons, may be served upon the person to whom it is directed by —

- (a) delivering a copy of the summons to that person; or
- (b) by leaving a copy of the summons at the last known or usual place of abode or business of that person with some other person who is apparently an inmate of, or employed at, that place and apparently over the age of 16 years.

**(2)** Service of a summons under subsection (1) shall be effected at least 10 clear days before the time appointed in the summons for the hearing of the plaint.

**(3)** If it appears to the Court, a Magistrate or the Clerk, by statement on oath or by affidavit, that, from any cause, service in accordance with subsections (1) and (2) cannot be effected, the Court, Magistrate or Clerk may extend the time for hearing and the Court may make such order for substituted or other service, or for the substitution for service of notice by advertisement or otherwise, as to the Court seems just.

**(4)** Service of a summons in accordance with this section may be proved by the oath of the person who served it or by affidavit or otherwise.

**Particulars of demand and set-off**

**125. (1)** Concise particulars of the plaintiff's demand with dates, items and prices or value shall be endorsed upon or annexed to the summons on every plaint made in respect of a civil claim and shall be deemed to be part of the summons.

**(2)** Concise particulars of the defendant's set-off (if any) with dates, items and prices or value shall be endorsed upon or annexed to the notice in writing of the set-off.

(3) An inaccuracy or omission that, in the opinion of the Court, is not likely to mislead shall not vitiate the particulars of demand or set-off, and evidence shall not be given in support of a debt not mentioned in the particulars if the opposite party objects to it.

(4) The Court may, at any time before an order is made, allow either party to alter or amend the particulars of his demand or set-off upon such terms as to costs, adjournment or otherwise as appear just.

(5) The plaintiff shall cause his plaint and as many copies as there are defendants to be filed with the Clerk 14 clear days before the return of the summons.

#### **Particulars of demand for sums due to be in forms in Third Schedule**

126. Notwithstanding anything contained in section 125, where, on a plaint made in respect of a civil claim, a sum of money is claimed and particulars of the debt with dates, items and prices or value have at any time before the date of the plaint been delivered to the defendant or are in the possession of the defendant, it is sufficient if the particulars of the demand to be endorsed upon or annexed to the summons as required by that section are in accordance with one of the forms in the Third Schedule for that purpose provided or as near thereto as applicable.

#### **Further particulars may be ordered where necessary for purposes of defence**

127. (1) At the hearing of a plaint, the Court, on the application of the defendant, may, if it thinks fit, order the plaintiff to deliver further and fuller particulars, wholly or in part, and with dates, items and prices or value, to the defendant or his solicitor or agent within such time and upon such terms as to costs or otherwise as the Court thinks just.

(2) The Court shall not make an order for particulars unless it is satisfied that the particulars are necessary for the purposes of the defence, and not demanded for the purpose of delay, and the Court may adjourn the hearing of, and stay all proceedings in, the plaint until the order has been complied with.

#### **Particulars of set-off**

128. The provisions of sections 126 and 127 apply, with the necessary modifications, to a set-off as if it were a plaint.

#### **Nothing to be proved that is not stated in summons**

129. Evidence of a demand or cause of action shall not be given on behalf of the plaintiff on the hearing of a plaint except evidence of a demand or cause of action stated in the summons issued on the plaint or in the summons as amended.

#### **General power of amendment**

130. Upon the hearing of a plaint, the Court may allow any amendment of the summons that it thinks just, and upon such terms as it thinks just, and all such amendments shall be made as are necessary for the purpose of determining the real questions in controversy between the parties.

#### **Notice of defence**

131. (1) Where a defendant in a plaint intends to defend the action upon the plaint, he shall, at least 5 clear days before the return day, file a notice of his intention to defend with the Clerk and the Clerk shall forthwith transmit by post a copy of the notice to the plaintiff.

(2) If a notice of intention to defend is not filed in pursuance of this section, the defendant shall not, without the leave of the Court, be permitted to defend the action upon the plaint.

(3) The Court may grant the leave referred to in subsection (2) on such conditions as to costs and adjournment as the Court thinks fit.

(4) At the conclusion of the opening of the plaintiff's case and before any evidence is taken, the defendant, if so required by the plaintiff, shall, by himself or his counsel, solicitor or agent, give a concise statement of his defence to the plaintiff and of the points on which he relies, and he shall not, except by leave of the Court, enter or rely upon or give evidence as to any matters other than those included in the defence and points so stated.

#### **Proceedings at hearing when facts are admitted**

132. (1) The substance of the plaint shall be stated to the defendant and he shall be asked if he has any cause to show why an order should not be made against him.

(2) If he thereupon admits the truth of the plaint and does not show sufficient cause why an order should not be made against him, the Court shall, after hearing such evidence as it thinks fit with respect to the subject-matter of the plaint, make an order against him accordingly.

#### **Proceedings when facts not admitted**

133. If the defendant does not admit the truth of the plaint and has filed a notice of intention to defend as provided in section 131 or has been granted leave under that section to defend the action, the Court shall proceed —

- (a) to hear the plaintiff and such witnesses as are examined on his behalf, and such other evidence as is adduced in support of the plaint;
- (b) to hear the defendant and such witnesses as are examined on his behalf, and such other evidence as is adduced in his defence; and
- (c) to hear such witnesses as the plaintiff examines in reply, if any evidence has been given on behalf of the defendant.

#### **Regulation of proceedings**

134. (1) The defendant or his counsel, solicitor or agent may address the Court after all the evidence for the plaintiff and the evidence (if any) for the defendant and the plaintiff in reply have been given and the plaintiff or his counsel, solicitor or agent shall have a closing address.

(2) Where the defendant begins, the plaintiff or his counsel, solicitor or agent may address the Court after all the evidence for the defendant and the plaintiff have been given and the defendant or his counsel, solicitor or agent shall have a closing address.

**Proceedings where defendant does not appear**

**135.** Where the defendant in a plaint —

- (a) does not appear at the time and place appointed in the summons or at the time to which the hearing of the summons was adjourned or postponed (as the case may be); or
- (b) has not filed a notice of intention to defend as provided in section 131 or been granted leave under that section to defend the action and does not admit the truth of the plaint,

and it appears to the Court, on oath or affidavit, that the summons was duly served within the time prescribed by section 124 for the service of the summons or that an order for substituted or other service or for the substitution for service of notice by advertisement or otherwise was duly complied with and sufficient grounds are not shown for an adjournment, the Court may proceed *ex parte* to hear and determine the plaint or may adjourn the hearing to a future day.

**Adjournment or dismissal in absence of plaintiff**

**136.** Where, at the time and place appointed, the defendant attends in obedience to the summons in that behalf served upon him, but the plaintiff does not appear by himself, his counsel, solicitor or agent, the Court shall either dismiss the plaint and hear and determine the defendant's set-off if he has given notice of set-off, or, if it thinks proper, shall adjourn the hearing or further hearing of the plaint and set-off to some other day upon such terms as it thinks fit.

**Statement of defence and evidence in certain cases to be taken in writing**

**137. (1)** At the request of any party to be made before any evidence is given, the Court shall, in every case where the defendant is required to give and gives a statement of his defence and the points on which he relies, cause the statement and points to be recorded in accordance with section 158, and the Court shall preserve the record.

**(2)** The Court may, if it thinks fit, in any case cause the exhibits put in evidence to be marked so as to be thereafter clearly identified as those exhibits, and shall cause the Clerk to make and preserve a list of the exhibits so marked.

**(3)** The Court may, if it thinks fit, order the exhibits or any of them to be retained by the Clerk until the further order of the Court.

**(4)** Upon any appeal from an order of the Court, it shall be deemed, if the statement and points were recorded, that no other defence and points were relied on at the hearing, and, if the evidence was recorded and the exhibits marked, that no evidence other than that so recorded was given at the hearing, and that no exhibits other than those so marked or mentioned in the list were put in evidence at the hearing.

**Court to decide case**

**138.** The Court, having heard what each party has to say and the evidence adduced by each, shall consider and determine the whole matter, and shall either make an order against the defendant or dismiss the plaint, or make an order against the plaintiff or dismiss the set-off, as the case may be.



**Plaintiff may discontinue in certain cases**

**139.** Upon the hearing of a plaint or set-off, the plaintiff, or, in the case of set-off, the defendant, in order to avoid a dismissal of the plaint or set-off, as the case may be, may, upon the immediate payment to the defendant or plaintiff, as the case may be, of such reasonable costs as are fixed by the Court, withdraw or discontinue the plaint or set-off before it is determined, and thereupon the plaint or set-off shall not be dismissed, and the plaintiff or defendant, as the case may be, may thereupon respectively sue afresh in respect of the same matter.

**Jurisdiction in case of stranger about to leave Territory**

**140.** If any person complains on oath to a Magistrate that he has a cause of action, whether it did or did not arise within the Territory, which, if it arose in the Territory, would be cognisable by the Court against any other person for any debt or damages of not more than \$10,000 and that that person does not usually reside in the Territory, and is about to leave the Territory without paying the debt or satisfying the damages, the Court may hear and determine the matter of the plaint in a summary way, and may make an order for the payment of the debt, or so much of the debt as appears to be due, or of any sum in the way of damages not exceeding that amount.

**One of several persons liable may be sued**

**141. (1)** Where a plaintiff has any demand recoverable under this Act against 2 or more persons jointly answerable, it is sufficient if any of those persons is served with process.

**(2)** An order may be made and enforced against the person so served notwithstanding that others jointly liable have not been served or sued or are not in the Territory.

**(3)** A person against whom such an order has been made and who has satisfied the whole or a part of the order is entitled to demand and recover contribution from any other person jointly liable.

**(4)** The process and order does not prevent the plaintiff from afterwards proceeding in respect of the demand against the other persons jointly liable if the order is not satisfied provided that the plaintiff does not obtain in all more than the amount recovered by the order.

**Determination of Court final**

**142.** When a plaint or set-off for a civil claim has been heard and determined by the Court, an action is not maintainable in any other Court in respect of the claim.

**Special defences to be notified to plaintiff**

**143.** The defendant in any plaint shall not, without the permission of the Court, be allowed to set-off any debt or demand claimed or recoverable by him from the plaintiff, or to set up by way of defence and to claim and have the benefit of illegality, infancy, the Statute of Frauds, a Statute of Limitations or his discharge under any law relating to bankrupts or insolvent debtors or be allowed to plead justification in any action of tort unless a notice of intention to defend the action is filed as provided in section 131 and it is stated in the notice that the defendant sets up such a defence.

**Proceedings where defendant's set-off exceeds plaintiff's claim**

**144. (1)** In a plaint in which the defendant is allowed to set-off any debt or demand claimed or recoverable by him from the plaintiff, the defendant may, subject to subsection (2), recover in the plaint the amount (if any) by which the debt or demand so set-off exceeds the debt or demand claimed and proved by the plaintiff, and shall have an order for the amount accordingly.

**(2)** Where a debt or demand so set-off exceeds the maximum amount in respect of which the Court has jurisdiction, the defendant may abandon the excess.

**(3)** Where the defendant does not abandon the excess and the Court is satisfied that the set-off is claimed in good faith, the Court shall not make any order on the plaint.

*Division 3 — Default Summonses***Default summons**

**145.** Notwithstanding anything contained in this Act, upon a plaint made in respect of any debt or liquidated demand with or without interest the Magistrate or Clerk before whom the plaint is made, instead of issuing a summons to the defendant in the ordinary form, shall, if so required by the person making the plaint, and subject to the provisions of this Division, issue a summons to the defendant to be called a “Default Summons”.

**Service of default summons**

**146. (1)** A default summons issued under the provisions of this Division shall be in accordance with Form 9 in the Third Schedule or to the like effect.

**(2)** Subject to subsection (3), a default summons or duplicate of a default summons shall be served personally on the defendant.

**(3)** Where a Magistrate is satisfied by affidavit that reasonable efforts have been made to effect personal service on the defendant and that the defendant wilfully evades service, the Magistrate may make an order dispensing with personal service and prescribing such service as he thinks fit.

**Grounds of defence to be in writing lodged with the Clerk**

**147. (1)** In an action where a default summons has been issued, the defendant shall —

- (a)** where the default summons was served in the Territory, within 10 days after personal service on him of the summons, or, where personal service has not been effected, within 14 days after the service prescribed by a Magistrate; or
- (b)** where the default summons was served outside the Territory, within 60 days after personal service on him of the summons, or, where personal service has not been effected, within 60 days after the service prescribed by a Magistrate,

file in duplicate with the Clerk notice of the grounds of defence to the action in writing in accordance with Form 10 in the Third Schedule, signed by the defendant or his solicitor or agent, together with an affidavit by the defendant verifying the notice of grounds of defence.

(2) The Clerk shall forthwith furnish the grounds of defence so filed to the plaintiff or his solicitor or agent by posting the notice to or by leaving it at his residence or usual place of abode or business.

(3) Where the defendant does not, within the time specified in subsection (1), file notice of the grounds of defence and an affidavit in accordance with that subsection, the plaintiff may, within 3 months after the expiration of the time so specified, upon filing an affidavit of service and an account setting out particulars of his claim verified by the affidavit of the plaintiff, his solicitor or agent, and, where the default summons was served outside the Territory, after obtaining an order for leave to proceed in the action, have judgment entered by the Court or the Clerk against the defendant for the amount of the claim together with costs as prescribed by rules or Regulations under this Act.

(4) Where the default summons was served outside the Territory, the Court shall not grant leave to proceed in the action unless the plaintiff proves orally or by affidavit that —

- (a) the debt or the demand sued for arose within the Territory; or
- (b) the defendant has given an engagement or promise in writing to pay the debt or sum at a specified place in the Territory.

(5) Where judgment has been entered under subsection (3), the Court may, on the application of the defendant, direct that the amount of the judgment (including costs) be paid at such times, and by such instalments, as it thinks fit.

### **Trial**

**148.** (1) When the defendant has filed the —

- (a) prescribed notice of grounds of defence; and
- (b) affidavit,

within the time prescribed by subsection 147(1), the Clerk shall set the action down for trial at the next sitting of the Court.

(1A) Where, under subsection (1), an action is set down for trial at a sitting of the Court which is less than 4 clear days after the day on which notice of grounds of defence was filed, the hearing of that action at that sitting shall not proceed, except with the consent of all parties to the action, but shall be adjourned.

(2) At the trial the defendant shall not, except with the consent of the plaintiff, or by leave of the Court, set up a ground of defence not included in the notice and verified by affidavit.

(3) The defendant may, at any time before judgment and after the expiration of the time prescribed by subsection 147(1), file with the Clerk the prescribed notice of grounds of defence and affidavit, and, with the consent in writing of the plaintiff or by leave of the Court, may be let in to defend.

**PART 6 — HEARING***Division 1 — General***Open Court**

**149. (1)** Subject to this section and to section 246A, the room or place in which the Court sits to hear and determine an information or plaint shall be deemed an open and public Court, to which all persons may have access so far as it can conveniently contain them.

**(2)** Where, in the opinion of the Court, the interests of public morality require that all or any persons should be excluded from the Court, the Court may exclude those persons accordingly.

**(3)** The Court shall not exclude from the Court the counsel, solicitor or agent for the defendant.

**Exclusion of strangers**

**150.** The room or place in which the Court takes the examinations and statements of persons charged with indictable offences for the purpose of committal for trial, and the depositions of the witnesses for that purpose, shall be deemed not to be an open Court, and the Court may, if it appears to it that it is in the interest of justice to do so, order that a person shall not be in that room or place without its permission.

**Conduct of case**

**151. (1)** The informant or plaintiff may himself or by his counsel, solicitor or agent conduct his case and may examine and cross-examine the witnesses giving evidence for or against him and may, if the defendant gives any evidence or examines any witness as to any matter other than as to general character, call and examine witnesses in reply.

**(2)** The defendant may himself or by his counsel, solicitor or agent make full answer and defence and may give evidence himself and may examine and cross-examine the witnesses giving evidence for or against him respectively.

**Where both parties present Court to hear case**

**152.** If both parties appear either personally or by their respective counsel, solicitors or agents, the Court shall proceed to hear and determine the information or plaint.

*Division 2 — Evidence***Examination to be on oath**

**153. (1)** A person appearing to give evidence shall be examined on oath.

**(2)** The Court may administer or cause to be administered to a person so appearing the usual or other lawful oath.

**(3)** It is not necessary to administer an oath to a person who appears solely for the purpose of producing documents.

**Power to order witnesses out of Court**

**154. (1)** The Court may, if it thinks fit, at any time during the hearing, order all witnesses, other than the plaintiff and the defendant and the witnesses under examination, to leave the Court and remain outside and beyond the hearing of the Court until required to give evidence.

**(2)** A witness who wilfully disobeys any such order is guilty of a contempt of court.

**Husband or wife of plaintiff or defendant to be competent witness in civil proceedings**

**155.** Upon a plaint the plaintiff, or the husband or wife of the plaintiff, and the defendant, or the husband or wife of the defendant, are competent to give evidence.

**Competence of defendant and spouse in criminal proceedings**

**156. (1)** An accused person, and the husband or wife of an accused person, in a criminal proceeding are competent, but not compellable, to give evidence in that proceeding.

**(2)** An accused person in a criminal proceeding is not liable to be called as a witness on behalf of the prosecution in that proceeding.

**(3)** Neither an accused person, nor the husband or wife of an accused person, in a criminal proceeding is liable, without the leave of the Court, to be questioned on cross-examination in that proceeding as to his or her previous character or antecedents.

**Proof of exceptions, etc**

**157.** Where a person is charged before the Court with an offence against a law in force in the Territory, any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany the description of the offence in the provision of the law creating the offence, may be proved by the person charged, but need not be specified or negatived in the information, and, if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant.

**Mode of taking evidence**

**158. (1)** Subject to subsections (2) to (9), the depositions of a witness —

- (a) shall be recorded by being taken down in writing;
- (b) shall be read over to the witness; and
- (c) shall be signed by the witness and the Magistrate constituting the Court.

**(2)** The Court may direct that the depositions of a witness be recorded by means of shorthand, stenotype machine, sound-recording apparatus or other means.

**(3)** Where the depositions of a witness are recorded by any of the means specified in subsection (2), the depositions —

- (a) shall subsequently be reduced to writing and the transcript certified as provided by this section; and
- (b) need not be read over to the witness or be signed by the witness and the Magistrate.

(4) Where the Court has directed that the depositions of a witness be recorded by one of the means specified in subsection (2), the Clerk shall make a notation of the direction upon the transcript of the depositions as so recorded.

(5) The Clerk shall cause the transcript of the depositions of a witness recorded by one of the means specified in subsection (2) to be prepared in triplicate, either during the continuance of the hearing or as soon as practicable after the conclusion of the hearing.

(6) A transcript of the depositions of a witness prepared in pursuance of subsection (5) shall be certified as correct by the person making the transcript.

(7) Upon lodgment with the Clerk of a notice of intention to appeal to the Supreme Court, the Clerk shall, where the depositions were recorded by one of the means specified in subsection (2), transmit the transcript of the depositions to the Registrar.

(8) Depositions of witnesses, recorded by any of the means specified in subsection (2), are records of the Court and the records of those depositions shall be in the custody of the Clerk.

(9) Where upon the hearing of a plaintiff, the amount claimed or the value of the property, civil right or other matter at issue is less than \$100, the depositions of the witnesses shall not be recorded.

#### **Power of Magistrate to summon witnesses to attend and give evidence**

**159.** If it is made to appear to a Magistrate that a person is likely to give material evidence, and will not voluntarily appear for the purpose of being examined as a witness at the hearing of an information or plaintiff, the Magistrate shall issue his summons to that person, requiring him to be and appear at a time and place mentioned in the summons before the Court to testify what he knows concerning the matter of the information or plaintiff.

#### **Service, etc of summons on witness**

**160.** A summons to a witness shall be served, and proof of service may be given, in the same manner as provided in section 47 in the case of a summons to a defendant.

#### **Warrant to attend**

**161. (1)** If a person summoned as a witness refuses or neglects to appear at the time and place appointed by the summons, and no just excuse is offered for the refusal or neglect, then (after proof upon oath that the summons was duly served upon that person, and that a reasonable sum was paid or tendered to him for his costs and expenses of attendance) the Court may then and there impose upon him in his absence a penalty not exceeding \$40, which may be recovered in the same manner as penalties imposed upon a summary conviction as provided in this Act.

**(2)** The Court may also issue its warrant to bring and have that person, at a time and place to be mentioned in the warrant, before the Court so to testify.

#### **Warrant in the first instance**

**162.** If a Magistrate is satisfied by evidence upon oath that it is probable that a person whose evidence is desired will not attend to give evidence without being compelled to do so, then, instead of issuing a summons, he may issue a warrant in the first instance.

**Refusal of witness to be examined**

**163. (1)** Where a person —

- (a) appears to give evidence or to produce a document, either in obedience to a summons or by virtue of a warrant; or
- (b) being present, is orally required by the Court to give evidence or produce a document,

and that person —

- (c) without lawful excuse, refuses to be examined on oath touching the matter of the information or plaint;
- (d) refuses to take the oath;
- (e) having taken the oath, refuses, without lawful excuse, to answer any question concerning the matter that is put to him; or
- (f) refuses or neglects to produce a document mentioned in the summons or warrant or orally required to be produced (without offering sufficient excuse for any such refusal or neglect),

the Court may adjourn the proceedings for any period not exceeding 8 clear days, and may in the meantime by warrant commit that person to gaol or to a lock-up.

**(2)** If that person, upon being brought up on the adjourned hearing, again so refuses or neglects, the Court, if it thinks fit, may again adjourn the proceedings and commit the person for the like period, and so again from time to time until he consents to be sworn or to give evidence or to produce the documents.

**(3)** The Court shall not commit a person to a gaol or lock-up under this section for periods exceeding, in the aggregate, one month.

**Production of documents before Magistrate**

**164. (1)** Where a Magistrate has authority to summon any person as a witness, he shall have the like authority to require and compel him to bring and produce, for the purposes of evidence, all documents and writings in his possession or power, and to proceed against him, in case of neglect or refusal so to do, in the same manner as in case of neglect or refusal to attend or refusal to be examined.

**(2)** A person is not bound to produce a document or writing that is not specified or sufficiently described in the summons or that he would not be bound to produce upon a subpoena duces tecum in the Supreme Court.

**Person about to leave Territory may be ordered to be examined or produce documents**

**165.** Where, by evidence on oath, a Magistrate is satisfied that any person is able to give material evidence or to produce relevant or material documents relating to an information or plaint pending before a Court, and that that person is likely to be absent from the Territory when the case comes on for hearing, the Magistrate may, on the application of any party, order that the evidence of that person be taken or the documents be produced before him, at any time before the hearing, in the same manner as the evidence would be taken or the documents be produced at the hearing, and after reasonable notice of the intended examination or production is given to the other party.

**Witnesses' rights and liabilities**

**166.** Upon service on any person of an order in pursuance of section 165, together with the payment or tender of a reasonable sum for expenses, that person shall attend at the time and place appointed by the order, and shall have all the rights and liabilities that he would have if he were duly summoned to appear to give evidence or to produce documents at the hearing.

**Depositions to be recorded and delivered to the Clerk**

**167. (1)** The depositions of a person upon whom an order has been served in pursuance of section 165 shall be recorded in accordance with the provisions of section 158 and the depositions and any documents produced shall be delivered to the Clerk.

**(2)** Where documents are produced by a person not giving evidence, the documents shall, on delivery to the Clerk, be accompanied by a certificate signed by the Magistrate stating the name of the person producing them.

**(3)** Where the Court is satisfied that the person who made the depositions is not in the Territory, his depositions may be read by any party.

**(4)** Any documents so delivered to the Clerk may, subject to all just exceptions, be put in at the hearing as if produced at the hearing by the person producing them.

*Division 3 — Adjournment of Proceedings***Court may adjourn cases**

**168.** Where all the cases have not been heard and determined at any sitting of the Court, the Court may adjourn the cases remaining unheard or undetermined, either to the next day appointed for the holding of the Court or to such other time as it thinks fit.

**Particular cases may be adjourned**

**169. (1)** Where, before or during the hearing or further hearing of any information or plaint, it appears advisable, the Court may, in its discretion, adjourn the hearing or further hearing to a certain time and place to be then appointed and stated in the presence and hearing of the parties or their respective counsel, solicitors or agents.

**(2)** In the case of an information, the Court may, in the meantime, suffer the defendant to go at large or commit him to gaol or a place of security, or to such other safe custody as the Court thinks fit, or may discharge him upon his entering into a recognisance for a reasonable amount, with or without sureties at the discretion of the Court, conditioned for his appearance at the time and place to which the hearing or further hearing is adjourned.



**Proceedings when either party is not present at adjourned hearing**

**170.** If, at the time and place to which the hearing or further hearing is so adjourned, either or both of the parties do not appear personally or by his or their counsel, solicitors or agents, the Court may proceed to the hearing or further hearing as if the party or parties were present, or, if the informant or plaintiff does not appear, the Court may dismiss the information or plaint with or without costs as to the Court appears just.

**Proceedings when both parties are present at adjourned hearing**

**171.** If, at the time and place to which the hearing or further hearing is so adjourned, the parties appear personally or by their respective counsel, solicitors or agents, the Court may, subject to the provisions of this Act, proceed with the further hearing.

**Witnesses to attend adjourned sittings**

**172.** All persons whose attendance has been required by summons in any cases that have been adjourned or postponed shall attend at the time and place to which the case has been adjourned or postponed without the issue or service of any further summons, but shall nevertheless be entitled to their additional expenses for so attending.

**Postponement of hearing**

**173.** If, on the return of any summons or at any adjournment of the hearing or at the time to which the hearing is postponed, the Chief Magistrate is not present, or 3 Magistrates (other than the Chief Magistrate) are not present, the Clerk may, and after the lapse of an hour, at the request of the plaintiff or informant, shall, postpone the hearing until the next day on which the Court will be held at the place mentioned in the summons or to which the case has been so adjourned.

**PART 7 — RECORDS OF CONVICTIONS, ORDERS, ETC****Minute of decision to be made and served on defendant**

**174. (1)** Where the Court convicts or makes an order against a defendant, a minute or memorandum of the conviction or order shall be made and signed by the Magistrate constituting the Court.

**(2)** The minute does not form part of the warrant of commitment or of execution.

**(3)** A document purporting to be a copy of the minute or memorandum signed by the Clerk is evidence in all courts of law of the making of the conviction or order.

**Formal convictions and orders**

**175. (1)** Subject to subsection (2), the Court shall afterwards draw up the conviction or order in proper form and cause it to be lodged with the Clerk, who shall file it among the records of the Court.

**(2)** It is not necessary for the Court formally to draw up a conviction, order or other record of a decision unless it is requested by a party to the proceedings for the purpose of an appeal against the decision or required for the purpose of a return to a writ of habeas corpus or other writ from the Supreme Court.

**Proceedings in case of dismissal**

**176. (1)** If the Court dismisses the information, plaint or set-off, the Court shall make an order of dismissal, and shall, on application, give the defendant or plaintiff, as the case may be, a certificate of the order signed by the Chief Magistrate, the presiding Magistrate (not being the Chief Magistrate) or the Clerk.

**(2)** The certificate, without further proof, shall, on its production be a bar to any other information, plaint or legal proceeding in any Court (other than proceedings on appeal) for the same matters respectively against the same party.

**Copies of proceedings in summary cases**

**177.** Where a conviction or order is made or an information or a plaint is dismissed by the Court, all parties interested therein shall be entitled to demand and have copies of the information or plaint and depositions, and of the conviction or order, on payment to the Clerk of the amount prescribed.

**Imprisonment in first instance**

**178.** Where the Court upon a conviction sentences the defendant to be imprisoned with or without hard labour, it shall issue its warrant of commitment accordingly.

**Imprisonment for a subsequent offence**

**179. (1)** Where the Court, upon making a conviction or order for an offence punishable summarily, sentences the defendant to be imprisoned, and the defendant has previously been adjudged to be imprisoned upon a conviction or order for any other offence (whether an indictable offence or not) or breach of duty, or is adjudged at the Court to be imprisoned for any other offence, the Court may, if it thinks fit (whether the defendant is actually undergoing imprisonment or not), adjudge that the imprisonment for the subsequent offence shall commence at the expiration of the term of imprisonment which the defendant is then undergoing, or liable to undergo, or of any term of imprisonment to which he is sentenced by the Court.

**(2)** Subject to subsection (1), every term of imprisonment imposed by the Court under this Act shall commence to run from the time when the defendant is first imprisoned under the warrant of commitment.

**PART 7A — ENFORCEMENT OF JUDGEMENTS***Division 1 — Preliminary***Interpretation**

**180. (1)** In this Part, unless the contrary intention appears —

“account” includes —

- (a) a deposit account or withdrawable share account; and
  - (b) any record of deposit or subscription for withdrawable shares; and
  - (c) a loan account that has a credit balance,
- but does not include an account or record that is prescribed as exempt from the operation of this definition;

“bank” means a bank within the meaning of the *Banking Act 1959* of the Commonwealth;

“deposit taking institution” means a bank, investment fund or investment corporation;

“earnings” in relation to a person, means a sum payable to the person —

- (a) by way of wages or salary, including any fee, bonus, commission, overtime pay or other emolument payable in addition to wages or salary; or
- (b) by way of pension including —
  - (i) an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity; or
  - (ii) periodical payments in respect of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment; or
  - (iii) periodical payments in respect of compensation for the loss of wages or salary because of illness or injury,

but does not include a pension, benefit or allowance payable to the person under —

- (iv) the *Social Security Act 1991* of the Commonwealth; or
- (v) the *Veterans’ Entitlements Act 1986* of the Commonwealth; or
- (vi) the *Social Services Act 1980*;

“examination summons” means an examination summons issued under Subdivision 2 of Division 3;

“fine” means a monetary penalty imposed on an offender by the Court in criminal proceedings for an offence and includes —

- (a) any costs ordered to be paid by the offender in connection with the proceedings; and
- (b) any amount ordered to be paid in connection with or as a result of the offence, if the order is of a kind prescribed for the purposes of this definition,

but does not include any other amount of money ordered to be paid in connection with or as a result of the offence;

“garnishee” means the person to whom a garnishee order is directed;

“garnishee order” means an order under this Part attaching earnings or debts other than earnings for the purpose of satisfying a judgement debt;

“instalment order” means an order under this Part providing that a judgement debtor will pay a judgement debt by such instalments at such times as are specified in the order;

“judgement” includes —

- (a) an order of the Court for the payment of money, whether as costs or otherwise; and
- (b) a fine;

“judgement creditor” means a person in whose favour a judgement is given and, in respect of a fine, means the Administration;

“judgement debt” includes —

- (a) an amount ordered by the Court to be paid, whether as costs or otherwise; and
- (b) a fine;

“judgement debtor” means a person against whom a judgement is given; and

“writ of execution” means a writ of execution issued under this Part.

**(2)** A reference in this Part —

- (a) to the giving of a judgement will be taken to include a reference to the making of an order;
- (b) to a debt due or accruing will be taken to include a reference to debt that will become due and payable;
- (c) to a form by number will be taken to include a reference to a form so numbered approved by the Minister.

### **Exercise of powers**

**181.** (1) The Court may exercise or perform a power or function of the Clerk under this Part.

(2) Despite any other provision of this Part, the Court or Clerk may exercise any power under this Part in respect of a judgement debt that is a fine without reference to a judgement creditor.

### **Costs**

**182.** The Court or Clerk may, if of the opinion that a party has acted unreasonably in proceedings under this Part, order the party to pay —

- (a) the costs, or part of the costs, of another party; or
- (b) an amount that the Court or Clerk thinks fit for the expenses of another party,

incurred by reason of those proceedings.

### *Division 1A — Imprisonment*

### **Warrant of commitment**

**182A.** The Court may, following the conviction of a person, by warrant in accordance with form 80A, commit the person to prison in accordance with that conviction.

*Division 2 — Enforcement of Fines***Interpretation**

- 183.** In this Division unless the contrary intention appears —
- “licence” has the same meaning as in the *Traffic Act 2010*;
  - “enforcement fees” means prescribed fees imposed in connection with proceedings under this Division;
  - “offender” means an offender who is a natural person; and
  - “recognised licence” has the same meaning as in the *Traffic Act 2010*.

**Licence suspension notices**

- 184. (1)** If —
- (a) a fine has not been paid; and
  - (b) more than 28 days has passed since the fine was imposed; and
  - (c) any application for an instalment order, garnishee order or writ of execution in respect of the fine has been determined; and
  - (d) either —
    - (i) no instalment order, garnishee order or writ of execution is in operation in respect of the fine; or
    - (ii) an instalment order is in operation in respect of the fine but the offender on whom the fine was imposed is in breach of that order,

the Clerk may issue a licence suspension notice to the offender on whom the fine was imposed.

**(2)** A licence suspension notice —

- (a) must be in the prescribed form; and
- (b) must be served personally on the offender; and
- (c) operates immediately on being served on the offender; and
- (d) operates until it is cancelled.

**(3)** A licence suspension notice operates in respect of an offender in the following manner —

- (a) the operation in Norfolk Island of any recognised licence held by the offender, or that may be obtained by the offender, is suspended during the operation of the notice; and
- (b) the operation of any licence (other than a recognised licence) held by the offender, or that may be obtained by the offender, is suspended during the operation of the notice; and
- (c) a period of suspension of a licence under a licence suspension notice operates concurrently with any other period of licence suspension or disqualification operating in respect of the licence.

**(4) The Clerk —**

- (a) may cancel a licence suspension notice for any good reason; and
- (b) must immediately cancel a licence suspension notice if —
  - (i) the fine is paid in full; or
  - (ii) an instalment order, garnishee order or writ of execution is made in respect of the fine after the licence suspension notice is issued; and
- (c) must notify the offender in writing of that cancellation and the date and time from which it operates.

**(5)** The Clerk must notify the Registrar of Motor Vehicles appointed under section 5 of the *Traffic Act 2010* of —

- (a) the date and time from which a licence suspension notice operates; and
- (b) the date and time from which the cancellation of a licence suspension notice operates.

**Evidentiary — licence suspension notices**

**184A.** In any proceedings for an offence, evidence —

- (a) that a fine had not, at a particular time, been paid; or
- (b) that, at a particular time, no application for an instalment order, garnishee order, or writ of execution in respect of a fine remained undetermined; or
- (c) that, at a particular time, no instalment order, garnishee order or writ of execution was in operation in respect of a fine; or
- (d) that, at a particular time, an instalment order, garnishee order or writ of execution was in operation in respect of a fine but the offender on whom the fine was imposed was in breach of that order; or
- (e) that, at a particular time, a licence suspension notice had been issued under section 184; or
- (f) of the details of a licence suspension notice and of the matter to which it relates; or
- (g) that a licence suspension notice had not, at a particular time, been cancelled; or
- (h) that a document issued under this Act was served on a person at a particular time in accordance with section 184; or
- (i) of any matter relevant to the service of a licence suspension notice,

given by certificate signed, or purporting to be signed, by the Clerk is admissible as evidence of those matters.

**Warrant of commitment****184B. (1)** If —

- (a) a fine has been imposed on a natural person; and
- (b) the fine has not been paid in full; and
- (c) more than 28 days has passed since the fine was imposed; and
- (d) any application for an instalment order, garnishee order or writ of execution in respect of the fine has been determined; and
- (e) either —
  - (i) no instalment order, garnishee order or writ of execution is in operation in respect of the fine; or
  - (ii) an instalment order is in operation in respect of the fine but the offender on whom the fine was imposed is in breach of that order,

the Court may by warrant in accordance with form 80B, commit the person to prison for the period specified in the order.

**(2)** If —

- (a) the amount in respect of which the warrant was issued is paid in full; or
- (b) an instalment order, garnishee order or writ of execution is made in respect of the amount after the warrant of commitment is issued,

the Clerk must immediately cancel a warrant of commitment.

**(3)** If part of the amount in respect of which the warrant was issued is paid, the Clerk must immediately vary the warrant by reducing the period specified in the warrant by the same proportion that the amount paid bears to the amount in respect of which the warrant was issued.

*Division 3 — Enforcement of Judgements***SUBDIVISION 1 — GENERAL****Orders at time of judgement****185. (1)** The Court may, when giving judgement in proceedings —

- (a) make an instalment order in respect of a judgement debt ; or
- (b) make a garnishee order in respect of a judgement debt; or
- (c) make an order for the issue of an examination summons in respect of a judgement debt; or
- (d) make an order for the issue of a writ of execution in respect of a judgement debt ; or
- (e) adjourn the proceedings to a hearing before the Clerk.

**(2)** The Court may make an order under subsection (1) on the application (including oral application) of a party to the proceedings or of its own motion.

**(3)** On an adjournment under paragraph (1)(e), the Clerk may hear the judgement creditor and judgement debtor and make any of the orders specified in paragraphs (1)(a) to (d).

**Exercise of discretion by decision makers**

**186.** In considering whether to make an instalment order or a garnishee order, the Court or Clerk must have regard to —

- (a) the order, if any, preferred by the judgement debtor; and
- (b) in respect of an instalment order, the likelihood of the judgement debtor complying with that order; and
- (c) any other information that, in the opinion of the Court or Clerk is relevant or reliable; and
- (d) in determining the amount of an instalment to be paid under an instalment order or a garnishee order in respect of earnings, any matter ascertained under subsection (2).

**(2)** The Court or Clerk must, before making an instalment order or a garnishee order, endeavour to ascertain the property and financial circumstances of the judgement debtor.

**Manner in which orders under this Division operate to stay judgements and operation of other orders**

**187. (1)** An instalment order or garnishee order operates as a stay of enforcement of the judgement in respect of which it is made unless the Clerk or Court otherwise orders on application under Subdivision 6.

**(2)** An application for an instalment order in respect of a judgement debt operates —

- (a) to stay the enforcement of the judgement; and
- (b) to stay any writ of execution issued in respect of that judgement,

until the application is finally determined (including under section 199) unless the Clerk or Court otherwise orders on application under Subdivision 6.

**(3)** An application for an instalment order in respect of a judgement debt does not operate as a stay —

- (a) if the judgement debtor has made a previous application for an instalment order under subsection 198(1) in respect of that judgement; or
- (b) in respect of an instalment order or garnishee order that was made before the application,

unless the Clerk or Court otherwise orders on application under Subdivision 6.

**(4)** If —

- (a) an instalment order; and
- (b) a garnishee order attaching earnings,

are in force in relation to a judgement debt —

- (c) the execution of the garnishee order is, by force of this section, stayed until the Court or Clerk otherwise orders; and
- (d) if the judgement debt is satisfied before the stay on the garnishee order ceases to operate, the Clerk must promptly revoke the garnishee order.



**(5)** If —

- (a) the execution of a garnishee order in respect of a judgement debt is stayed under subsection (4); and
- (b) the instalment order ceases to be in force by virtue of subsection 202(1) before the judgement debt is satisfied,

the Clerk must, on the application of the judgement creditor in accordance with Subdivision 6 remove the stay of execution on the garnishee order.

**(6)** A bailiff must not sell any property seized under a writ of execution during the operation of a stay of that writ under this section.

## **SUBDIVISION 2 — EXAMINATION PROCEDURES**

### **Notice requiring financial information**

**188. (1)** If a judgement debt has not been satisfied, the Clerk may, (and must, if the judgement creditor so requires) issue a notice in accordance with Form 81, requiring the judgement debtor to answer the questions contained in the notice within 14 days after the day on which the notice is served on the judgement debtor.

**(2)** The judgement debtor must not make a false or misleading statement when responding to a notice referred to in subsection (1).

Penalty: 20 penalty units.

### **Issue of examination summons**

**189. (1)** If —

- (a) a judgement debt has not been satisfied; and
- (b) the judgement debtor has failed to comply with a notice issued under subsection 188(1) in respect of that judgement debt,

the Clerk may issue an examination summons in accordance with Form 82 directed to —

- (c) the judgement debtor; or
- (d) if the judgement debtor is a corporation—an officer or former officer of the corporation,

and, subject to subsections (3) and (4), must issue an examination summons on application by the judgement creditor under subsection (2).

**(2)** A judgement creditor may apply to the Clerk for the issue of an examination summons —

- (a) in accordance with Form 83; and
- (b) in respect of an application for an examination summons directed to an officer or former officer of a corporation, supported by an affidavit setting out evidence that the officer or former officer —
  - (i) is likely to have a sufficient knowledge of the affairs of the corporation to enable the officer to give such answers as might be required of a judgement debtor who is not a corporation, or a substantial part of those answers, at an examination; or

- (ii) is likely to have in the officer's possession or control any document or thing that tends to show the true position as to the property or financial circumstances of the corporation.

(3) The Clerk must not issue a further examination summons to a person in relation to a judgement debt if the person has complied with an examination summons in relation to that debt within the previous 3 months unless the Clerk is satisfied that —

- (a) the property or financial circumstances of the judgement debtor have significantly changed; or
- (b) additional relevant information has become available,

since that examination.

(4) An application for an examination summons referred to in subsection (3) must be supported by an affidavit setting out evidence of a matter referred to in paragraph (3)(a) or (b).

(5) An examination summons —

- (a) must require the person to whom it is directed to attend before the Clerk at the time and place specified in the summons to be orally examined about —
  - (i) the judgement debtor's property and other means of satisfying a judgement debt; and
  - (ii) the judgement debtor's general financial circumstances; and
- (b) may require the person to whom it is directed to produce to the Clerk any document or thing in that person's possession or control that tends to show the true position as to the judgement debtor's property or financial circumstances.

(6) An examination summons must be served personally on the person to whom it is directed not less than 14 days before the date on which the attendance of the person is required by the summons.

#### **Examination of judgement debtor**

**190.** (1) If a person attends before the Clerk for oral examination in compliance with a summons, the Clerk and the judgement creditor (if present) may orally examine the person —

- (a) about the judgement debtor's property and other means of satisfying the judgement debt; and
- (b) generally about the judgement debtor's financial circumstances.

(2) An examination —

- (a) must be taken on oath administered by the Clerk; and
- (b) may be conducted in open court or in chambers as the Clerk directs.

**Orders following examinations**

**191.** After examination of the judgement debtor, the Clerk may, of his or her own motion, or on application by the judgement creditor or judgement debtor —

- (a) make an instalment order in respect of a judgement debt; or
- (b) make a garnishee order in respect of a judgement debt; or
- (c) make an order varying or revoking an instalment order or garnishee order in force in relation to a judgement debt; or
- (d) issue a writ of execution in respect of a judgement debt.

**Failure to attend in answer to summons**

**192. (1)** If at the time set down (whether originally or on adjournment) for the examination of a person to whom an examination summons is directed —

- (a) the person fails to attend before the Clerk; and
- (b) there is proof —
  - (i) that the person has been served with the summons in accordance with section 189; or
  - (ii) if the examination has been adjourned—that the person has been notified of the date, time and place fixed for the examination; and
- (c) the judgement creditor so requests,

the Clerk must report in writing to the Court that the person has failed to attend.

**(2)** On receiving a report under subsection (1), the Court may —

- (a) authorise the Clerk to issue a warrant for the apprehension of the person to whom the examination summons was directed; or
- (b) adjourn the examination and order that the person attend before the Clerk at a time and place specified in the order,

and the Clerk must promptly serve the person with notice of the action taken by the Court.

**(3)** A warrant must —

- (a) be in accordance with Form 84; and
- (b) be signed by the Clerk; and
- (c) name, or otherwise describe, the person whose apprehension is required by the warrant; and
- (d) state briefly the reason for its issue; and
- (e) require the bailiff to apprehend the person named or described, if the person is within the Territory, and to bring that person before the Clerk to be examined.

**(4)** For the purposes of paragraph (2)(a) a bailiff —

- (a) may enter and search any premises where the bailiff suspects the person to be, using reasonable force if necessary; and
- (b) may require a police officer to aid the bailiff in the execution of the warrant.

**(5)** A warrant will continue in force until —

- (a) executed; or
- (b) revoked by order of the Court; or
- (c) the expiration of 3 months after the warrant is issued,

whichever occurs first.

**(6)** For the purposes of paragraph (4)(a), a warrant is executed when —

- (a) the person whose apprehension is required has been examined; or
- (b) the examination is adjourned to another day; or
- (c) the examination is struck out,

whichever occurs first.

#### **Examination after issue of warrant**

**193. (1)** If —

- (a) the person in respect of whom the issue of a warrant is authorised under section 192 —
  - (i) is brought before the Clerk under the warrant; or
  - (ii) otherwise attends before the Clerk by arrangement; and
- (b) the judgement creditor, having been notified of the date, time and place set down for the conduct of the examination, attends before the Court,

the Clerk and the judgement creditor (if present) may orally examine that person as to the matters referred to in section 190(1)(a) and (b).

**(2)** If the judgement creditor has been notified of the date, time and place set down for the conduct of an examination but does not attend the examination, the Court may strike out the examination.

#### **Refusal to be examined**

**194.** If a person attends, or is brought, before the Clerk for examination and the person —

- (a) refuses or fails, without reasonable excuse —
  - (i) to take an oath; or
  - (ii) to answer a question he or she is required by the Clerk to answer; or
  - (iii) to produce a document or thing he or she is required by the Clerk, or by a summons issued under section 189 to produce; or
- (b) gives false information,

the Clerk may adjourn the examination and refer the matter of the refusal, failure or giving of false information to the Court.

#### **Clerk may adjourn examination**

**195.** The Clerk may adjourn an examination at any time (whether before or after the time originally set down for the examination or to which it has already been adjourned).

**Report on certain examinations**

**196.** If a judgement creditor does not attend an examination of a person under this Subdivision in respect of the judgement debt in respect of which he or she is the judgement creditor, the Clerk must report to the judgement creditor the results of the examination and any order as soon as reasonably practicable.

**SUBDIVISION 3 — INSTALMENT ORDERS****Instalment orders by agreement**

**197. (1)** A judgement creditor and judgement debtor may agree in writing in accordance with Form 85 —

- (a) that the judgement debtor will pay the judgement creditor an agreed amount by specified instalments at specified times; or
- (b) that an instalment order in respect of a judgement debt should be revoked or varied in a specified manner.

**(2)** If an agreement in accordance with subsection (1) is filed, the Clerk must make an instalment order —

- (a) that the judgement debtor will pay the agreed amount by the instalments and at the times specified in the agreement; or
- (b) varying or revoking the instalment order in the manner specified in the agreement.

**Instalment orders on application of judgement debtor**

**198. (1)** A judgement debtor may apply to the Clerk in accordance with Form 86 for —

- (a) leave to pay a judgement debt, or the balance of a judgement debt, owing to a judgement creditor by such instalments payable at such times as are specified in the application; or
- (b) an order varying or revoking an instalment order in force in respect of a judgement debt,

(but if a writ of execution is in force in respect of the judgement debt, the judgement debtor is entitled to make only one such application in any period during which that writ is in force).

**(2)** An application must be supported by an affidavit (in duplicate) in accordance with Form 87 about —

- (a) in the case of an application under paragraph (1)(a) — the judgement debtor's property and financial circumstances; or
- (b) in the case of an application under paragraph (1)(b) — any change in the property or financial circumstances of the judgement debtor since the instalment order was made.

**(3)** The Clerk must consider an application made in accordance with this section and may make the order applied for.

**(4)** Before making an order under subsection (3), the Clerk may consult the judgement creditor (either orally or in writing) about the order that the Clerk proposes to make.

(5) A judgement creditor may file a notice objecting to an order made under subsection (3) within 14 days after the day on which the judgement creditor was served with notice of that order under section 203.

### **Hearing by Court**

**199.** (1) If —

- (a) the Clerk refuses to make an order on an application by the judgement debtor under subsection 198(1); or
- (b) the judgement creditor files a notice of objection under subsection 198(5);

the Clerk must —

- (c) set the application or objection down for hearing by the Court; and
- (d) notify the judgement debtor and judgement creditor of the date, time and place set down for the hearing.

(2) When undertaking a hearing for the purposes of paragraph (1)(c), the Court must hear the judgement creditor and judgement debtor, if they appear, and may make —

- (a) an instalment order in respect of the judgement debt ; or
- (b) a garnishee order in respect of the judgement debt; or
- (c) an order confirming, varying or revoking an instalment order or garnishee order in force in relation to the judgement debt; or
- (d) an order for the issue of a writ of execution in respect of the judgement debt against goods of the judgement debtor.

### **Judgement creditor may apply for variation or revocation**

**200.** (1) A judgement creditor may apply to the Clerk (in duplicate) in accordance with Form 86 for an order varying or revoking an instalment order in force in respect of the judgement debt on the ground that —

- (a) there has been a substantial increase in the property, or a substantial improvement in the financial circumstances, of the judgement debtor; or
- (b) at the time the order was made, material facts had been withheld from the Court or Clerk or material evidence before the Court or Clerk was false.

(2) An application under subsection (1) must be supported by an affidavit (in duplicate) setting out the facts sought to be relied on.

(3) Unless the Clerk otherwise orders, the judgement creditor must serve a sealed copy of the application and supporting affidavit on the judgement debtor by —

- (a) if the judgement debtor is a natural person —serving them on the judgement debtor personally; or
- (b) if the judgement debtor is a body corporate—leaving them at a registered office, principal place of business or principal office of the judgement debtor with a person who is apparently an officer or employee of the judgement debtor over the age of 16 years.

(4) The Clerk must consider an application made in accordance with this section and hear the judgement creditor and judgement debtor, if they appear, and may —

- (a) make an order confirming, varying or revoking the instalment order or any garnishee order in force in relation to the judgement debt; or
- (b) make a garnishee order in respect of the judgement debt; or
- (c) make an order for the issue of a writ of execution in respect of the judgement debt against goods of the judgement debtor.

#### **Payment to judgement creditor**

**201.** The Clerk must, as soon as reasonably practicable after receiving a payment from a judgement debtor under an instalment order, pay the amount received to the judgement creditor.

#### **Default**

**202.** If —

- (a) a judgement debtor fails to make a payment under an instalment order; and
- (b) the failure continues for 7 days after the day on which the payment was due,

the instalment order ceases to be in force and the judgement may be enforced for the balance of the judgement debt owing to the judgement creditor unless —

- (c) the Court otherwise orders; or
- (d) in the case of an instalment order made under subsection 197(2), the relevant agreement otherwise provides.

#### **Notice of instalment orders**

**203.** The Clerk must, on making an instalment order, promptly provide the judgement creditor with a copy of —

- (a) the order; and
- (b) any affidavit filed by the judgement debtor under subsection 198(2) in respect of the order.

### **SUBDIVISION 4 — GARNISHEE ORDERS**

#### **Application for garnishee order**

**204. (1)** The Clerk may, on application by a judgement creditor, make a garnishee order in respect of a judgement debt attaching —

- (a) earnings; or
- (b) debts other than earnings,

in the terms specified in the application.

**(2)** The application and supporting affidavit must be in accordance with Form 88.

**Making of garnishee order**

**205. (1)** The Clerk may refuse to make a garnishee order if —

- (a) by reason of the smallness of the judgement debt or the earnings to be attached; or
- (b) for any other reason,

the Clerk is of the opinion that the order should not be made.

**(2)** A garnishee order attaching earnings shall attach only that part of the earnings that exceeds the amount specified in the order.

**(3)** The judgement creditor must serve a copy of a garnishee order on the garnishee —

- (a) if the execution of a garnishee order is stayed, when the stay is lifted; or
- (b) in any other case, promptly after the order is made,

and must serve a copy of the order on the judgement debtor within 5 days after that service on the garnishee.

**(4)** A garnishee order comes into force as soon as it is served on the garnishee.

**(5)** Subject to this Subdivision, a garnishee order operates —

- (a) in the case of an order attaching earnings—to attach, to the extent of the amount specified in the order, any earnings payable by the garnishee to the judgement debtor from time to time until the amount so specified has been paid; or
- (b) in the case of an order attaching debts other than earnings—to attach, to the extent of the amount specified in the order, all debts that at the time of service are due or accruing from the garnishee to the judgement debtor (whether they were due and accruing at the time that the order was made or not).

**(6)** Only one garnishee order attaching earnings may be in force in respect of a judgement debt at any time.

**Form of garnishee order**

**206. (1)** A garnishee order must —

- (a) be in accordance with Form 89; and
- (b) specify the unpaid amount of the judgement debt owing to the judgement creditor; and
- (c) require the garnishee to pay to the Clerk the earnings or other debts attached or so much of those earnings or other debts as may be sufficient to satisfy the unpaid amount after deducting such amount (if any) as may be notified in writing to the garnishee by the judgement creditor or Clerk as having been paid or credited to the judgement creditor on account of the unpaid amount otherwise than under the order; and



- (d) include such particulars of the earnings or other debts to be attached as are —
  - (i) known to, or reasonably capable of being ascertained by, the judgement creditor; and
  - (ii) necessary to enable the garnishee to identify the earnings or other debts; and
- (e) state that the garnishee may apply for the variation or revocation of the order on the ground of exceptional hardship; and
- (f) state that the judgement debtor may apply for —
  - (i) if such an order is not already in force in respect of the judgement debt—an instalment order which, if made, will result in a stay of execution of any garnishee order attaching earnings; or
  - (ii) the variation or revocation of the garnishee order on the grounds of exceptional hardship.

### **Payments by garnishees**

**207. (1)** A garnishee must make payment under a garnishee order to the Clerk or, if the garnishee gives the Clerk and judgement creditor advance notice, to, or at the direction of, the judgement creditor.

**(2)** A garnishee under a garnishee order attaching earnings must make a payment within 14 days after the day on which the earnings are due for payment to the judgement debtor.

**(3)** A garnishee under a garnishee order attaching debts other than earnings must make a payment within 21 days after the day on which the order is served on the garnishee or the later date on which the debt is due for payment to the judgement debtor.

**(4)** If a garnishee order attaches a debt other than earnings that is due for payment after the expiration of the period of 21 days after the day on which the order is served on the garnishee, the garnishee must, before the expiration of that period, notify the judgement creditor of —

- (a) the date on which the debt is, or is likely to be, due for payment to the judgement debtor; and
- (b) if the amount of the debt is less than the unpaid amount of the judgement debt specified in the garnishee order, the amount of the debt.

**(5)** A person must not knowingly make a statement in a notice under subsection (4) that is false or misleading.

Penalty (Subsection (5)): 2 penalty units.

(6) An amount paid by, or recovered from, a garnishee under this Division —

- (a) will be taken to satisfy the judgement debt in respect of which the order is issued; and
- (b) constitutes a valid discharge to the garnishee as against the judgement debtor,

to the extent of the amount paid or recovered, despite —

- (c) the setting aside of the judgement; or
- (d) the setting aside, variation or revocation of the garnishee order.

#### **Application to vary or revoke a garnishee order**

**208.** (1) A judgement debtor or a garnishee may apply in accordance with Subdivision 6 for an order varying or revoking the garnishee order that is in force.

(2) A garnishee order may be varied on application under subsection (1) on the grounds that the order imposes exceptional hardship on the applicant or a member of the applicant's family.

#### **Judgement debtor subject to garnishee order may apply for instalment order**

**209.** (1) A judgement debtor may, if a garnishee order is in force in respect of a judgement debt, apply for leave to pay the judgement debt, or the balance of the judgement debt, by such instalments payable at such times as are specified in the application.

(2) An application must be made in accordance with Form 86 and must be supported by an affidavit (in duplicate) in accordance with Form 87 about the judgement debtor's property and financial circumstances.

#### **Determination of applications**

**210.** (1) On receiving an application under section 208 or 209, the Clerk must —

- (a) set the application down for hearing by the Court; and
- (b) notify the judgement debtor and garnishee of the date, time and place set down for the hearing; and
- (c) in the case of an application under section 209, give a copy of the supporting affidavit to the judgement creditor.

(2) When hearing an application under section 208 or 209, the Court must hear the judgement creditor and judgement debtor, if they appear, and may make —

- (a) an instalment order in respect of the judgement debt; or
- (b) an order varying or revoking the garnishee order; or
- (c) if the application relates to a garnishee order attaching earnings, and whether or not that order is varied or revoked—a garnishee order in respect of the judgement debt attaching debts other than earnings; or

- (d) if the application relates to a garnishee order attaching debts other than earnings, and whether or not that order is varied or revoked—a garnishee order in respect of the judgement debt attaching earnings; or
- (e) a writ of execution.

(3) The Clerk must serve a copy of any order made under this section on the judgement creditor and the judgement debtor.

**No debts due or accruing**

**211.** (1) If a garnishee reasonably believes that, at the time the garnishee order was served on the garnishee, there were no earnings or other debts due or accruing from the garnishee to the judgement debtor, the garnishee may serve on the judgement creditor and the Clerk an affidavit in accordance with Form 90 summarising the grounds on which that belief is based.

(2) A garnishee will not be subject to any action, liability, claim or demand in respect of a disclosure of information under subsection (1) if, in the circumstances, it was reasonable to have made the disclosure.

**Failure to comply with garnishee order**

**212.** (1) If a garnishee order has not been complied with, the judgement creditor may apply for the issue of a summons under subsection (2) by filing an affidavit in accordance with Form 91 sworn by the judgement creditor as to the non compliance of the garnishee.

(2) If an affidavit is filed under subsection (1), the Clerk may issue a summons in accordance with Form 92 requiring the garnishee to attend before the Court on a day and at a time specified in the summons to show cause why the garnishee should not comply with the garnishee order.

(3) At the time set down (whether originally or on adjournment) for a garnishee to attend to answer a summons under subsection (2), the Court may hear and determine any question in dispute concerning the liability of the garnishee to pay the earnings or other debts sought to be attached by the garnishee order and —

- (a) give judgement for the amount of those earnings or other debts or the unpaid amount of the judgement debt (whichever is the lesser) in favour of the judgement creditor against the garnishee; or
- (b) vary or revoke the garnishee order.

(4) The Court must not give judgement in the absence of a garnishee unless satisfied that —

- (a) the garnishee was duly served with the summons; and
- (b) if the hearing has been adjourned—the garnishee was notified of the date and time fixed for the garnishee to attend.

(5) The Court may refuse to give judgement under subsection (3)(a) —

- (a) by reason of the smallness of the judgement debt or of the earnings or other debts sought to be attached; or
- (b) for any other reason.

**Lien or claim of third party on debt**

**213. (1)** If, in proceedings under this Division it appears to the Court that a person other than the judgement debtor is, or claims to be, entitled to —

- (a) any money paid under a garnishee order; or
- (b) the earnings or other debts attached by the order; or
- (c) any charge or lien on, or interest in that money or those earnings or debts,

the Court may —

- (d) order that notice of the proceedings be given to that person; and
- (e) hear and determine the claim; and
- (f) give any judgement or make any order in respect of the claim (including an order barring the claim and an order for the payment into Court by the judgement creditor of money received under the garnishee order) that the Court thinks just.

**Excess paid by garnishee**

**214. (1)** If a judgement creditor receives an amount paid under a garnishee order in excess of the amount required to satisfy the judgement debt, the judgement creditor must promptly —

- (a) notify the garnishee and the judgement debtor of the excess payment; and
- (b) pay the excess to the garnishee or the judgement debtor.

Penalty: 10 penalty units.

**(2)** An excess amount referred to in subsection (1) may be recovered by the judgement debtor or the garnishee from the judgement creditor.

**Reduction of attached debt**

**215.** The Court may, if satisfied that a garnishee has been reasonably diligent in giving effect to a garnishee order that is in force, order that the earnings or other debts attached by that order be reduced to the extent of any payment of those earnings or debts by the garnishee to the judgement debtor.

**Deductions by garnishees**

**216. (1)** A garnishee may deduct from a payment under a garnishee order an amount (not exceeding 10% of the payment) for the reasonable expenses incurred by the garnishee in complying with the order.

**(2)** The garnishee must, when paying the balance of the payment due, provide the judgement creditor with a statement of —

- (a) the amount deducted under the garnishee order from the earnings of the judgement creditor; and
- (b) the amount deducted by the garnishee under subsection (1); and
- (c) the amount paid to the Clerk or to, or at the direction of, the judgement creditor.

(3) An amount retained under subsection (1) will be taken to have been paid to the judgement creditor on account of the unpaid amount of the judgement debt.

**Judgement debtor ceases employment**

**217. (1)** If —

- (a) a garnishee order attaching earnings is in force; and
- (b) the judgement debtor ceases to be employed by the garnishee, the judgement debtor and the garnishee must, within 21 days after that cessation of employment, give the Clerk written notice of —
  - (c) the cessation and the date from which it operates; and
  - (d) in the case of the judgement debtor, if the judgement debtor has a new employer —
    - (i) the name and address of the new employer; and
    - (ii) the place of the new employment; and
    - (iii) the amount of his or her earnings from the new employer.

Penalty: 10 penalty units.

**(2)** The Clerk —

- (a) must notify the judgement creditor in writing of the contents of a notice received under subsection (1); and
- (b) may, if no written objection is received from the judgement creditor or the judgement debtor within a reasonable time, of the Clerk's own motion revoke the existing garnishee order and make a further garnishee order in respect of the judgement debt directed to the judgement debtor's new employer attaching the judgement debtor's earnings from that employer.

**Prejudice to employee**

**218. (1)** An employer must not dismiss an employee, or otherwise prejudice an employee in his or her employment, because of the making of a garnishee order attaching the earnings of the employee.

Penalty: 50 penalty units.

**(2)** If —

- (a) an employee is dismissed or prejudiced within 6 months after a garnishee order is made; and
- (b) all elements of the offence other than the reason for the employer's action are proved,

the onus of proving that the dismissal or prejudice was not because of the garnishee order is on the employer.

(3) A conviction under subsection (1) does not limit, restrict or otherwise effect any obligation of the garnishee in relation to the judgement debtor or any right or remedy of the judgement debtor against the garnishee under any other law in force in the Territory.

**Bank accounts**

**219. (1)** For the purpose of determining whether an amount standing to the credit of a judgement debtor in a deposit-taking institution is attachable as a debt due or accruing to the judgement debtor, a condition —

- (a) that a demand is required to be made before any money or share is withdrawn; or
- (b) relating to the manner in which or the place at which a demand is to be made; or
- (c) that a passbook, receipt or other document or thing is required to be produced before any money or share is withdrawn; or
- (d) that notice is required before any money or share is withdrawn; or
- (e) that any money or share may not be withdrawn for a specified period; or
- (f) prescribing a minimum amount in respect of a withdrawal; or
- (g) that a minimum balance is required to be maintained in the account; or
- (h) relating to the account prescribed by regulations for the purposes of this section,

will be disregarded.

**(2)** If an amount standing to the credit of a judgement debtor in an account with a deposit-taking institution is attached —

- (a) the garnishee order will be taken to operate as a notice of withdrawal or demand for payment under the contract between the garnishee and the judgement debtor in respect of that account; and
- (b) that notice or demand is, while the order remains in force, irrevocable; and
- (c) that notice or demand will be taken to have been received by the garnishee —
  - (i) on the date of service of the order; or
  - (ii) if the judgement debtor is not entitled under the contract to give notice of withdrawal, or to make a demand for payment, on the date of service of the order — on the date on which the judgement debtor would, but for the order, have become so entitled.

**Direct crediting — veterans' pensions**

**220. (1)** If —

- (a) a judgement debtor has an account with a deposit-taking institution; and
- (b) instalments of a pension payable to the judgement debtor (whether on the judgement debtor's own behalf or not) are being paid into the account; and

- (c) a garnishee order attaching debts other than earnings is in force in respect of the account,

the garnishee order does not attach to the saved amount (if any).

(2) In this section —

“saved amount” means the difference between —

- (a) the total amount of the pension payable to the judgement debtor that has been paid to the credit of the account during the 4 week period immediately before the garnishee order came into force; and
- (b) the total amount withdrawn from the account during the same 4 week period.

(3) This section applies to an account whether it is maintained by the judgement debtor —

- (a) alone; or
- (b) jointly with another person; or
- (c) in common with another person.

(4) In this section —

“pension” means a pension, benefit or allowance payable under the *Veterans’ Entitlements Act 1986* of the Commonwealth.

....

## **SUBDIVISION 5 — EXECUTION AGAINST PERSONAL PROPERTY**

### **General restriction on issue of writ of execution**

**220B.** (1) The Court must not make an order for the issue of a writ of execution in respect of a judgement debt if an instalment order or garnishee order has been made in respect of the judgement debt and has not expired or been revoked.

(2) The Court must not make an order for the issue of a writ of execution in respect of a judgement debt unless —

- (a) the judgement creditor consents to the making of the order; and
- (b) the Court is satisfied that, having regard to the amount of the debt outstanding and the interests of the judgement debtor and judgement creditor, it would be appropriate to make an instalment order or garnishee order in relation to the judgement debt.

**Issue of writs of execution**

**220C.** (1) Subject to section 220D, the Clerk may, on application by a judgement creditor, issue a writ of execution in respect of a judgement debt against the goods of the judgement debtor.

(2) The judgement creditor must apply for a writ of execution —

- (a) in accordance with Form 93; and
- (b) supported by the judgement creditor's affidavit, in accordance with that Form, setting out —
  - (i) the date of the judgement in respect of which the writ of execution is sought; and
  - (ii) the amount of money originally payable under the judgement; and
  - (iii) the amount of costs originally payable under the judgement; and
  - (iv) the total amount (if any) paid by the judgement debtor in reduction of the judgement debt; and
  - (v) the total amount of the credits (if any) accrued in reduction of the judgement debt otherwise than by payment; and
  - (vi) any other particulars necessary to calculate the amount payable under the judgement; and
  - (vii) the amount payable under the judgement on the day on which the affidavit is sworn; and
  - (viii) any interest payable on the amount payable under the judgement at the day on which the affidavit is sworn; and
  - (ix) the address at which it is alleged that personal property of the judgement debtor is situated.

(3) A writ of execution must be in accordance with Form 94 and must indicate the date on which it is issued.

**Leave required to issue writ of execution in certain circumstances**

**220D.** (1) The Clerk must not issue a writ of execution without leave of the Court granted in accordance with an application under subsection (2) if —

- (a) since the judgement was given or entered, a change has taken place (whether by assignment, death or otherwise) in the person entitled or liable to execution under the judgement; or
- (b) the judgement is against the assets of a deceased person coming into the hands of his or her executor or administrator after the day on which the judgement was given or entered and the writ of execution is sought against assets of that description.



(2) The person seeking to execute a judgement must apply for leave under subsection (1) —

- (a) in accordance with Subdivision 6; and
- (b) supported by an affidavit setting out —
  - (i) the amount due on the date of the motion; and
  - (ii) if a period of more than 12 years has elapsed since the judgement was given or entered—the reason for the delay before seeking to execute the judgement; and
  - (iii) if paragraph (1)(a) applies—the change that has taken place; and
  - (iv) if paragraph (1)(b) applies—that a demand for satisfaction of the judgement debt has been made of the person liable to execution but the judgement debt has not been satisfied; and
  - (v) that the applicant is entitled to proceed to execution of the judgement; and
  - (vi) that the person against whom execution is sought is liable to execution on the judgement.

#### **Priority and duration of writs**

**22OE.** (1) On receiving a writ of execution, a bailiff must write the date and time of receipt on the back of the writ.

(2) A bailiff must execute writs of execution received by him or her in order of the dates and times on which the bailiff received them.

(3) If —

- (a) a writ of *feri facias* against the property of a person issues out of the Supreme Court; and
- (b) a writ of execution against the same property issues out of the Court, the right to that property when seized will be determined by the priority of —
  - (c) the time of delivery of the writ issued out of the Supreme Court to the Sheriff of the Territory; or
  - (d) the time of receipt of the writ issued out of the Court by the bailiff.

(4) A writ of execution will be valid for a period of 6 months commencing on the date of issue.

(5) Despite subsection (4), a writ of execution remains valid until the property seized under the writ is sold or otherwise disposed of, or is returned to the judgement debtor, in accordance with this Subdivision.

**Seizure of property for sale**

**220F. (1)** A bailiff may, for the purpose of executing a writ of execution, seize and sell personal property —

- (a) that is or may be in the judgement debtor's possession; or
  - (b) to which the judgement debtor is or may be entitled; or
  - (c) that the judgement debtor can (at law or in equity) assign or dispose of,
- except —

- (d) necessary items of clothing, and beds, bedding and kitchen furniture (including a stove, oven and refrigerator but not including a washing machine or automatic dishwasher); or
- (e) ordinary tools of trade, plant and equipment, professional instruments and reference books, the aggregate value of which does not exceed the prescribed amount; or
- (f) a right or interest in respect of land.

**(2)** When time for payment in respect of a cheque, bill of exchange, promissory note, bond, specialty or security for money seized under a writ of execution has arrived, the person on whose behalf the writ has been issued is entitled to —

- (a) demand and receive payment; and
- (b) sue in the name of the person against whom the writ has been issued, or in the name of a person in whose name that person might have sued, for the recovery of the sum made payable or secured.

**Safekeeping of seized property**

**220G. (1)** Property seized in accordance with this Subdivision must, before its sale, remain in custody as directed by the bailiff.

**(2)** A bailiff may, if it is necessary for the safekeeping or sale of the property, remove property under a writ of execution from the place where it was seized to another place.

**(3)** A bailiff must, as soon as practicable after removing property under subsection (2), give to the judgement debtor or leave for the judgement debtor at the place from which the property is removed, notice of the removal and an inventory of the property removed.

**(4)** A bailiff must serve —

- (a) a judgement debtor against whom a writ of execution has been issued; or
- (b) any person who has custody of any personal property of a judgement debtor,

with a notice, in accordance with Form 95, listing the property in the custody of the person served that has been seized under the writ and, if appropriate, informing the person served that the bailiff is responsible of the safekeeping of the property so seized.

(5) On seizing property under a writ of execution, a bailiff must deliver to the judgement debtor, or leave at the place where the property was seized, a notice in accordance with Form 96 —

- (a) specifying the amount that is necessary to satisfy the judgement including costs and charges; and
- (b) setting out the effect of subsections 220O(1) and (2) and section 220S; and
- (c) informing the judgement debtor that he or she may make an application for a declaration exempting specified property from execution or an application for an instalment order; and
- (d) setting out the effect of section 187.

**Bailiff's powers of entry, search and seizure**

**220H. (1)** If, in executing a writ of execution against a judgement debtor —

- (a) a bailiff is refused entry to the judgement debtor's premises by an occupier of the premises, after having informed, or having made reasonable attempts to inform, the occupier (orally or in writing) about the procedure in relation to the execution of the writ and the bailiff's intention to seek an order for entry under this section if entry is refused; or
- (b) a bailiff —
  - (i) has made reasonable attempts to contact both the judgement debtor and any other occupier of the judgement debtor's premises to obtain consent to entry of the premises; and
  - (ii) has been unable to make such contact with the judgement debtor or any other occupier of those premises,

the Court may, on application by the bailiff in accordance with Subdivision 6 if satisfied that —

- (c) the judgement debtor resides at the premises; or
- (d) there is within the premises property that the bailiff is entitled to seize under section 220F in executing a writ of execution,

issue an order authorising the bailiff, for any purpose connected with executing the writ of execution, to enter the judgement debtor's premises using reasonable force if necessary, with the assistance of a police officer or officers if the bailiff considers that assistance to be necessary.

(2) Without limitation, an order under subsection (1) authorises the bailiff —

- (a) to search the premises for any property that the bailiff is entitled to seize under section 220F; and
- (b) to seize and remove any such property.

(3) No action, suit or proceeding lies against a bailiff in relation to an act done or omitted to be done in good faith in carrying out an order of the Court under subsection (1).

(4) In this section —

“judgement debtor’s premises” means premises occupied by the judgement debtor.

#### **Property seized not abandoned**

**220I.** (1) Despite —

- (a) seizing property under a writ of execution; and
- (b) subsequently leaving the house or other place from which the property is seized,

a bailiff—

- (c) may at all reasonable times re-enter that house or place; and
- (d) will not be taken to have abandoned the property seized there.

#### **Exempt property**

**220J.** (1) The Clerk may, on application by a judgement debtor in accordance with Subdivision 6, declare that specified property of the judgement debtor is exempt from execution.

(2) The Clerk must not make a declaration under subsection (1) unless satisfied that the judgement debtor, or a member of his or her family, would otherwise be likely to suffer exceptional hardship.

(3) The Clerk may revoke a declaration under subsection (1).

#### **Payment preventing execution**

**220K.** If a person —

- (a) pays to a bailiff the amount for which a writ of execution was issued or produces to the bailiff the receipt of the Clerk for that amount; and
- (b) pays the amount of all the proper costs and charges actually incurred in effecting the sale up to the time of payment, including any costs associated with removing the property from the place where it was seized and advertising the sale,

the bailiff must not proceed with the execution and must return the writ.

#### **Suspension of execution by the judgement creditor**

**220L.** (1) If property has not been seized under a writ of execution, the judgement creditor may —

- (a) require execution of the writ to be suspended unconditionally; and
- (b) if the execution of the writ has been suspended—require the execution to be resumed.

(2) A requirement under subsection (1) must be in writing.

(3) A bailiff must comply with a requirement in accordance with this section.

**Agreements to withdraw and re-enter**

**220M. (1)** If property has been seized under a writ of execution and the judgement creditor —

- (a) enters into an arrangement with the judgement debtor that a bailiff shall be at liberty to withdraw from and re-enter possession; and
- (b) communicates that arrangement to the bailiff; and
- (c) requests the bailiff to withdraw from possession,

the bailiff must withdraw from possession and suspend execution of the writ but may, at the judgement creditor's written request, re-enter possession and resume the execution in accordance with the terms of the arrangement.

**(2)** If property has been seized under a writ of execution and the judgement creditor, without communicating any arrangement referred to in subsection (1), requests a bailiff to withdraw from possession or to suspend execution, other than for the purposes of postponing a sale for a reasonable time —

- (a) the judgement creditor will be taken to have abandoned the execution; and
- (b) the bailiff must withdraw from possession and return the writ.

**Deposit to cover costs of execution**

**220N. (1)** The Clerk may, before issuing a writ of execution or during the execution of a writ, require the judgement creditor to deposit with the Clerk an amount of money sufficient to meet the costs and charges incurred, or likely to be incurred, by a bailiff executing the writ.

**(2)** If a deposit required by the Clerk is not paid as soon as practicable —

- (a) the Clerk may refuse to issue the writ of execution; or
- (b) the bailiff executing the writ may withdraw from any possession entered into and return the writ.

**Conditions of sale**

**220O. (1)** If a bailiff is of the opinion that the property seized under a writ of execution is more than sufficient to satisfy the execution, the bailiff must sell —

- (a) so much of the property as, in his or her opinion, would be sufficient; and
- (b) if the property sold is not sufficient, so much more of the property as, in his or her opinion, would be sufficient to satisfy the balance due under the execution.

**(2)** If property is to be sold in accordance with subsection (1), the bailiff must sell that property —

- (a) in the order that, in his or her opinion, is best for the speedy execution of the writ without undue expense; and
- (b) subject to paragraph (a), in the order that the judgement debtor specifies; and
- (c) subject to paragraphs (a) and (b), in the order that, in his or her opinion, is best for minimising hardship to the judgement debtor or to any other person.

(3) Subsections (1) and (2) do not affect any liability of the bailiff to the judgement creditor.

(4) Subject to subsection 220P(2), the bailiff must offer the property for sale at a public auction as soon as practicable having regard to —

- (a) the interests of the judgement creditor and the judgement debtor; and
- (b) the need to obtain the reserve price for the property.

#### **Time of sale**

**220P.** (1) Subject to subsection 220J(1) and subsections 220O(1) and (2), property seized under a writ of execution must be offered for sale at public auction —

- (a) within 10 weeks after the day on which the property is seized; or
- (b) if execution of the writ is suspended, within 10 weeks after the day on which execution is resumed,

unless the amount for which the writ has been issued and the costs and charges of the execution are sooner paid or the Court otherwise orders.

(2) Subject to subsection (3), property seized under a writ of execution must not be sold before —

- (a) the expiration of 6 days after the day on which the property is seized unless the judgement debtor requests in writing that the property be sold within that period; and
- (b) any application made by the judgement debtor under subsection 220J(1) is determined.

(3) Property of a perishable nature seized under a writ of execution may be sold immediately after it is seized.

#### **Postponement**

**220Q.** Subject to subsection 220P(1), a bailiff may postpone, or require the auctioneer to postpone, the sale of property under a writ of execution —

- (a) if the bailiff is of the opinion that a postponement is necessary to obtain the reserve price; or
- (b) in compliance with a request by the judgement creditor for a postponement.

#### **Determining market value**

**220R.** (1) Before an item of property is offered for sale at an auction under section 220T, the bailiff must, so far as he or she can do by exercising reasonable diligence, determine the market value of the item.

(2) For the purposes of subsection (1), the bailiff —

- (a) may require the judgement creditor to furnish him or her with any information about the property to be auctioned known to, or reasonably capable of being ascertained by, the judgement creditor; and
- (b) if the nature and apparent value of the property is such that it is reasonable to do so—may engage a suitably qualified and experienced person to provide the bailiff with an opinion as to the value of the property; and

- (c) may make such other inquiries as are reasonable.

(3) If a judgement creditor unreasonably fails to provide any information required under paragraph (2)(a), the bailiff —

- (a) must report the failure to the Clerk; and
- (b) may refuse to proceed further towards the sale of the property.

(4) The bailiff must, as soon as practicable after determining the market value of the items to be offered for sale under subsection (1), notify the judgement debtor in writing of those market values.

#### **Judgement debtor may challenge market value**

**220S.** (1) The Clerk may, on application by the judgement debtor, revoke a determination under subsection 220R(1) in respect of an item and determine a higher market value of the item.

(2) An application under subsection (1) —

- (a) must be made within five days after the judgement debtor is notified of the determination under subsection 220R(4); and
- (b) must be in accordance with Subdivision 6.

(3) The Clerk must not make a determination under subsection (1) unless —

- (a) there is evidence before the Clerk from a suitably qualified and experienced person as to the true market value of the item; and
- (b) the Clerk is satisfied that, having regard to all the evidence, the market value of the item determined under subsection 220R(1) is substantially less than its true market value.

(4) If a judgement debtor makes an application under subsection (1), a bailiff must not sell any property seized under the writ of execution until the application has been determined.

#### **Sale by public auction**

**220T.** (1) Subject to subsection (7), property seized under a writ of execution and offered for sale at a public auction must be sold to the highest bidder.

(2) The bailiff —

- (a) may conduct the auction; or
- (b) if the nature and apparent value of the property to be sold at auction is such that it is reasonable to do so—may engage an auctioneer licensed under the *Auctioneers Act 1926* to conduct the auction under the bailiff's direction.

(3) The bailiff must, at least 48 hours before the day of the auction —

- (a) advertise the details of the proposed auction in the Gazette; and
- (b) serve on the judgement debtor a notice specifying the date, time and place of the auction and the property to be auctioned.

(4) There will be a single reserve price in respect of each item offered for sale at the auction equal to 65% of the market value of the item determined under section 220R or 220S, as the case may be.

(5) The reserve price of an item must not be disclosed at any time before or during the auction at which it is offered for sale.

(6) Before the auction is conducted, the bailiff must —

- (a) prepare a list in accordance with Form 97 of the items of property to be offered for sale at the auction; and
- (b) record opposite each item in the list the reserve price of the item and how that price was determined.

(7) An item must not be sold at the auction for less than its reserve price.

#### **Sale by private agreement**

**220U. (1)** If property seized under a writ of execution remains unsold after being offered for sale at an auction under section 220T, a bailiff or the auctioneer may sell the property by private agreement.

(2) An item must not be sold by private agreement for less than its reserve price set under subsection 220T(4).

#### **Terms as to payment**

**220V. (1)** A bailiff or auctioneer must sell property seized under a writ of execution on terms that the purchaser of an item of that property —

- (a) must pay —
  - (i) an amount equal to 10% of the purchase price as a deposit immediately after the sale; and
  - (ii) the balance of the purchase price within such period (not exceeding 2 working days after the day of the sale) as the bailiff determines before the sale; or
- (b) must pay the whole of the purchase price immediately after the sale.

(2) The bailiff must require payment of the purchase price to be in cash or by bank draft or by any other method prescribed for the purposes of this Subdivision.

#### **Sale price to be recorded**

**220W.** The bailiff or auctioneer must record opposite each item in the list under subsection 220T(6) that is sold the price for which the item was sold.

#### **Purchase by bailiff or auctioneer prohibited**

**220X.** Neither a bailiff nor an auctioneer is entitled —

- (a) to bid at the auction at which property seized under a writ of execution is offered for sale; or
- (b) to purchase, on his or her own behalf, or on another person's behalf, any item of that property at the auction or by private agreement.

#### **Auctioneer to account**

**220Y.** An auctioneer must, as soon as practicable after receiving any money under a writ of execution, pay that money, less the auctioneer's charges, to the bailiff.



**Surplus sale proceeds paid to judgement debtor**

**220Z.** A bailiff must deduct from the amount realised from the sale of property seized under a writ of execution —

- (a) the amount of all proper costs and charges actually incurred in effecting the sale, including any costs associated with removing the property from the place where it was seized and advertising the sale; and
- (b) the amount for which the writ was issued,

and must pay the surplus (if any) to the judgement debtor.

**Costs of execution**

**220ZA.** Unless the Court otherwise orders, the costs and charges of a writ of execution (whether executed or not and whether productive or not) must be added to and form part of the judgement debt.

**Payment of amounts raised to the Clerk**

**220ZB.** The bailiff must within 24 hours after receiving the amount realised from the sale of property seized under a writ of execution, pay the amounts deducted under section 220Z to the Clerk.

**Proceeds of writ**

**220ZC. (1)** If the Clerk receives an amount of money as the proceeds of a writ of execution under a judgement given or entered on a claim, the Clerk must pay the amount to the judgement creditor.

**(2)** If the Clerk receives an amount of money as the proceeds of a writ of execution issued other than pursuant to a judgement given or entered on a claim, the Clerk must (unless a law in force in the Territory or the Court otherwise requires) pay the amount to the Administration.

**Account**

**220ZD.** A bailiff must, on request, give to —

- (a) a party to the proceedings in relation to which a writ of execution was issued; or
- (b) a person who claims that his or her property has been sold by the bailiff,

a report of the sale of the property seized under the writ and an account of —

- (c) the proceeds of the sale and any other money received by the bailiff under the writ; and
- (d) all the proper costs and charges actually incurred in effecting the sale, including any costs associated with removing the property from the place where it was seized and advertising the sale; and
- (e) the manner of disposal of those proceeds and that money.

**Order for disposal**

**220ZE. (1)** If property seized under a writ of execution remains unsold after being offered for sale at an auction under section 220T, the Court may, on application by the judgement creditor, make an order for the disposal of the property.

(2) An application under subsection (1) must be made in accordance with Subdivision 6 and —

- (a) within 11 weeks after the property was seized; or
- (b) if execution of the writ is suspended — within 11 weeks after the day on which execution is resumed.

(3) In considering whether to make an order for the disposal of the property, the Court must have regard to —

- (a) the amount of the judgement debt and costs and charges remaining unpaid; and
- (b) any hardship that would be occasioned to the judgement creditor if the order were not made and to the judgement debtor if the order was made.

#### **Property to be returned to the judgement debtor**

**220ZF.** If —

- (a) the judgement creditor does not make an application in accordance with subsection 220ZE(2) in respect of the property remaining unsold; or
- (b) the Court refuses to make an order for the disposal of the property remaining unsold under section 220ZE(1),

that property must be returned to the judgement debtor.

#### **Separate execution for costs**

**220ZG.** If —

- (a) there is a judgement for the payment of money and for the payment of costs; and
- (b) the money becomes payable pursuant to the judgement before the costs become payable because the costs have not been taxed or for any other reason,

a person entitled to enforce the judgement by execution may have execution issued separately to enforce payment of the money and costs when each becomes payable.

#### **Offences**

**220ZH. (1)** A person other than a bailiff must not act as, or purport to be, a bailiff.

(2) A person must not assault, resist, interrupt or obstruct a bailiff in the exercise of his or her powers, authorities, duties or functions under this Act or any other law in force in the Territory.

(3) A person who knows that property has been seized under section 220F or is the subject of a notice under subsection 220I(5) must not, except with the consent of the Court or the consent in writing of the bailiff by whom the property was seized or the notice was served —

- (a) interfere with, or dispose of, the property; or
- (b) remove the property from the place at which it was seized or at which it was situated when the notice was served; or

- (c) cause, permit or suffer the property to be interfered with, disposed of or removed.

Penalty (Subsection (3)): 50 penalty units or 6 months imprisonment or both.

### **Liability of bailiffs**

**220ZI.** A bailiff who executes a writ of execution is responsible to the parties to the proceedings in relation to which the writ was issued for all the acts and omissions of the bailiff, and any person assisting the bailiff, in executing that writ in the same manner as the Sheriff of the Territory is responsible for all the acts and omissions of the Sheriff, and any person assisting the Sheriff, in executing a writ of *feri facias*.

## **SUBDIVISION 6 — INTERLOCUTORY APPLICATIONS**

### **Application of this Subdivision**

**220ZJ.** This Subdivision applies only as expressly provided in the other Subdivisions of this Division.

### **Interlocutory applications**

**220ZK. (1)** A person may make an application for the purposes of this Subdivision (“**an application**”) by plaint.

**(2)** The procedure in respect of an application will be that set out in Division 2 of Part 5 with the following modifications —

- (a) a summons must be served under subsection 124(1) at least three clear days before the time appointed in the summons for the hearing of the plaint; and
- (b) the Court may hear an application despite that the applicant has not made a plaint or that a person named in the plaint has not been issued with a summons if —
  - (i) compliance with those requirements would cause undue delay, or other undue mischief, to the applicant; or
  - (ii) each interested party consents to the making of the order sought by the applicant; or
  - (iii) the Court by order dispenses with those requirements; and
- (c) a plaint may be supported by affidavit if the person who intends to rely on the affidavit at the hearing files the affidavit and serves it on each interested party (other than a party on whom service of a summons was not required under this section) —
  - (i) in sufficient time to allow the other party to make and file, and serve a copy of, an affidavit in reply; or
  - (ii) within such other period as the Court orders; and
- (d) a plaint may, with the leave of the Court, be heard *ex parte*;

**Costs**

**220ZL.** (1) Subject to this Act and any contrary order of the Court, the costs of any application made under this Subdivision will follow the event of the proceedings.

(2) Costs of an application to the Court in proceedings made *ex parte* must not be allowed except by order of the Court.

*Division 6 — Miscellaneous***Mitigation of payment by Court**

**221.** (1) Where in a case when either imprisonment or a fine is imposed there is prescribed a requirement for the defendant to enter into his recognisance and to find sureties for keeping the peace, or being of good behaviour, and observing some other condition, or to do any of those things, the Court may dispense with such a requirement or any part of such a requirement.

(2) Where the Court has authority under an Act, other than this Act, or any law, whether past or future, to impose imprisonment for an offence punishable on summary conviction, and has no authority to impose a fine for that offence, it may nevertheless, when adjudicating on that offence, if it thinks that the justice of the case will be better met by a fine than by imprisonment, impose a penalty not exceeding 100 penalty units, and not being of such an amount as will subject the offender under the provisions of this Act in default of payment of the penalty to any greater term of imprisonment than that to which he is liable under the Act or law authorising the imprisonment.

**Scale of imprisonment for non-payment of money**

**222.** (1) Subject to the provisions of Division 5 of this Part, the period of imprisonment imposed by the Court upon the non-payment of any penalty, compensation or sum of money or costs, ordered to be paid by a conviction or order, except where some express provision to the contrary is made in the law of the Territory under which the conviction or order is made, shall be such period as in the opinion of the Court will satisfy the justice of the case, but not exceeding in any case a period of one day for each amount equal to 2 fee units in the penalty, compensation or sum of money or costs so ordered to be paid.

(2) The imprisonment shall be either with or without hard labour as the Court in and by the conviction or order adjudges.

**Clerk to pay sums to Administrator**

**223.** All sums received by the Clerk as the proceeds of a warrant of execution shall forthwith be paid by him to the person to whom those sums respectively are to be paid, according to the directions of the law under which the information was laid or the plaint was made, and if the law contains no directions for the payment of those sums to any person, the Clerk shall pay the sums to the Administrator.

**Accounts to be kept in the form in Second Schedule**

**224.** The Clerk and every keeper of a gaol shall keep a true and exact account of all moneys received by him under or by virtue of any conviction or order, showing the persons from whom and the time when the sums were received and to whom and when the sums were paid, in accordance with the form in the Second Schedule.

Penalty: \$4.00.

**Executors and administrators may enforce orders in civil matters**

**225.** (1) Where an order for the recovery or payment of money with or without costs or for costs ordered to be paid on a conviction or for costs alone (including costs ordered to be paid by an informant) has been made, and the party entitled to enforce the order dies, his executor or administrator, after filing with the Clerk an affidavit showing that he is the executor or administrator, may enforce the order to the same extent, by the like means and in the same circumstances as the party might have done if living.

(2) Where necessary, the name of the executor or administrator as the executor or administrator of the party deceased may be substituted for the name of the party.

**Forfeited goods may be sold**

**226.** Except where otherwise provided, all forfeitures, not pecuniary, that are incurred in respect of an offence triable by the Court or that may be enforced by the Court, may be sold or disposed of or dealt with in such manner as the Court directs, and the proceeds of the sale shall be applied in like manner as if the proceeds were a fine imposed under the law on which the proceeding for forfeiture is founded.

**Warrant of commitment or distress not to be void for form only**

**227.** A warrant of commitment or of execution shall not be held void by reason only of a defect or error in the warrant if there is a conviction or order that is good and valid, or that may be amended and made good and valid, under this Act to sustain it.

**Conviction, etc, to be transmitted to Registrar of Supreme Court**

**228.** Where a person is convicted before, or an information is dismissed by, the Court in respect of a prosecution for an indictable offence, the Court shall forthwith thereafter transmit the conviction and recognisances, or a copy of the certificate of dismissal (if any), as the case may be, to the Registrar, to be kept by him among the records of the Supreme Court, and the Court shall also cause all such decisions to be registered in a book to be kept for the purpose.

**PART 8 — APPEALS FROM DECISIONS OF THE COURT OF PETTY SESSIONS****Appeal from Court of Petty Sessions**

**229.** (1) A party to a proceeding before the Court of Petty Sessions to which this section applies who is dissatisfied with a judgment of that Court may, within 14 days after the date of the judgment, appeal to the Supreme Court.

(2) The proceedings to which this section applies are —

- (a) criminal proceedings where a person has been fined not less than \$10 or sentenced to imprisonment for any term; and
- (b) civil proceedings where the judgment is given or pronounced for, or in respect of, a sum or matter at issue amounting to, or of the value of \$100.

**Leave to appeal**

**230.** The Supreme Court may, on the application of a party to a proceeding before the Court of Petty Sessions who is dissatisfied with a judgment of the Court of Petty Sessions (including the prosecutor in a criminal proceeding where the judgment is that a charge be dismissed or that an accused person be acquitted), grant leave to appeal against the judgment in a case where —

- (a) an appeal does not otherwise lie against the judgment; and
- (b) the Supreme Court is of opinion that the granting of leave to appeal would be in the public interest.

**Method of appeal**

**231. (1)** A person intending to appeal, or to apply for leave to appeal, against a judgment of the Court of Petty Sessions shall file in the registry of the Supreme Court a notice in writing setting out —

- (a) the part of the judgment appealed against;
- (b) the grounds of the appeal; and
- (c) where the notice is an application for leave to appeal, the grounds on which the Supreme Court is asked to grant leave to appeal.

**(2)** An appellant or applicant for leave to appeal shall, within 14 days after filing a notice in accordance with subsection (1), serve a copy of the notice on the Clerk and on every party directly affected by the appeal or the application for leave to appeal, as the case may be.

**(3)** The Supreme Court may —

- (a) extend the time within which a notice is to be served under subsection (2), whether or not the time has expired; and
- (b) if satisfied that a party to be served with such a notice has left the Territory - dispense with service of the notice on that party or make an order for the service of the notice on that party by post or by such other method as the Court thinks fit.

**Security for appeal**

**232. (1)** Within 7 days after filing a notice of appeal to, or an application for leave to appeal to, the Supreme Court, the appellant or the applicant shall give security for the costs of the appeal or for the costs of the application for leave to appeal and, if the application is granted, for the appeal, as the case may be.

**(2)** Security shall be given in the sum of \$200 and shall be by deposit of money with the Registrar or by such other method as the Registrar approves.

**(3)** If security is not given in accordance with this section, the appeal, or the application for leave to appeal, as the case may be, shall be deemed to have been abandoned.

**Stay of proceedings on appeal**

**233. (1)** Except as provided by this section, an appeal or an application for leave to appeal to the Supreme Court does not operate as a stay of proceedings.

**(2)** In a proceeding other than a criminal proceeding, where security has been given under section 232 —

- (a) an appeal stays the judgment appealed from and all process in execution of it or to compel obedience to it until the determination of the appeal; and
- (b) an application for leave to appeal stays the judgment appealed from and all process in execution of it or to compel obedience to it until the determination of the appeal or until leave to appeal is refused, as the case may be.

**(3)** After notice of appeal has been given, or an application has been made for leave to appeal, in a criminal proceeding, the Judge may, upon application and on being satisfied that notice of the application has been given to the prosecutor, grant a stay of execution or admit the appellant to bail upon such terms and conditions as he thinks just.

**Hearing of appeal**

**234. (1)** An appeal to the Supreme Court shall be in the nature of a re-hearing.

**(2)** The depositions of a witness called or examined before the Court of Petty Sessions may be read as evidence for either party at the hearing of the appeal if —

- (a) the other party consents;
- (b) it is proved on oath that —
  - (i) where the depositions were recorded in the manner specified in subsection 158(1), the depositions were taken in the presence of the other party or his counsel, solicitor or agent, or, where the depositions were recorded by one of the means specified in subsection 158(2), the record is a correct record of the depositions and was made in the presence of the other party or his counsel, solicitor or agent and the transcript is a correct transcript of that record;
  - (ii) the other party or his counsel, solicitor or agent had full opportunity of cross-examining the witness; and
  - (iii) the witness is dead, is so ill as not to be able to travel, or cannot, after such search or for such reason as to the Court seems sufficient, be produced by the party tendering the depositions; or
- (c) the Supreme Court for any special reason so directs.

**(3)** On the hearing of an appeal, the Supreme Court may affirm, reverse or modify the judgment appealed from and may give judgment as ought to have been given in the first instance and make such other order as justice requires.

**PART 9 — COSTS AND FEES****Award of costs**

**235. (1)** The power of the Court to award costs and the award of costs by the Court are subject to the following provisions:

- (a) where the Court makes a conviction or order in favour of the informant, it may in its discretion award and order that the defendant shall pay to the informant such costs as it thinks just and reasonable;
- (b) where the Court dismisses the information, or makes an order in favour of the defendant, it may in its discretion award and order that the informant shall pay to the defendant such costs as it thinks just and reasonable;
- (c) the sums so allowed for costs shall in all cases be specified in the conviction or order or order of dismissal;
- (d) a sum awarded or ordered to be paid by an informant or to a defendant for costs may be raised and levied by distress under the provisions of this Act;
- (e) where a case is adjourned, the Court may, in its discretion, order that the costs of and occasioned by the adjournment be paid by any party to any other party;
- (f) the costs of persons present to give evidence or produce documents, whether they have been examined or not, or have or have not produced documents, shall, unless otherwise ordered by the Court, be allowed to them though they have not been summoned, but their allowance for attendance shall not, in any case, exceed the highest rate of allowance prescribed;
- (g) the amount of costs to be paid by one party to another, whether for the attendance of those persons or otherwise, shall in all cases be fixed by the Court and the costs in proceedings to obtain judgment on complaints shall follow the event;
- (h) when a complaint over which the Court has no jurisdiction is brought before the Court, the Court may award costs to the like extent and recoverable in the like manner as if the Court had jurisdiction and the complaint had been dismissed.

**(2)** The amount of the Court fees to be included in any costs awarded in pursuance of this section shall not exceed the amounts respectively prescribed by rules or Regulations under this Act.

**Court fees**

**236. (1)** There shall be payable, in respect of proceedings and matters under this Act, to the Clerk and to the Registrar such fees as are prescribed by rules or Regulations under this Act.

**(2)** The prescribed fees shall be paid in advance and, in the first instance, by the party on whose behalf the proceedings are taken.



**Remission of fees**

**237.** Where it appears to the Commonwealth Minister or any officer authorised for that purpose by the Commonwealth Minister that the payment of any fee payable to the Clerk under this Act would, owing to the exceptional circumstances of the particular case, involve undue hardship, the Commonwealth Minister or that officer may reduce or remit the fee, or postpone payment of the fee, in that particular case.

**Solicitor's costs**

**238.** In any proceedings in which a solicitor or agent, or counsel and a solicitor or agent, are employed by a plaintiff or a defendant against whom a plaint is made, the costs incurred by the plaintiff or defendant in employing a solicitor or agent, or counsel and a solicitor or agent, to be included in the costs to be paid to the plaintiff or defendant by another party shall not exceed for the work done the sums respectively prescribed by rules or Regulations under this Act.

**Witnesses' expenses**

**239.** The costs that may be allowed for witnesses who attend to give evidence before the Court shall be in accordance with such scale as is prescribed by rules or Regulations under this Act.

**Costs in garnishee proceedings**

**240.** (1) The costs of an application for a garnishee order and of any proceedings arising from or incidental to the application shall be in the discretion of the Court.

(2) Where the garnishee pays into Court, 5 days before the return day of the summons, all debts due, owing or accruing from him to the judgment debtor or so much of the debts as is sufficient to satisfy the judgment debt, he is not liable for any costs incurred by the judgment debtor.

**PART 10 — SECURITIES****Securities taken in pursuance of Act**

**241.** (1) A person shall give security under this Act, whether as principal or surety, either by the deposit of money with the Clerk, or by an oral or written acknowledgment of the undertaking or condition by which, and of the sum for which, he is bound, in such manner and form as are prescribed.

(2) Record of the security having been made may be provided by entry thereof in the register under this Act of proceedings of the Court or in such other manner as is prescribed.

**Recovery of sum due under security**

**242.** Any sum becoming due in pursuance of a security under this Act shall be recoverable summarily on plaint by a police officer or by the Clerk or by some other person authorised for that purpose by the Court.

**Sums paid by surety may be recovered from principal**

**243.** A sum paid by a surety on behalf of his principal in respect of a security under this Act, together with all costs, charges and expenses incurred by the surety in respect of the security, shall be deemed to be a debt due to him from the principal, and may be recovered summarily on plaint by the surety.

**Payment enforced by security**

**244.** Where security is given under this Act for payment of a sum of money, the payment shall be enforced by means of the security in substitution for other means of enforcing the payment.

**Enforcement of recognisances**

**245. (1)** Subject to subsection (2), where a recognisance is conditioned for the appearance of a person before the Court, or for his doing some other matter or thing to be done in, to or before the Court or in a proceeding in the Court, the Court may, on any breach of the condition, declare the recognisance to be forfeited and make an order for the payment to the Clerk of the sum due under the recognisance by the persons bound by the recognisance whether as principal or sureties, and the order may be enforced as if it were an order made on a plaint by the Clerk.

**(2)** At any time before the sale of goods under a warrant of execution for the sum, the Court may cancel or mitigate the forfeiture upon the person liable applying and giving security to the satisfaction of the Court for the future performance of the condition of the recognisance, and paying or giving security for payment of the costs incurred in respect of the forfeiture, or upon such other conditions as the Court thinks just.

**(3)** All sums paid in respect of a recognisance declared in pursuance of this section to be forfeited shall be paid to the Clerk.

**PART 11 — MISCELLANEOUS****Penalty for insulting or interrupting Magistrate**

**246. (1)** A person who wilfully insults a Magistrate sitting in the exercise of his jurisdiction under this or any other Act, or wilfully interrupts, or is guilty of contempt during the proceedings of, the Court, may be excluded from the Court by order of the Court, and may, whether he is so excluded or not, be summarily convicted by the Court on view, and, on conviction, shall be liable to a penalty not exceeding 2 penalty units, and, in default of immediate payment, to be imprisoned for a period not exceeding 7 days.

**(2)** A summons need not be issued against any such offender, nor need any evidence be taken on oath, but he may be taken into custody then and there by a police officer by order of the Court and called upon to show cause why he should not be convicted.

**Proceedings concerning children not open to the public**

**246A. (1)** In this section —

“child” means —

- (a) a person who has not attained the age of 18 years; or
- (b) in the case of a person as to whose age positive evidence is not available, a person who has apparently not attained that age;

“the Court” means the Court of Petty Sessions —

- (a) when hearing and determining, whether under this Act or under some other enactment, an information or complaint against a child;
- (b) at the preliminary examination in respect of an indictable offence alleged to have been committed by a child; or
- (c) when hearing an application or other proceeding concerning a child under the *Child Welfare Act 1937*;

“lawyer” means a barrister or solicitor.

(2) Other expressions used in this section that are defined by the *Child Welfare Act 1937* have the same meanings as they have in that Act.

(3) This section does not apply in relation to proceedings for an offence against the *Traffic Act 2010* or against the Regulations under that Act.

(4) A person who is not a person specified in any of the following paragraphs is not entitled to be present at the hearing of proceedings in the Court except as otherwise provided by this Act or by some other enactment or as permitted or required by the Court to be present:

- (a) a member or officer of the Court;
- (b) a person immediately concerned with the proceedings, the person’s lawyer or an employee of that lawyer;
- (c) a parent or other person having the care of a child in respect of whom the proceedings are taken or any other person whom the Court admits as a representative of the child;
- (d) an officer or a person employed in the Public Service of Norfolk Island and concerned with the proceedings;
- (e) a person who has, or a representative of a body, authority or agency which has, furnished a report to the Court concerning the child; or
- (f) a person attending for the purpose of preparing a news report of the proceedings and authorised by his employer so to attend.

(5) A person shall not print or publish by any means a report or account of any proceedings in the Court if the printing or publication discloses the identity of the child concerned or of a member of his family, or enables the identity of the child concerned or of a member of his family to be ascertained.

(6) Where a child and some other person are jointly charged with an offence, the Court may direct that the preceding provisions of this section, or such of those provisions as the Court specifies, are not to apply.

(7) A person who contravenes subsection (5) is guilty of an offence punishable on conviction by a fine not exceeding 15 penalty units or by imprisonment for a period not exceeding 6 months.

....

(9) Proceedings for an offence against this section shall not be commenced except by, or with the consent in writing of, the Administrator.

(10) This section does not affect the operation of subsections 149(1) and (2) or of section 150.

### **Forms**

**247.** (1) Subject to any rules or Regulations for the time being in force under this Act, the forms in the Third Schedule, or forms to the like effect, may be used for the purposes to which they are respectively applicable, and instruments in those forms shall be deemed sufficient in law, but those forms, or any of them, may be varied for the purpose of adapting them to circumstances.

(1A) If there is no form prescribed for a purpose under this Act or the rules or regulations for a purpose, the Minister may approve a form for that purpose and an instrument in that form, or in a form to a like effect (including that form varied to adapt to particular circumstances) —

- (a) may be used for that purpose; and
- (b) will be taken to be sufficient in law.

(2) A conviction or order shall not be vacated, quashed or set aside for want of form, or be impeached or affected by reason of any defect, mistake or omission therein, if the proceeding or matter to which the form relates is sufficient in substance and effect.

### **Delegation**

**247A.** (1) Subject to this section, the Commonwealth Minister may by written instrument delegate to the Administrator any of the Commonwealth Minister's powers or functions under this Act, other than this power of delegation and the power referred to in section 248.

(2) A power or function so delegated, when exercised or performed by the Administrator, an Acting Administrator or a Deputy Administrator, is to be taken, for the purposes of this Act, to have been exercised or performed by the Commonwealth Minister.

(3) A delegation under this section may specify conditions or limitations to be observed by the delegate in the exercise or performance of the powers or functions so delegated, and the Administrator, an Acting Administrator or a Deputy Administrator must comply with any such conditions or limitations.

(4) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Commonwealth Minister.

### **Rules and Regulations**

**248.** (1) The Administrator may make rules or Regulations, not inconsistent with this Act, prescribing all matters required or permitted to be prescribed by this Act, or necessary or convenient to be prescribed for giving effect to this Act, and, in particular, prescribing matters providing for and in relation to —

- (a) the practice and procedure before Magistrates and in the Court;
- (b) the permitting and regulating of the payment of money into Court in satisfaction of claims made in any plaint or set-off under this Act, the permitting of any such payment, or the tender to the plaintiff or his agent before the issue of a plaint of a sum of money as amends for the injury

complained of, to be relied upon as a defence, and the regulation of the conditions thereof;

- (c) the giving of security under this Act;
- (d) the revocation of any of the forms in the Third Schedule;
- (e) the fees, costs and charges in respect of proceedings under this Act or under any other Act for the time being in force so far as the proceeding relates to any matter or proceeding in respect of which the Court or any Magistrate has jurisdiction;
- (f) the regulating of the form of account to be rendered by the Clerk of fines, fees and other sums received by him, and including the variation of the form in the Second Schedule; and
- (g) the service of documents, and the taking of evidence, in the Territory, in pursuance of any request from the Consular or other proper authority of a foreign country under the terms of any Convention relating to Legal Proceedings in Civil and Commercial Matters to which the Commonwealth is a party.

(2) Until, in relation to a matter or class of matters, rules or Regulations are made under this Act, the *Magistrates Court (Civil Jurisdiction) Rules.2004* of the Australian Capital Territory including the prescribed scale of costs in effect under those rules, as in force from time to time, in relation to that matter or class of matters shall, so far as applicable and mutatis mutandis, be deemed to be rules or Regulations made under this Act.

---

**SCHEDULE 1**

Section 7

**OATH**

I, \_\_\_\_\_, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her in the office of \_\_\_\_\_ and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will:

SO HELP ME GOD!

**AFFIRMATION**

I, \_\_\_\_\_, do solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her in the office of \_\_\_\_\_ and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will.

**SCHEDULE 2**

Section 224

*Account of Clerk of Court of Petty Sessions and of the Keeper of the Gaol*

**RETURN** to Court of Petty Sessions held at Norfolk Island, on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, of all fines, penalties, and sums of money received by the Clerk of the said Court [or by the Keeper of the Gaol] at Norfolk Island, from the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, to the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, and how applied.

Name of party convicted	Date	Offence	Costs	Amount thereof paid	Fine	Amount thereof paid	Amount of fine, how applied	Punishment when fine not paid	Name of convicting Magistrate	Reasons of non-payment or other observations

(Signed)

Clerk of Court of Petty Sessions, *or* Keeper of the abovenamed Gaol

**SCHEDULE 3**

Section 247

Form 1

**ORIGINATING PROCEEDINGS**

*Information to require surety of the peace or for good behaviour*

Norfolk Island,

The information of C.D., of \_\_\_\_\_, laid this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before the undersigned (*a Magistrate or Clerk of the Court of Petty Sessions*), who says that A.B., of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at \_\_\_\_\_ declared and threatened [*here state the defendant's threats*], and that the said C.D. is therefore afraid that the said A.B. will do him [*or the said \_\_\_\_\_*] some bodily injury [*or commit a breach of the peace towards him (or the said \_\_\_\_\_), or burn (or injure) his house, or procure some bodily injury to be done to him, or as the case may be*] [*or that the said A.B. is a person of evil fame and character, making his living by dishonest means, or as the case may be*]; and the said C.D. therefore asks that the said A.B. may be required to find sureties to keep the peace towards him [*or the said \_\_\_\_\_*] [*or be of good behaviour*]: And the said C.D. says that he does not lay this information from any malice or ill-will [*in case of surety of the peace add, but merely for the preservation of his life and person (and property) (or the life and person) of the said \_\_\_\_\_ from injury*].

Sworn before me the day and year first abovementioned, at Norfolk Island.

J.S.  
Magistrate or Clerk.

---

Form 2

*Information to Ground Search Warrant*

Norfolk Island

THE information of C.D. of \_\_\_\_\_, made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before the undersigned (*a Magistrate or Clerk of the Court of Petty Sessions*), who says that the following goods of [him], the said C.D., to wit [*describe them*], were, on the \_\_\_\_\_ day of \_\_\_\_\_ [*or have lately been*] feloniously stolen, taken and carried away, from and out of the dwelling-house [*or as the case may be*] of the said C.D. situate at \_\_\_\_\_, and that he, the said C.D., has reasonable cause to suspect, and does suspect, that the said goods, or part thereof, are concealed in the dwelling-house or premises [*or as the case may be*] in the occupation of A.B., situate at \_\_\_\_\_

[*here state grounds of suspicion.*]

Sworn before me the day and year first abovementioned, at Norfolk Island.

J.S.  
Magistrate.

---

Form 3

*Information or Complaint in all other cases*

Norfolk Island,

THE information (or complaint) of C.D. of \_\_\_\_\_, laid (*or made*) this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before the undersigned Magistrate, who says that on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at \_\_\_\_\_ [*etc, stating the offence or subject-matter*].

Sworn [*or laid or made*] before me the day and year first abovementioned, at Norfolk Island.

J.S.  
Magistrate.

Note - The causes of action in civil cases may be stated as follows:—

- For that you assaulted A.B. by [*state nature of assault*].
  - For that certain goods of A.B. are detained by you.
  - For that you on the      day of      20 , at      , were indebted to A.B. in the sum of      (on balance of accounts).
  - For goods then and there bargained and sold to you by A.B.
  - For goods then and there sold and delivered to you by A.B.
  - For money then and there lent to you by A.B. and interest thereon.
  - For money paid by A.B. for you at your request.
  - For money received by you for the use of A.B.
  - For work and labour then and there done by A.B. for you at your request.
  - For the use and hire of divers chattels [*or beasts*] by A.B. then and there let to hire and delivered to you at your request.
  - For work and labour then and there done and materials for the work and labour then and there provided by A.B. for you at your request.
  - For the use and occupation of certain land [house *or* apartments] of A.B. by you at your request and by the permission of the said A.B. then and there held and enjoyed.
  - For board and lodging then and there provided and supplied by A.B. for and to you at your request.
  - For feeding and taking care of horses [sheep *or* cattle] by A.B. then and there fed and taken care of for you at your request.
  - For warehouse room then and there found and provided by A.B. in and about the storing and keeping of goods and chattels by the said A.B. for you at your request.
  - For the carriage of goods and chattels by A.B. then and there carried for you at your request.
  - For the amount of a cheque drawn by you on the Bank of      dated      or for the amount of a bill of exchange dated the      day of      now overdue, and directed by the plaintiff to you and requiring you to pay to the plaintiff (here insert amount) months after date, which was accepted by you, but was not paid, or for the amount of your promissory note dated      , payable months after date, and interest thereon.
  - For money due to A.B. on account stated.
-



## Form 4

*Certificate of Indictment being filed*

I HEREBY certify that at the Sittings of the Supreme Court, held at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, an information was presented against A.B., therein described as A.B., of \_\_\_\_\_, for that he, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at [*etc, stating shortly the offence*], and that the said A.B. did not appear or plead to the said information.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

J.S.  
Registrar.

**SUMMONSES**

## Form 5

*Summons to the defendant upon information.*

In the Court of Petty Sessions at Norfolk Island.

To A.B., of \_\_\_\_\_, in Norfolk Island.

WHEREAS an information has this day been laid before the undersigned (*a Magistrate or Clerk of the Court of Petty Sessions*), that you, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ [*here state shortly the matter of the information*]. These are therefore to command you, in Her Majesty's name, to appear at the Court House at Norfolk Island on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock in the forenoon, before the said Court to answer the said information, and to be further dealt with according to law.

Given under my hand, at Norfolk Island, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

J.S.  
Magistrate *or* Clerk of Court of Petty Sessions.

*Affidavit of service [to be endorsed on summons]*

A.B. \_\_\_\_\_ of \_\_\_\_\_ being duly sworn saith as follows: —

I am a \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I personally served the within-named C.D. with the within summons by delivering a copy of it to him personally and at the same time showing him the original summons.

Sworn before me [*etc., as in information*].

## Form 6

*Summons upon Complaint*

In the Court of Petty Sessions at Norfolk Island

A.B., plaintiff

C.D., defendant

To C.D. of [*state defendant's address and occupation*] *the defendant.*

WHEREAS a complaint has this day been made before the undersigned (*a Magistrate of the Court of Petty Sessions or the Clerk of the Court of Petty Sessions*) for that you [*here state shortly the matter of the complaint*].

These are therefore to command you in Her Majesty's name to be and appear on the      day of      , at o'clock in the      noon, at Norfolk Island, before the said Court to answer the said complaint, and to be further dealt with according to law.

The plaintiff's address for service is      to which, or at which all notices may be posted or left.

Dated at Norfolk Island the      day of      , 20      .

J.S.

*Magistrate or Clerk of Court of Petty Sessions.*

\_\_\_\_\_

## Form 7

*Summons to a person to give evidence [and produce documents].*

In the Court of Petty Sessions at Norfolk Island.

A.B., informant [*or plaintiff or applicant*].

C.D., defendant.

Date of information [*or plaint or as the case may be*]      20      .

Nature of information (*or plaint or as the case may be*) [*state shortly*].

To      , of

THESE are to require you to appear on the      day of      20      , at      o'clock in the      noon, at Norfolk Island, before the said Court to give such evidence as you know concerning the matter of the abovementioned information [*or plaint, or as the case may be*]. [*Where documents are required to be produced add and also to bring with you and produce at the time and place aforesaid for examination at the hearing thereof the following accounts, papers, books, or other documents, that is to say:*

*or such of them as are in your possession or control.*]

Dated at Norfolk Island the      day of      , 20      .

J.S.

*Magistrate or Clerk of Court of Petty Sessions.*

\_\_\_\_\_

## Form 8

*Summons to a person to produce documents*

In the Court of Petty Sessions at Norfolk Island.

A.B., informant [*or plaintiff or applicant*].

C.D., defendant.

Date of information [*or plaint or as the case may be*]

Nature of information (*or plaint or as the case may be*) [*state shortly*].

To \_\_\_\_\_, of \_\_\_\_\_

THESE are to require you to appear on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, at \_\_\_\_\_, before the said Court and to bring with you and produce for examination at the hearing of the abovementioned information [*or plaint or as the case may be*] the following accounts, papers, books, or other documents, that is to say:

or such of them as are in your possession or control.

Dated at Norfolk Island the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

J.S.

Magistrate *or* Clerk of Court of Petty Sessions.

## Form 9

*Default Summons upon a plaint for a civil claim*

In the Court of Petty Sessions at Norfolk Island.

A.B., Plaintiff.

C.D., Defendant.

Take notice that unless within\* \_\_\_\_\_ days after personal service on you, or, where service upon you has not been personal, within\* \_\_\_\_\_ days after service as prescribed by a Magistrate, you file with the clerk of this Court, a notice in duplicate of any grounds of defence you may have to this action, dated and signed by yourself or your solicitor or agent, together with an affidavit verifying it, you will not afterwards be allowed to make any defence to the claim that the plaintiff makes on you, as per margin, the particulars of which are hereunto annexed; but the plaintiff may\*\* proceed to judgment and execution without giving any further notice.

If you file the notice with the Clerk of this Court within the time specified, the action shall go to trial at a sitting of this Court to be held not less than 4 clear days after the day on which you file the notice.

The plaintiff's address for service is \_\_\_\_\_ to which, or at which, all notices may be posted or left.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Clerk of Court of Petty Sessions

\$

Claim  
Solicitor's or agent's costs  
Fees for plaint and service

Total amount of debt and costs

\* Insert number of days prescribed by section 147

\*\* Where summons is to be served outside the Territory, insert "after obtaining leave of the Court".

---

Form 10

*Notice of grounds of defence to an action in which a default summons has been issued*

*[To be filed in duplicate with an affidavit of verification by the defendant]*

In the Court of Petty Sessions at Norfolk Island.

A.B., Plaintiff.

C.D., Defendant.

TAKE notice that I intend to defend this action and to rely upon the following grounds of defence, namely:- [Here enumerate grounds of defence.]

Dated this     day of     , 20   .

Address.

Defendant *or* his solicitor or agent.

---

Form 11

*Summons in case of adverse claims to goods distrained*

In the Court of Petty Sessions at Norfolk Island.

A.B., Plaintiff.

C.D., Defendant.

G.H., Applicant.

To A.B., of etc, and E.F., of etc, claimant

WHEREAS application hath this day been made by G.H. to the undersigned, a Magistrate of the Court of Petty Sessions, for that by a warrant under the hand of the Clerk of Court of Petty Sessions or a Magistrate of the said Court dated the     day of     last and directed to etc the said Police Officers or the said bailiff were commanded in Her Majesty's name forthwith to make distress of the goods and chattels of C.D., and that G.H., one of the said Police Officers or the said bailiff had under the said warrant distrained certain goods and chattels as and for the goods and chattels of the said C.D.,\* and that you the said E.F. have claimed the same as your property. These are therefore to command you the said E.F. and A.B. in Her Majesty's name to be and appear on the     day of     [next *or* instant] at     o'clock in the     noon, at Norfolk Island, before the Court of Petty Sessions there in order

that it may adjudicate upon the said claim and make an order thereupon according to law.

Dated at Norfolk Island the     day of     , 20   .

\* See Form 48

J.S.  
Magistrate.

## WARRANTS

## Form 12

*Warrant in the first instance to apprehend a person charged with an offence*

In the Court of Petty Sessions at Norfolk Island.

To all Police Officers in Norfolk Island.

WHEREAS an information has this day been laid upon oath before the undersigned, *the Clerk of Court of Petty Sessions or a Magistrate* of the said Court, for that A.B. on the      day of      20 , at [*here state shortly the offence*]:

These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A.B. and to bring [him] before a Magistrate of the said Court, to answer to the said information, and be further dealt with according to law.

Given under my hand, at Norfolk Island, this      day of      , 20.

J.S.

Clerk of Court of Petty Sessions *or* Magistrate.

## Form 13

*Search Warrant*

In the Court of Petty Sessions at Norfolk Island.

To all Police Officers in Norfolk Island.

WHEREAS an information has this day been laid upon oath before the undersigned, *the Clerk of Court of Petty Sessions or a Magistrate* of the said Court, for that A.B., on the      day of      20, at [*here state shortly the offence*]: These are therefore to command you, in Her Majesty's name, forthwith, with proper assistance, to enter the said dwelling-house and premises [*or as the case may be*] of the said A.B. [in the day time], and there diligently search for the said goods; and if the goods, or any part thereof, are found upon search, that you attach the goods so found [and apprehend the said A.B., and bring (him) before the said court to give an account of how he came by the said goods, and to be further dealt with according to law].

Given under my hand, at Norfolk Island, this      day of      , 20.

J.S.

Clerk of Court of Petty Sessions *or* Magistrate.

## Form 14

*Warrant to apprehend defendant where the summons is disobeyed*

In the Court of Petty Sessions at Norfolk Island.

To all Police Officers in Norfolk Island.

WHEREAS on the      day of      20 , an information was laid that A.B. [*etc, as in the summons*], and a summons was then issued to the said A.B., commanding [him] to appear at Norfolk Island on the      day of      20 , at      o'clock in the forenoon, before the said Court, to answer the said information: And whereas the said A.B. neglected to appear at the time and place appointed by the said summons, and it has been proved upon oath that the said summons was duly served upon the said A.B.: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A.B. and to bring [him] before the said court to answer the said information, and to be further dealt with according to law.

Given under my hand, at Norfolk Island, this      day of      , 20 .

J.S.

Clerk of Court of Petty Sessions *or* Magistrate.

## Form 15

*Warrant to apprehend a person required to give surety of the peace or for good behaviour*

[As in the above warrant, and conclude as follows, instead of "and to be further dealt with, according to law"] and to find sufficient sureties to keep the peace towards Her Majesty and her people, and especially towards the said C.D. [or be of good behaviour] for such term as shall be directed.

Given under my hand, etc.

## Form 16

*Warrant where a witness has not obeyed a summons to attend the examination of a person charged with an indictable offence or the hearing of a charge punishable on summary conviction*

In the Court of Petty Sessions at Norfolk Island.

To all Police Officers in Norfolk Island.

WHEREAS on the      day of      20      , an information was laid that A.B. [etc, as in the summons or warrant], and a summons was duly issued to E.F. of      requiring [him] to appear on the      day of      20      , at Norfolk Island, before the said Court, to testify what [he] knew concerning the matter of the said information: And whereas proof has this day been made upon oath that the summons was duly served upon the said E.F.: And whereas the said E.F. neglected to appear at the time and place appointed by the said summons, and no just excuse has been offered for the neglect: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said E.F. and bring [him] before the said Court to testify what [he] knows concerning the matter of the said information.

Given under my hand, at Norfolk Island, this      day of      , 20      .

J.S.

Clerk of Court of Petty Sessions or Magistrate.

## Form 17

*Warrant for a witness in the first instance*

In the Court of Petty Sessions at Norfolk Island.

To all Police Officers in Norfolk Island.

WHEREAS on the      day of      , 20      , at      , an information [or a plaint] was laid [or made] that A.B. [etc, as in the summons or warrant, and it being made to appear before me upon oath that E.F. of      is likely to give material evidence on behalf of the prosecution [or as the case may be] in the matter, and it is probable that the said E.F. will not attend to give evidence without being compelled so to do: These are therefore to command you, in Her Majesty's name, forthwith, to apprehend the said E.F. and bring [him] before the said court to testify what [he] knows concerning the matter of the said information [or plaint].

Given under my hand, at Norfolk Island, this      day of      , 20      .

J.S.

Clerk of Court of Petty Sessions or Magistrate.

## Form 18

*Warrant to apprehend person indicted*

In the Court of Petty Sessions at Norfolk Island.

To all Police Officers in Norfolk Island.

WHEREAS it has been certified by the Registrar of the Supreme Court that [*etc, stating the certificate (Form 4)*]: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A.B. and to bring [him] before the said Court of Petty Sessions to be dealt with according to law.

Given under my hand, at Norfolk Island, this     day of     , 20     .

J.S.

Clerk of Court of Petty Sessions *or* Magistrate.

---

**REMANDS**

## Form 19

*Warrant remanding a prisoner*

In the Court of Petty Sessions at Norfolk Island.

To all Police Officers in Norfolk Island and to the Keeper of the Gaol at     , in

WHEREAS A.B. was this day charged before the undersigned, a Magistrate of the Court of Petty Sessions, for that [*etc, as in the warrant to apprehend*], and it appears to me to be necessary to remand the said A.B.: These are therefore to command you the said police officers, in Her Majesty's name, forthwith to convey the said A.B. to the gaol at     , in     , and there to deliver [him] to the keeper thereof together with this warrant, and I hereby command you the said keeper to receive the said A.B. into your custody in the said gaol, and there safely keep [him] until the     day of     , 20     , or such earlier day as may be lawfully ordered in that behalf, when I hereby command you to have [him] at Norfolk Island, at     o'clock in the forenoon, before the said Court, further to answer the said charge.

Given under my hand, at Norfolk Island, this     day of     , 20     .

J.S.

Magistrate.

---

Form 20
*Warrant of committal for safe custody during an adjournment of the hearing*

In the Court of Petty Sessions at Norfolk Island.

To all Police Officers in Norfolk Island and to the Keeper of the Gaol at     , in

WHEREAS on the     day of     , 20     , an information was laid before the undersigned [*or as the case may be*], for that [*etc, as in the summons or warrant*], and whereas the hearing of the same is adjourned to the     day of     , 20     , at     o'clock in the forenoon at Norfolk Island, and it is necessary that the said A.B. should in the meantime be kept in safe custody: these are therefore to command you, the said police officers, in Her Majesty's name, forthwith to convey the said A.B. to the gaol at     , in     , and there deliver [him] into the custody of the keeper thereof, together with this warrant and I hereby command you the said keeper to receive the said A.B. into your custody in the said gaol, and there keep [him] until the     day of     20     , when I hereby require you to convey and have him [him] the said A.B. at the time and place to which the said hearing is so adjourned as aforesaid before the said Court of Petty Sessions, to answer further the said information, and to be further dealt with according to law.

Given under my hand, at Norfolk Island, this     day of     , 20     .

J.S.

Magistrate.

---

**RECOGNISANCES, ETC**

## Form 21

*Certificate of consent to bail by the committing Magistrate endorsed on the commitment*

I hereby certify that I consent to the within-named A.B. being bailed by recognisance, himself in the sum of \_\_\_\_\_ and [two] sureties in the sum of \_\_\_\_\_ [each].

J.S.  
Magistrate.

## Form 22

*The like on a separate paper*

WHEREAS A.B. was on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, committed by [me] to the gaol at \_\_\_\_\_, in \_\_\_\_\_, charged with [*etc, naming the offence shortly*]:

I hereby certify that I consent to the said A.B. being bailed by recognisance, himself in the sum of \_\_\_\_\_ and [two] sureties in the sum of \_\_\_\_\_ [each].

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

J.S.  
Magistrate.

## Form 23

*Recognisance for the appearance of a defendant, where the case is adjourned or not to be at once proceeded with*

Norfolk Island,

to wit.

BE it remembered that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, A.B., of \_\_\_\_\_, and L.M., of \_\_\_\_\_, personally came before the undersigned a Magistrate of the Court of Petty Sessions, and severally acknowledged themselves to owe to our Sovereign Lady the Queen the several sums following - that is to say, the said A.B. the sum of \_\_\_\_\_, and the said L.M. the sum of \_\_\_\_\_, to be made and levied of their several goods and chattels, lands and tenements respectively to the use of our said Lady the Queen, Her Heirs and Successors, if [he] the said A.B. shall fail in the condition endorsed.

Taken and acknowledged before [me] the day and year first abovementioned at Norfolk Island.

*Condition*

The condition of the within-written recognisance is such that if the said A.B., charged upon the information of C.D., with [*here insert briefly nature of charge, such as larceny, assault, etc*], shall personally appear at Norfolk Island on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock in the forenoon, before the Court of Petty Sessions [further] to answer the said charge made by C.D. against the said A.B.; then the said recognisance to be void, or else to stand in full force and virtue.

J.S.  
Magistrate.



## Form 24

*Notice of such recognisance to be given to the defendant and his surety*

TAKE notice that you, A.B., of \_\_\_\_\_, in Norfolk Island, are bound in the sum of \_\_\_\_\_, and you L.M. of \_\_\_\_\_, in the sum of \_\_\_\_\_, that you, A.B., appear personally at Norfolk Island on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock in the forenoon., before the Court of Petty Sessions, to answer further a certain charge made by C.D., the further hearing of which was adjourned to the said time and place; and unless you appear accordingly,

the recognisance entered into by you, A.B., and by L.M. as your surety, will forthwith be put in suit and enforced against you and him.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

J.S.

Magistrate.

## Form 25

*Certificate of non-appearance or default to be endorsed on the defendant's recognisance*

I hereby certify that the said A.B. did not appear at the time and place in the condition of the within-written recognisance mentioned.

J.S.

Magistrate.

## Form 26

*Recognisance of bail on committal for trial*

[Same as Recognisance, Form 23]

*Condition*

THE condition of the within recognisance is such as whereas the said A.B. was this day charged before [me], the Magistrate within mentioned, that [*etc, as in the warrant*]; if therefore the said A.B. shall appear at the next Sittings of the Supreme Court to be held at \_\_\_\_\_ in \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and surrender [himself] into the custody of the keeper of the gaol there, and plead to such information as may be filed against [him] in respect of the charge aforesaid, and take [his] trial upon the same, and not depart from the said Court without leave, then the said recognisance to be void, or else to stand in full force and virtue.

## Form 27

*Notice of recognisance to be given to the defendant and his bail*

In the Court of Petty Sessions at Norfolk Island.

TAKE notice that you, A.B., of \_\_\_\_\_, in Norfolk Island, are bound in the sum of \_\_\_\_\_, and you, L.M. and N.O. in the sum of \_\_\_\_\_ each, that you, A.B., appear [*etc, as in the conditions of the recognisance*], and do not depart from the said Court without leave; and unless you, the said A.B., personally appear and plead and take your trial accordingly, the recognisance entered into by you and your sureties will forthwith be put in suit and enforced against you and them.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

J.S.

Magistrate.

## Form 28

*Recognisance of the peace or for good behaviour*

[Same as Recognisance, Form 23]

*Condition*

THE condition of the within-written recognisance is such that, if the said A.B. shall keep the peace towards Her Majesty the Queen and Her people, and especially towards C.D., of [ ] [or be of good behaviour] for the term of [6 months] now next ensuing, then the said recognisance to be void, or else to stand in full force and virtue.

## Form 29

*Note of recognisance to be given to the defendant and his sureties*

TAKE notice that you, A.B. of Norfolk Island, are bound in the sum of and you, L.M. and N.O. in the sum of , that you, A.B. keep the peace towards Her Majesty the Queen and Her people, and especially towards C.D. of [ ] [or be of good behaviour] for the term of [six months] from the day of [last], and unless you so keep the peace [or as the case may be] accordingly, the recognisance entered into by you, A.B. and by L.M. and N.O. as your sureties, will forthwith be put in suit and enforced against you and them.

Dated this day of , 20 .

J.S.  
Magistrate.

## Form 30

*Recognisance to give evidence*

Norfolk Island,  
to wit

BE it remembered that on the day of , 20 , C.D. of , came before [me], a Magistrate of the Court of Petty Sessions and acknowledged [himself] to owe to our Sovereign Lady the Queen the sum of , to be made and levied of [his] goods and chattels, lands, and tenements, to the use of our said Lady the Queen, Her Heirs and Successors, if [he] the said C.D. shall fail in the conditions endorsed.

Taken and acknowledged before [me] the day and year first above mentioned at Norfolk Island.

J.S.  
Magistrate.

*Condition*

THE condition of the within-written recognisance is such that whereas A.B. was this day charged before the Court of Petty Sessions at Norfolk Island, for that [etc, as in the caption of the depositions]. If therefore [he the said C.D. shall appear at the next Sittings of the Supreme Court, to be holden at in the , on , the day of , 20 , and there gave evidence upon an information to be then preferred against the said A.B. for the offence aforesaid, then the said recognisance to be void, or else to stand in full force and virtue.

## Form 31

*Notices of recognisance to be given to the witnesses*

Norfolk Island,

to wit

TAKE notice that you, C.D. of , are bound in the sum of , to appear at the next [*as in the Condition*], and then and there to give evidence against A.B. and unless you then appear and give evidence accordingly the recognisance entered into by you will be forthwith put in suit and enforced against you.

Dated this day of , 20 .

J.S.  
Magistrate.

## Form 32

*Recognisance on appeal*

[Same as Recognisance, in Form 23]

*Condition*

WHEREAS the said A.B. was, on the day of , convicted before the Court of Petty Sessions held at Norfolk Island of an offence against the provisions of the section of the [*or as the case may be, describing the Act, Regulation or by-law under which the offence is created*] and it was by the said conviction adjudged that the said A.B. should for such offence forfeit and pay, etc [*recite conviction*], and should also pay to the said A.B. the sum of \$ for costs; [*or Whereas on the day of 20 , at upon the hearing of a plaint made by C.D. of , against A.B. of , E.F. and others the Court of Petty Sessions at Norfolk Island adjudged that the said A.B. should pay to the said C.D. the sum of \$ on or before the day of then next, and should also pay to the said C.D. the sum of \$ for costs*], [*or that the said plaint should be dismissed, and that the said C.D. should pay to the said A.B. the sum of for costs*]. And whereas the said A.B. has given notice of his intention to appeal from the said conviction [*or order*] to the Supreme Court: Now, the conditions of the within-written recognisance are such that if said A.B. shall prosecute the said appeal without delay, and submit to the judgment of the Supreme Court, and pay such costs as the said Court shall award; [*if not in custody add and further shall appear before the Court of Petty Sessions, at the Court House at Norfolk Island within days after the judgment of the Supreme Court is given, to abide such judgment, unless the decision appealed against is reversed*]; then this recognisance shall be void, but otherwise shall remain in full force and virtue.

**DEPOSITIONS, ETC**

## Form 33

*Depositions of witnesses*

Norfolk Island,

to wit

THE examination of C.D. of , and E.F. of taken this day of , 20 , at Norfolk Island before the Court of Petty Sessions, in the presence and hearing of A.B. who is charged this day before the said Court that [he] [*etc, describing the offence as in a warrant of commitment*].

C.D., on his oath [*or affirmation*] says as follows [*etc, state the deposition of the witness as nearly as possible in the words he uses*].

E.F., upon his oath [*or affirmation*] says as follows [*etc*].

Taken and sworn [*or affirmed*] before me at Norfolk Island on the day and year first above-mentioned.

J.S.  
Magistrate.

## Form 34

*Statement of the Defendant*

Norfolk Island,

to wit

A.B. stands charged before the Court of Petty Sessions, at Norfolk Island, this      day of      , 20      , that [he] [*etc, as in the caption of the depositions*], and the charge being read to the said A.B. and the witnesses for the prosecution, C.D. and E.F., being severally examined in [his] presence the said A.B. is now addressed by the said Court as follows:- “Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial. You are clearly to understand that you have nothing to hope from any promise or favour and nothing to fear from any threat that may have been held out to you to induce you to make any admission or confession of your guilt; but whatever you now say may be given in evidence against you upon your trial, notwithstanding any such promise or threat.” Whereupon the said A.B. says as follows: [*Here state whatever the prisoner may say, and in his very words as nearly as possible; get him to sign it if he will.*]

A.B.

Taken before the said Court at Norfolk Island, the day and year first above-mentioned.

J.S.  
Magistrate.

---

**MINUTES**

## Form 35

*Minute of conviction or order*

Norfolk Island,

to wit

C.D. VERSUS A.B.

OFFENCE [or DEBT, *or as the case may be*].

Defendant convicted and adjudged [*or ordered*] to be imprisoned in Her Majesty's gaol at      for [*or to pay the sum of      or etc*] [and to pay      for costs] [and in default of payment of such sum (or sums) within      days, the amount to be levied by execution, and in default of execution the defendant to be (further) imprisoned in the said gaol for      ].

Dated this      day of      , 20      .

J.S.  
Magistrate.

---

## CONVICTIONS

## Form 36

*Conviction for a penalty to be levied by execution, and in default of sufficient execution imprisonment*  
Norfolk Island,

to wit

BE it remembered that on the      day of      , 20      at Norfolk Island, A.B. of      , was convicted before the Court of Petty Sessions that [he], the said A.B. [*etc, stating the offence and the time and place when and where it was committed*], and the said A.B. was adjudged for [his] said offence to forfeit and pay the sum of      [*stating the penalty and the compensation, if any*] to be paid and applied according to law, and also to pay to the said C.D. the sum of      for [his] costs, and if the said several sums are not paid forthwith [*or on or before      next*] then\* it is hereby ordered that the same be levied by execution against the goods and chattels of the said A.B., and in default of sufficient goods and chattels\* the said A.B. is adjudged to be imprisoned in the gaol at      in      [there to be kept to hard labour] for the period of      unless the said several sums and all costs and charges of the said execution [and of taking and conveying the said A.B. to gaol] are sooner paid.

Given under my hand, at Norfolk Island, the day and year first above-mentioned.

J.S.

Magistrate.

*\*Or where the issuing of warrant of execution would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy, then, instead of the words between the asterisks \*\*, say —*  
“Inasmuch as it appears to the said court that the issuing of a warrant of execution would be ruinous to the said A.B. and his family” [*or “that the said A.B. has no goods or chattels whereon to levy the said sum*] the said A.B.” [*etc, as above, to the end, but omitting the words “of the said execution and”*].

## Form 37

*Conviction for a penalty and, in default of payment, imprisonment*

Norfolk Island,

to wit

BE it remembered that on the      day of      , 20      , at Norfolk Island, A.B. of      , was convicted before the Court of Petty Sessions that [he] the said A.B. [*etc, stating the offence and the time and place when and where it was committed*], and the said A.B. was adjudged for [his] said offence to forfeit and pay the sum of [*stating the penalty and the compensation, if any*] to be paid and applied according to law, and also to pay to the said C.D. the sum of      for [his] costs, and if the said several sums are not paid forthwith *or* on or before      next, the said A.B. is adjudged to be imprisoned in the gaol at, in      , [there to be kept to hard labour] for the period of      unless the said several sums [and the costs and charges of commitment and of conveying the said A.B. to gaol] are sooner paid.

Given under my hand at Norfolk Island, the day and year first abovementioned.

J.S.

Magistrate.

## Form 38

*Conviction when the punishment is imprisonment, and costs are awarded to be levied by execution*

Norfolk Island,

to wit

BE it remembered that on the      day of      , 20      , at Norfolk Island, A.B. of      , was convicted before the Court of Petty Sessions, that [he] the said A.B. [*etc, stating the offence and the time and place when and where it was committed*], and the said A.B. was adjudged for [his] said offence to be imprisoned in the gaol at      , in      , [there to be kept to hard labour] for the period of      , and the said A.B. was also adjudged to pay to the said C.D. the sum of      for [his] costs; and if the said sum for costs is not paid forthwith [*or on or before      next*] then\* [I] order that the said sum be levied by execution against the goods and chattels\* of the said A.B. and in default of sufficient goods and chattels\* [I] adjudge the said A.B. to be imprisoned in the said gaol for the term of      , to commence at and from the termination of [his] imprisonment aforesaid, unless the said sum for costs and all costs and charges of the said execution [and of taking and conveying the said A.B. to gaol] are sooner paid.

Given under my hand, at Norfolk Island, the day and year first above-mentioned.

J.S.

Magistrate.

*\*Or where the issuing of warrant of execution would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy, then, instead of the words between the asterisks \*\*, say – “Inasmuch as it appears to (me) that the issuing of a warrant of execution would be ruinous to the said A.B. and [his] family” [or “that the said A.B. has no goods or chattels whereon to levy the said sums [I] adjudge” [etc, as above, to the end, but omitting the words “of the said execution and”].*

---

**CONVICTIONS FOR INDICTABLE OFFENCE**

## Form 39

*Summary conviction*

Norfolk Island,

to wit

BE it remembered that on the      day of      , 20      , at Norfolk Island, A.B., being charged before the Court of Petty Sessions, that [he] the said A.B. [*etc, stating the offence and the time and place when and where committed*] and the age of the said A.B. on the [*date of offence*] having in the opinion of the said Court not exceeded 16 [*or 12*] years [*or and the value of the said goods not exceeding \$4 (or as the case may be)*] and the said A.B. [*or C.D. the parent (or guardian) of the said A.B.*] consenting to the said Court deciding upon the charge summarily, the said A.B. is therefore convicted before the said Court of the said offence, and the said A.B. is adjudged for [his] said offence to be imprisoned in the gaol at      , in      [there to be kept to hard labour] for the term of      .

Given under my hand at Norfolk Island, the day and year first abovementioned.

J.S.

Magistrate.

---

## Form 40

*Summary conviction on confession*

Norfolk Island,

to wit

BE it remembered that on the      day of      , 20      , at Norfolk Island, A.B. being charged before the Court of Petty Sessions, that [he] the said A.B. [*etc, stating the offence and the time and place when and where committed*] and [he] the said A.B., pleading guilty to such charge [he] is thereupon convicted before the said Court of the said offence, and the said A.B. is adjudged for [his] said offence to be imprisoned in the gaol at      , in      [there to be kept to hard labour] for the term of      .

Given under my hand at Norfolk Island, the day and year first abovementioned.

J.S.  
Magistrate.

---

**ORDER AND CERTIFICATES OF DISMISSAL**

## Form 41

*Order of Dismissal of an information or plaint*

In the Court of Petty Sessions at Norfolk Island

A.B., informant [or plaintiff]

C.D., defendant

Date of information [or plaint]      , 20     

Nature of information [or plaint] [*state shortly*]

BE it remembered that on the      day of      20      , the abovementioned [information *or* plaint] was laid before the said Court for that [*etc, as in the summons to the defendant*] and now at this day, to wit, on the      day of      in Norfolk Island, both the said parties having appeared in order that the said [information *or* plaint] should be heard and determined [*or* the said C.D. having appeared before the said Court, but the said A.B., although duly called not having appeared] whereupon the matter of the said [information *or* plaint] being duly considered it appears to this Court that the said [information *or* plaint] is not proved and the same is hereby dismissed and it is adjudged that the said A.B. do pay to the said C.D. the sum of      for [his *or* her] costs incurred by [him *or* her] in [his *or* her] defence in this behalf, and if the said sum for costs is not paid [forthwith *or* on or before      ] it is ordered that the same be levied by distress and the sale of the goods and chattels, money, Australian notes, bank notes, cheques, bills of exchange, promissory notes, bonds, specialities, or securities of money of the said A.B.

Dated at Norfolk Island the      day of      , 20      .

J.S.  
Magistrate.

---

Form 42
*Certificate of Dismissal*

Norfolk Island

to wit

I, the undersigned, a Magistrate of the Court of Petty Sessions, hereby certify that on the      day of      , 20      at      , A.B. was charged before the Court of Petty Sessions that [he] the said A.B., [*etc, stating the offences and the time and place when and where alleged to have been committed*] and that the said Court thereupon dismissed the said information.

Given under my hand, at Norfolk Island, this      day of      20      .

J.S.  
Magistrate.

---

## Form 43

*Certificate of dismissal on summary hearing of indictable offence*

Norfolk Island

to wit

I, the undersigned, a Magistrate of the Court of Petty Sessions, hereby certify that on the      day of      , 20      , in the said Territory, A.B., charged before the Court of Petty Sessions that [*stating the offence charged, and the time and place when and where committed, etc as in Form 39 to "summarily"*], the said information is thereupon dismissed.

Given under my hand, at Norfolk Island, this      day of      20      .

J.S.  
Magistrate.

**ORDERS**

## Form 44

*Order for payment of money to be levied by execution*

In the Court of Petty Sessions, at Norfolk Island

A.B., plaintiff

C.D., defendant

Date of plaint      , 20

Nature of plaint [*state shortly*]

The parties abovenamed having appeared [*or the said A.B. having appeared but the said C.D. although duly called not having appeared by [himself or herself or his or her counsel, solicitor or agent]*] and it now being satisfactorily proved on oath that the said C.D. has been duly served with a summons in this behalf [*or that an order for notice in substitution for service of a summons in this behalf has been made and complied with*] which required [*him or her*] to be and appear here at this day before the said Court of Petty Sessions to answer to the said plaint and to be further dealt with according to law] and now having heard the matter of the said plaint it is adjudged that the said C.D. do pay to the said A.B. the sum of      [*forthwith or on or before the      day of      next or as the Act may require*] and also pay to the said A.B. the sum of      for [*his or her*] costs in this behalf and if the said several sums are not paid [*forthwith or on or before the      next*] it is hereby ordered that the said sums be levied by distress and sale of the goods and chattels, money, Australian notes, bank notes, cheques, bills of exchange, promissory notes, bonds, specialities or securities of money of the said C.D.

Dated at Norfolk Island the      day of      20      .

J.S.  
Magistrate.



## Form 45

*Order for payment of money to be levied by execution and in default of execution imprisonment*

Norfolk Island

to wit

BE it remembered that on the      day of      , 20      , information was laid before the      that *[stating the facts entitling the plaintiff to the order, with the time and place when and where they occurred]*, and on the      day of      , 20      , at Norfolk Island, having heard the said plaint the said Court adjudged the said A.B. to pay to the said C.D. the sum of      forthwith *[or as the case may be]*, and also to pay to the said C.D. forthwith *[or as the case may be]*, the sum of      for costs, and if the said several sums are not paid as aforesaid\* it is ordered that the same be levied by execution against the goods and chattels of the said A.B., and in default of sufficient goods and chattels\* it is adjudged that the said A.B. be imprisoned in the gaol at      , in the      *[there to be kept to hard labour]* for the term of      unless the said several sums and all costs and charges of the said execution *[and the costs and charges of commitment and of conveying the said A.B. to gaol]* are sooner paid.

Given under my hand, at Norfolk Island, this      day of      20      .

J.S.

Magistrate.

*\*Or where the issue of warrant of execution would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy, then, instead of the words between the asterisks \*\*, say — “Inasmuch as it appears to the said court that the issuing of a warrant of execution would be ruinous to the said A.B., and his family [or “that the said A.B. has no goods or chattels whereon to levy the said sums”], it is adjudged” [etc, as above, to the end, but omitting the words “of the said execution and”].*

## Form 46

*Order for payment of money and in default of payment imprisonment*

Norfolk Island

to wit

BE it remembered that on the      day of      , 20      , information was laid before the Court of Petty Sessions at Norfolk Island, that *[stating the facts entitling the plaintiff to the order, with the time and place when and where they occurred]*, and on the      day of      , at Norfolk Island, having heard the said information the said Court adjudged the said A.B. to forfeit and pay to the said C.D. the sum of      forthwith *[or as the case may be]*, and also to pay to the said C.D. the sum of      for costs, and if the said several sums be not paid as aforesaid *[forthwith]*, it is adjudged that the said A.B. be imprisoned in the gaol at      , in the      *[there to be kept to hard labour]* for the term of      unless the said several sums and the costs and charges of commitment and of conveying the said A.B. to gaol] are sooner paid.

Given under my hand, at Norfolk Island, this      day of      20      .

J.S.

Magistrate.

## Form 47

*Order for any matter where the disobeying of it is punishable with imprisonment*

Norfolk Island

to wit

BE it remembered that on the      day of      , 20      , information was laid before the Court of Petty Sessions, at Norfolk Island, that [*stating the facts entitling the plaintiff to the order, with the time and place when they occurred*], and on the      day of      , at Norfolk Island, having heard the said information the said Court adjudged the said A.B. to [*here state the matter required to be done*], and if upon a copy of the minute of this order being served upon said A.B., either personally or by leaving the same for [him] at [his] last known or usual place of abode [he] shall neglect or refuse to obey the order it is adjudged that the said A.B. be imprisoned in the gaol at      , in the      [there to be kept to hard labour] for the term of      [unless the said order is sooner obeyed, *if the Act authorise this*], and it is also adjudged that the said A.B. pay to the said C.D. the sum of      for costs, and if the said sum is not paid forthwith [*or on or before      next*], it is ordered that the said sum be levied by execution against the goods and chattels of the said A.B., and in default of sufficient goods and chattels it is adjudged that the said A.B. be imprisoned in the said gaol for the term of      to commence at and from the termination of [his] imprisonment aforesaid, unless the said sum for costs, and all the costs and charges of the said execution [and of taking and conveying the said A.B. to gaol] are sooner paid.

Given under my hand, at Norfolk Island, this      day of      20      .

J.S.  
Magistrate.

## Form 48

*Order in case of adverse claims to goods distrained*

In the Court of Petty Sessions, at Norfolk Island.

A.B., plaintiff

C.D., defendant

G.H. , applicant, and E.F., claimant

BE it remembered that on the      day of      application was made by [*as in Form 11 to the\**] and that E.F. had claimed the said goods and chattels as his property and now at this day the said E.F. and A.B. the party who obtained the said warrant appear before the said Court [*if both do not appear state the non-appearance and service of the summons* “to be and appear here at this day before”, etc, “in order that the said Court might adjudicate upon the said claim and make an order thereupon according to law”] and now having heard the matter of the said application it is hereby adjudged that [*here state the adjudication in one of the following forms or to the like effect*] —

the said goods and chattels were [not] at the time of the said distress thereof the property of the said E.F.	part of the said goods and chattels to wit one chair etc were at the time of the said distress thereof the property of the said E.F. but that the residue of the said goods and chattels was not his property.
---	--

And it is also adjudged that the said [E.F. or A.B.] do pay the said [A.B. or E.F.] forthwith [*or on or before the      day of      next*] the sum of      for his costs in this behalf and the said G.H. forthwith [*or on or before etc*] the sum of      for his costs in this behalf and if the said sums [*proceed as in the usual order mutatis mutandis.*]

Dated at Norfolk Island the      day of      , 20      .

J.S.  
Magistrate.

## Form 49

*Attachment of debt — Summons for order for oral examination*

In the Court of Petty Sessions, at Norfolk Island

A.B., informant [*or* plaintiff]

C.D., defendant

Date of information [*or* plaint]        20 .

Nature of information [*or* plaint] [*state shortly*]

To the said C.D.

You are commanded to appear before the Court of Petty Sessions at Norfolk Island on the       day of  
[*next or* instant] at       o'clock in the       noon on the hearing of an application on the part of the said A.B.  
that you attend and be orally examined before the [said] Court at Norfolk Island as to whether any and  
what debts are owing to you and as to any and what other property or means of satisfying the order made  
on the said information [*or* plaint] you may have and that you do produce [all] your books of account  
papers and documents in any way relating to the said debts property or means before the said Court at the  
time of the examination.

Dated at Norfolk Island the       day of       , 20 .

J.S.

[Magistrate *or* Clerk of Court of Petty Sessions].

## Form 50

*Order for oral examination*

In the Court of Petty Sessions, at Norfolk Island

A.B., informant [*or* plaintiff]

C.D., defendant

Date of information [*or* plaint]        20 .

Nature of information [*or* plaint] [*state shortly*].

UPON hearing       it is ordered that the abovenamed C.D. attend and be orally examined before the  
Court of Petty Sessions at Norfolk Island on       the       day of       [*next or* instant] at       o'clock in  
the       noon as to whether any and what debts are owing to him and as to any and what other property  
or means of satisfying the order made on the said [information *or* plaint] *he* may have and that the said  
C.D. produce his books [*as may be ordered*] before the Court at the time of the examination and that  
the costs of this application be       .

Dated at Norfolk Island the       day of       , 20 .

J.S.

Magistrate.

## Form 51

*Order ex parte for attachment of debt*

In the Court of Petty Sessions, at Norfolk Island

A.B., informant [*or* plaintiff]

C.D., defendant

Date of information [*or* plaint] 20 .

Nature of information [*or* plaint] [*state shortly*].

[*add*] M.P. garnishee.

UPON hearing and upon reading the affidavit of filed the day of 20 .

It is ordered that all debts owing or accruing due from the abovenamed garnishee to the abovenamed C.D. be attached to answer the order herein for the sum of on which order the sum of \$ remains due and unpaid.

It is further ordered that the said garnishee attend before the Court of Petty Sessions at Norfolk Island on the day of [next *or* instant] at o'clock in the noon on an application by the said A.B. that the said garnishee pay to the said A.B. the debt due from him to the said C.D. or so much thereof as may be sufficient to satisfy the order herein.

And that the costs of this application be [If any order for special service is made add "and it is further ordered that service of this order may be made by (*as directed by the Court*)."]

Dated at Norfolk Island the day of , 20 . J.S.

Magistrate *or* Clerk of the Court of Petty Sessions.

## Form 52

*Order for payment by garnishee to person obtaining order where garnishee does not dispute his liability*

In the Court of Petty Sessions, at Norfolk Island

A.B., informant [*or* plaintiff]

C.D., defendant

Date of information [*or* plaint] 20 .

Nature of information [*or* plaint] [*state shortly*].

[*add*] M.P. garnishee

UPON hearing [all the said parties] and upon reading the order for attachment of debt dated it is ordered that the said garnishee do forthwith pay the said A.B. the amount of the debt due from him to the said C.D. namely \$ [*or* \$ part thereof] and that in default a warrant of execution may issue for the amount and that the cost of this application be .

Dated at Norfolk Island the day of , 20 . J.S.

Magistrate.

## Form 53

*Order where garnishee disputes his liability and issue is ordered*

In the Court of Petty Sessions, at Norfolk Island

A.B., informant [*or* plaintiff]

C.D., defendant

Date of information [*or* plaint] 20 .

Nature of information [*or* plaint] [*state shortly*].

[*add*] M.P. garnishee

UPON hearing [all] the parties abovenamed and upon reading the order of attachment of debt dated it is ordered that the said A.B. and the said M.P. do proceed to the trial of an issue in the Court of Petty Sessions at Norfolk Island wherein the said A.B. shall be [plaintiff] and the said M.P. shall be defendant; the question to be tried therein shall be whether the said M.P. was indebted to the said C.D. at the time the said order for attachment was made, eg on the , and, if so, whether he was so indebted to the amount of \$ and that the cost of this application follow the event of the issue.

And it is further ordered that this order be filed in the said Court of Petty Sessions at Norfolk Island within days of the making of this order.

Dated at Norfolk Island the day of , 20 .

J.S.  
Magistrate.

## Form 54

*Order where the garnishee suggests that a third person claims a lien or charge on debt due from garnishee to debtor*

In the Court of Petty Sessions, at Norfolk Island

A.B., informant [*or* plaintiff]

C.D., defendant

Date of information [*or* plaint] 20 .

Nature of information [*or* plaint] [*state shortly*].

[*add*] M.P. garnishee

S.T. claimant

UPON hearing the abovenamed A.B., C.D., and M.P., it is ordered that all the abovenamed parties A.B., C.D., M.P. and S.T. attend before the Court of Petty Sessions at Norfolk island at o'clock in the noon on the day of [next *or* instant] and state the nature and particulars of their respective claims to the debts and maintain or relinquish the debts and abide such order as may be made herein. And it is further ordered that the abovenamed A.B. do serve a true copy of the order in the said information [*or* plaint] made the day of last [*or* instant] upon the abovenamed S.T.

Dated at Norfolk Island the day of , 20 .

J.S.  
Magistrate.

## WARRANTS OF EXECUTION, ETC

## Form 55

*Warrant of execution upon a conviction for a penalty*

To all Police Officers in Norfolk Island

WHEREAS A.B., late of        was on the        day of        20    , at        , convicted before the Court of Petty Sessions of an offence against the provisions of the        section of the        [*or as the case may be, describing the Act, Regulation or By-law under which the offence is created*], and it was thereby adjudged that the said A.B. should for [his] offence forfeit and pay [*etc, as in the conviction*], and should also pay to the said C.D. the sum of        [his] costs, and it was thereby ordered that if the said several sums should not be paid [*forthwith*] the same should be levied by execution against the goods and chattels of the said A.B.\*: And whereas the said A.B. being [*now*] required to pay the said sums, has not paid the sums or any part thereof]: These are therefore to command you, in Her Majesty's name, forthwith to take the goods and chattels of the said A.B. and if within the period of        days after taking them the said sums, together with the reasonable charges of taking and keeping the goods and chattels are not paid, that then you sell the said goods and chattels and pay the money arising by the sale to the Clerk of the Court of Petty Sessions, at Norfolk Island; and if no goods and chattels can be found, that you so certify to me.

Given under my hand, at Norfolk Island, this        day of        20    .

J.S.  
Magistrate.

## Form 56

*Warrant of execution upon an order for the payment of money*

To all Police Officers in Norfolk Island

or

To        , a bailiff of the Court of Petty Sessions of Norfolk Island.

WHEREAS on the        day of        , 20    , at Norfolk Island, upon the hearing of a plaintiff made by C.D. of        , against A.B. of        E.F. [and others] the Court of Petty Sessions at Norfolk Island adjudged that the said A.B. should pay to the said C.D. the sum of        on or before the        then next [*or as the case may be*], and also should pay to the said C.D. the sum of        for costs, and it was thereby ordered that if the said several sums were not paid on or before the said        day of        then next, the sums should be levied by execution against the goods and chattels of the said A.B.\*: And whereas the said C.D. has not paid the said several sums of        , [*or any part thereof*]: These are therefore to command you, in Her Majesty's name, forthwith to take the goods and chattels of the said A.B., and if within the period of        days after taking them the said last-mentioned sums, together with the reasonable charges of taking and keeping the said goods and chattels are not paid, that then you sell the said goods and chattels, and pay the money arising from the sale to the Clerk of the said Court; and if no goods and chattels can be found, that you so certify to me.

Given under my hand, at Norfolk Island, this        day of        20    .

J.S.  
Magistrate.

## Form 57

*Warrant of execution for costs upon an order for dismissal of an information or a plaint*

To all Police Officers in Norfolk Island

*or*

To \_\_\_\_\_, a bailiff of the Court of Petty Sessions of Norfolk Island.

WHEREAS on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at Norfolk Island, upon the hearing of an information laid [*or* a plaint made] by C.D. against A.B. before the Court of Petty Sessions at Norfolk Island, dismissed the information [*or* plaint] and adjudged that the said C.D. should pay to the said A.B. the sum of \_\_\_\_\_ for costs, and that if the said sum were not paid [*forthwith*] the sum would be levied by execution against the goods and chattels of the said C.D.\*: And whereas the said C.D. being [*now*] required to pay to the said A.B. the said sum for costs, has not paid the sum or any part thereof: These are therefore to command you, in Her Majesty's name, forthwith to take the goods and chattels of the said C.D., and if within the period of \_\_\_\_\_ days next after taking them the said sum, together with the reasonable charges of taking and keeping the goods and chattels, are not paid, that then you sell the said goods and chattels, and pay the money arising from the sale to the Clerk of the said Court; and if no goods and chattels can be found, that you so certify to me.

Given under my hand, at Norfolk Island, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

J.S.  
Magistrate.

## Form 58

*Warrant of execution for costs upon a conviction where the offence is punishable by imprisonment*

To all Police Officers in Norfolk Island

WHEREAS A.B. of \_\_\_\_\_, in Norfolk Island was on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, convicted before the Court of Petty Sessions at Norfolk Island, of an offence against the provisions of the \_\_\_\_\_ section of the \_\_\_\_\_ [*or as the case may be, describing the Act, Regulation or by-law under which the offence is created*], and it was also adjudged that the said A.B. should be imprisoned in the gaol at \_\_\_\_\_, in the \_\_\_\_\_ [there to be kept to hard labour] for the term of \_\_\_\_\_, and it was also adjudged that the said A.B. should pay to the said C.D. the sum of \_\_\_\_\_ for costs, and it was thereby ordered that if the said sum of \_\_\_\_\_ for costs should not be paid [*forthwith*] the sum should be levied by execution against the goods and chattels of the said A.B.\*: And whereas the said A.B. being required to pay the said sum of \_\_\_\_\_ has not paid the sum [or any part thereof]: These are therefore to command you, in Her Majesty's name, forthwith to take the goods and chattels of the said A.B., and if within the period of \_\_\_\_\_ days next after taking them, the said last-mentioned sum, together with the reasonable charges of taking and keeping the goods and chattels, are not paid, that then you sell the said goods and chattels, and pay the money arising from the sale to the Clerk of the said Court; and if no goods and chattels can be found, that you so certify to me.

Given under my hand, at Norfolk Island, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

J.S.  
Magistrate.

## Form 59

*Warrant of execution for costs upon an order where the disobeying of the order is punishable with imprisonment*

To all Police Officers in Norfolk Island

WHEREAS on the       day of       , 20       , at Norfolk Island upon an information laid by C.D., of       , against A.B., of       the Court of Petty Sessions at Norfolk Island adjudged that the said A.B. should [etc, as in the order], and it was thereby also adjudged that the said A.B. should pay to the said C.D. the sum of       for costs, and it was ordered that if the said sum should not be paid [forthwith] the sum should be levied by execution against the goods and chattels of the said A.B., and that in default of sufficient goods and chattels the said A.B. should be imprisoned in the said gaol for the term of       , to commence at and from the termination of [his] imprisonment aforesaid, unless the said sum for costs and all costs and charges of the said execution and of the commitment should be sooner paid\*: And whereas a copy of the minute of the said order was served upon the said A.B. but the said A.B. has not paid the said sum for costs, or any part thereof: These are therefore to command you, in Her Majesty's name, forthwith to take the goods and chattels of the said A.B. and if within the period of       days after taking them the last-mentioned sum, together with the reasonable charges of taking and keeping the goods and chattels, are not paid, that then you sell the said goods and chattels, and pay the money arising from the sale to the Clerk of the said Court; and if no goods and chattels can be found, that you so certify to me.

Given under my hand, at Norfolk Island, this       day of       20       .

J.S.  
Magistrate.

## Form 60

*Warrant of distress for costs of an appeal against a conviction or order*

To       a member of the Police Force of Norfolk Island.

or

To       , a bailiff of the Court of Petty Sessions of Norfolk Island.

WHEREAS [etc, as in warrant of execution Form 57 or 58 to       and then thus]: And whereas the said C.D. appealed to the Supreme Court of Norfolk Island against the said [conviction or order] and the said Supreme Court thereupon ordered that the said [appellant] should pay to the said [respondent] the sum of       [his or her] costs: And whereas the Registrar of the said Supreme Court hath on the       day of       [instant or last past] duly certified that the said sum for costs had not then been paid: These are therefore to command you in Her Majesty's name forthwith to make distress of the goods and chattels, money, Australian notes, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties or securities of money of the said C.D. and if within the period of       days next after the making of the distress of the said last-mentioned sum, together with the reasonable charges of taking and keeping the said distress shall not be paid that then you do sell the said goods and chattels so by you distrained and do pay the money arising from the sale and such money and bank notes so distrained to the Clerk of the Court of Petty Sessions at Norfolk Island and that you do as by law empowered hold and realise and if occasion requires sue on the said cheques, bills of exchange, promissory notes, specialties or securities of money, and do pay the money realised or recovered unto the said Clerk that he may pay and apply the same as by law directed and if no such distress can be found then that you so certify unto me or some other Magistrate to the end that such proceedings may be had therein as to the law doth appertain.

Dated at Norfolk Island, the       day of       20       .

J.S.  
Magistrate.



## Form 61

*Return to a warrant of execution*

I, W.T., Police Officer, or bailiff of Norfolk Island, hereby certify to J.S., Esquire, a Magistrate of the Court of Petty Sessions, that by virtue of this warrant I have made diligent search for the goods and chattels of the within-mentioned A.B. and than I can find no sufficient goods or chattels of the said A.B. whereon to levy the sums within-mentioned.

Witness my hand, this     day of     20     .

W.T.

---

**WARRANT OF COMMITTAL, ETC**

## Form 62

*Warrant of commitment for trial or for sentence*

To all Police Officers in Norfolk Island and to the Keeper of the Gaol at

WHEREAS A.B. was this day charged before the Court of Petty Sessions at Norfolk Island on the oath of C.D., of     , in the said Territory, and others that [*etc, stating shortly the indictable offence*] [and the said A.B. being asked, admitted that he is guilty of the said offence], and thereupon it was ordered that the said A.B. should be committed to take his trial [*or to be sentenced*] for the said offence at the Sittings of the Supreme Court, to be holden at, etc: These are therefore to command you, the said Police Officers, to convey the said A.B. to the gaol at     aforesaid, and deliver [him] to the keeper thereof, together with this warrant; and [I] hereby command you, the said keeper of the said gaol, to receive the said A.B. into your custody in the said gaol, and [him] there keep until the said sittings of the said Court, or until [he] shall be thence delivered by due course of law.

Given under my hand, at Norfolk Island, this     day of     20     .

J.S.  
Magistrate.

---

Form 63*Warrant of commitment of a person indicted*

To all Police Officers in Norfolk Island and to the Keeper of the Gaol at

WHEREAS by warrant under [my hand, dated the     day of     20     , after reciting that it has been certified by J.D. [*etc, as in the certificate*], [I] command all police officers of Norfolk Island, in Her Majesty's name, forthwith to apprehend the said A.B. and to bring [him] before the Court of Petty Sessions at Norfolk Island. And whereas the said A.B. having been apprehended and brought before the said Court at Norfolk Island, it is proved to the said Court upon oath that the said A.B. is the same person who is charged in the said information: These are therefore to command you in Her Majesty's name forthwith to convey the said A.B. to the gaol at     , in the     , and deliver [him] to the keeper thereof, together with this warrant, and to command you, the said keeper, to receive the said A.B. into your custody in the said gaol and to keep [him] there until [he] shall be thence delivered by due course of law.

Given under my hand, at Norfolk Island, this     day of     20     .

J.S.  
Magistrate.

---

## Form 64

*Warrant to detain a person indicted who is already in custody for another offence*

To the Keeper of the Gaol at

WHEREAS it has been duly certified by the Clerk of the Court of Petty Sessions that [*etc, stating the certificate Form 41*]: And whereas [*I*] am informed that the said A.B. is in your custody in the said gaol at , in the , charged with some offence or other matter, and it is now proved upon oath before [*me*] that the said A.B. so indicted as aforesaid, and the said A.B. in your custody as aforesaid, are one and the same person: These are therefore to command you, in Her Majesty's name, to detain the said A.B. in your custody in the gaol aforesaid until [*he*] shall be lawfully removed therefrom for the purpose of being tried upon the said information, or until [*he*] shall otherwise be removed or discharged out of your custody by due course of law.

Given under my hand, at Norfolk Island, this      day of      20      .

J.S.  
Magistrate.

## Form 65

*Warrant of commitment of a witness for refusing to be sworn or to give evidence*

To all Police Officers in Norfolk Island and to the Keeper of the Gaol at

WHEREAS on the      day of      20      , upon the hearing of a charge before the Court of Petty Sessions at Norfolk Island, that [*etc, as in the summons or warrant*] [*or a plaint by A.B. against C.D.*] E.F., of      being required to make oath [*or affirmation*] as a witness to testify what [*he*] knew concerning the said charge [*or the matter of the said plaint*] refused so to do [*or being duly sworn as a witness, refused to answer certain questions concerning the premises which were put to him*] without offering any just excuse for the refusal: These are therefore to command you, the said police officers, to convey the said E.F. to the gaol at      , in the said Territory, and deliver [*him*] to the keeper thereof, together with this warrant, and [*I*] hereby command you, the said keeper of the said gaol, to receive the said E.F. into your custody in the said gaol and keep [*him*] there for the period of      days for [*his*] contempt, unless in the meantime he consents to be examined and to answer concerning the premises.

Given under my hand, at Norfolk Island, this      day of      20      .

J.S.  
Magistrate.

## Form 66

*Warrant of commitment for want of sureties of the peace or for good behaviour*

To all Police Officers in Norfolk Island and to the Keeper of the Gaol at

WHEREAS on the      day of      20      , upon the hearing of a charge before the Court of Petty Sessions at Norfolk Island, that [*etc, as in the complaint*] the said A.B., being ordered to enter into his own recognisance in the sum of \$      , with [*2*] sufficient sureties in the sum of \$      each, to keep the peace, etc [*or as the case may be - see condition of the recognisance to keep the peace, etc, ante, Form 28, etc*], refused and neglected, and still refuses and neglects so to do: These are therefore to command you, the said police officers, to convey the said A.B. to the gaol at      , in      , and deliver him to the said keeper thereof, together with this warrant: And to command you, the said keeper of the said gaol, to receive the said A.B. into your custody, and there keep [*him*] for the term of [*6 months*], unless he in the meantime enters into such recognisance with such sureties as aforesaid to keep the peace, etc [*or as may be*].

Given under my hand, at Norfolk Island, this      day of      20      .

J.S.  
Magistrate.

## Form 67

*Commitment of witness for refusing to enter into recognisance*

To all Police Officers in Norfolk Island and to the Keeper of the Gaol at

WHEREAS A.B. of , was on the day of 20 , charged before the Court of Petty Sessions at Norfolk Island that [*etc, as in the summons or warrant*] E.F., of , having been examined as a witness touching the premises, and being required to enter into a recognisance conditioned to give evidence against the said A.B., refuses so to do: These are therefore to command you, the said police officers, to convey the said E.F. to the gaol , in the , and deliver him to the said keeper thereof, together with this warrant and to command you, the said keeper of the said gaol, to receive the said E.F. into your custody in the said gaol, there to keep [him] until after the trial of the said A.B. for the offence aforesaid, unless in the meantime the said E.F. duly enters into such recognisance as aforesaid in the sum of \$ , before for the said Territory, conditioned to appear at the next Sittings of the Supreme Court to be held at Norfolk Island, and there to give evidence upon any information which may be then and there preferred against the said A.B. for the offence aforesaid, and also to give evidence upon the trial of the said A.B. for the said offence.

Given under my hand, at Norfolk Island, this day of 20 .

J.S.  
Magistrate.

## Form 68

*Warrant of commitment upon a conviction for a penalty in the first instance*

To all Police Officers in Norfolk Island and to the Keeper of the Gaol at

WHEREAS A.B., of , was on the day of 20 , convicted before the Court of Petty Sessions at Norfolk Island, for that [*stating the offence as in the conviction*], and it was adjudged that the said A.B. for [his] said offence should forfeit and pay the sum of [etc, in the conviction], and should pay to the said C.D. the sum of for costs; and it was further adjudged that if the said several sums should not be paid [*forthwith*] the said A.B. should be imprisoned in the gaol at in the [and there kept to hard labour] for the term of , unless the said several sums [and the costs and charges of conveying the said A.B. to the said gaol] should be sooner paid: And whereas the time in and by the said conviction appointed for the payment of the said several sums has lapsed, but the said A.B. has not paid the sums or any part thereof: These are therefore to command you, the said police officers, to apprehend the said A.B. and convey [him] to the gaol at aforesaid, and deliver [him] to the keeper thereof, together with this warrant, and to command you, the said keeper of the said gaol, to receive the said A.B. into your custody in the said gaol, there to imprison [him] and keep [him] to hard labour for the term of unless the said several sums [and the costs and charges of conveying (him) to the said gaol, amounting to the further sum of ] are sooner paid.

Given under my hand, at Norfolk Island, this day of 20 .

J.S.  
Magistrate.

## Form 69

*Warrant of commitment on an order in the first instance*

To all Police Officers in Norfolk Island and to the Keeper of the Gaol at

WHEREAS on the      day of      20      , upon the hearing of an information before the Court of Petty Sessions at Norfolk Island that [*etc, as in the order*], it was adjudged that the said A.B. pay to the said C.D. the sum of      , on or before the      day of      20      , and also to pay to the said C.D. the sum of      for costs, and also that if the said several sums should not be paid on or before the said      day of      20      , the said A.B. should be imprisoned in the gaol at      , in      [and there to be kept to hard labour] for the term of      , unless the said several sums [and the costs and charges of conveying A.B. to the said gaol] should be sooner paid: And whereas the said A.B. has not paid the said sums, or any part thereof: These are therefore to command you, the said police officers, to apprehend the said A.B. and convey [him] to the said gaol at      aforesaid, and there deliver him to the keeper thereof, together with this warrant, and [*I*] hereby command you, the said keeper, to receive the said A.B. into your custody in the said gaol, there to imprison [him] and keep [him] to hard labour for the term of      unless the said several sums [and the costs and charges of conveying (him) to the said gaol, amounting to the further sum of      ], are sooner paid.

Given under my hand, at Norfolk Island, this      day of      20      .

J.S.  
Magistrate.

## Form 70

*Warrant of commitment on an order where the disobeying of it is punishable by imprisonment*

To all Police Officers in Norfolk Island and to the Keeper of the Gaol at

WHEREAS on the      day of      20      , upon the hearing of an information before the Court of Petty Sessions at Norfolk Island that [*etc, as in the order*], it was adjudged that the said A.B. [*etc, as in the order*], and ordered that if upon a copy of the minute of that order being served upon the said A.B. either personally or by leaving the same for [him] at [his] last known or usual place of abode [he] should refuse or neglect to obey the same, the said A.B. should be imprisoned in the gaol at      , in the      [there to be kept to hard labour] for the term of      , unless the said order should be obeyed: And whereas it is now proved to [me] that after the making of the said order a copy of the minute thereof was duly served upon the said A.B. but [he] then refused [*or neglected*] to obey the order, and has not as yet obeyed the said order: These are therefore to command you, the said police officers, to apprehend the said A.B. and convey [him] to the gaol at      aforesaid, and deliver [him] to the keeper thereof, together with this warrant, and to command you, the said keeper of the said gaol, to receive the said A.B. into your custody in the said gaol, there to imprison [him] and keep [him] to hard labour for the term of      .

Given under my hand, at Norfolk Island, this      day of      20      .

J.S.  
Magistrate.

## Form 71

*Warrant of commitment on a conviction where the punishment is by imprisonment*

To all Police Officers in Norfolk Island and to the Keeper of the Gaol at

WHEREAS A.B. of , [labourer], was this day duly convicted before the Court of Petty Sessions at Norfolk Island, that [stating the offence as in the conviction as in Forms 37, 38 and 39], and it was adjudged that the said A.B. should be imprisoned in the gaol at , in the [there to be kept to hard labour] for a term of . These are therefore to command you, the said police officers, to convey the said A.B. to the gaol at aforesaid, and deliver [him] to the keeper thereof, together with this warrant, and to command you, the said keeper of the said gaol, to receive the said A.B. into your custody in the said gaol, there to imprison [him] and keep [him] to hard labour for the term of .

Given under my hand, at Norfolk Island, this day of 20 .

J.S.  
Magistrate.

**EXECUTION AND IMPRISONMENT**

## Form 72

*Warrant of commitment for want of execution upon a conviction for a penalty*

To all Police Officers in Norfolk Island, and to the Keeper of the Gaol at

WHEREAS [etc, as in either of the warrants of execution, Forms 55 and 56, to the asterisk (\*) and then thus]: And it was adjudged that in default of sufficient goods and chattels the said A.B. should be imprisoned in the gaol at in the [there to be kept to hard labour] for the term of , unless the said several sums and all costs and charges of the said execution and of taking and conveying the said A.B. to gaol should be sooner paid: And whereas, on the day of , in the year aforesaid, a warrant was issued to all Police Officers at Norfolk Island commanding them to levy the said sums of and by execution against the goods and chattels of the said A.B.: And whereas it appears to me as well as by the return to the said warrant of execution as otherwise that no sufficient goods and chattels could be found whereon to levy the sums abovementioned: These are therefore to command you, the said police officers, to apprehend the said A.B. and convey [him] to the gaol at aforesaid, and deliver [him] to the keeper thereof, together with this warrant: And to command you, the said keeper, to receive the said A.B. into your custody in the said gaol, there to imprison [him] and keep him to hard labour for the term of , unless the said several sums and all the costs and charges of the said execution [and of the commitment and conveying of the said A.B. to the said gaol], amounting to the further sum of , are sooner paid to you.

Given under my hand, at Norfolk Island, this day of 20 .

J.S.  
Magistrate.

## Form 73

*Warrant of commitment for want of execution for costs and dismissal of an information*

To all Police Officers in Norfolk Island, and to the Keeper of the Gaol at

WHEREAS [etc, as in Form 57 to the asterisk (\*) and then proceed as in Form 72, "And it was adjudged, etc," reciting order of dismissal according to its terms].

## Form 74

*Warrant of commitment for want of execution for costs where offence is punishable by imprisonment,  
or upon an order where disobeying the order is punishable with imprisonment*

To all Police Officers in Norfolk Island, and to the Keeper of the Gaol at

WHEREAS [etc, as in Forms 58 and 59 respectively, to the asterisk (\*) and then proceed as in Form 72 "And it was adjudged, etc" reciting conviction or order according to its terms.]

---

**GAOLER'S RECEIPT**

## Form 75

*Gaoler's receipt for the prisoner*

I HEREBY certify that I have received from W.T., police officer, of Norfolk Island, the body of A.B. in good health [or as the case may be], together with a warrant under the hand of J.S. Esquire, a Magistrate of the Court of Petty Sessions.

P.K.  
Keeper of the Gaol.

---

**DELIVERANCE**

## Form 76

*Warrant of discharge on bail being given for a prisoner already committed*

To the Keeper of the Gaol at

WHEREAS A.B., late of , in Norfolk Island, has, before the undersigned, a Magistrate of the Court of Petty Sessions, entered into his own recognisance and found sufficient sureties for [his] appearance at the next sittings of the Supreme Court, to be held at in to answer a charge that [etc, as in the commitment] for which [he] was committed to your said gaol: These are therefore to command you, in Her Majesty's name, that if the said A.B. is now in your custody in the gaol for the said cause and for no other, you forthwith suffer [him] to go at large.

Given under my hand, at Norfolk Island, this day of 20 .

J.S.  
Magistrate.

---

## Form 77

*Warrant to discharge a person committed for want of sureties of the peace or for good behaviour*

To the Keeper of the Gaol at

WHEREAS A.B., late of , in Norfolk Island, has, before the undersigned, a Magistrate of the Court of Petty Sessions, entered into his own recognisance and found sufficient sureties to keep the peace [*etc, as in the conditions of the recognisance*]: These are therefore to command you [*etc, as in the preceding Warrant of Discharge.*]

Given under my hand, at Norfolk Island, this      day of      20 .

J.S.  
Magistrate.

## Form 78

*Order to discharge a witness upon a prisoner not being committed for trial*

To the Keeper of the Gaol at

WHEREAS by a warrant dated the      day of      , under the hand of L.M., a Magistrate of the Court of Petty Sessions, reciting that upon the hearing of a charge against one A.B. for a certain offence therein mentioned, E.F., having been examined as a witness, refused to enter into a recognisance to give evidence against the said A.B., the said L.M. committed the said E.F. to your custody and required you to keep [him] until after the trial of the said A.B. for the offence aforeaid unless in the meantime the said E.F. should enter into a recognisance as aforesaid: And whereas the said A.B. has not been committed for trial or held to bail for the said offence, but has been discharged: These are therefore to direct you to discharge the said E.F. out of your custody and suffer [him] to go at large as to the said commitment.

Given under my hand, at Norfolk Island, this      day of      20 .

J.S.  
Magistrate.

### IMPRISONMENT OF FRAUDULENT DEBTORS

## Form 79

*Summons to Debtor*

In the Court of Petty Sessions at Norfolk Island

To A.B. of

WHEREAS the said Court did on the      day of      order that you should pay to C.D. the sum of \$      and costs which by the said order were fixed at the sum of \$      (or the sum of \$      for costs) and the said sums (*or sum*) (*or \$      part of, etc, as the case may be*) are still wholly due and unpaid:

These are therefore to command you to appear personally before the Court of Petty Sessions at Norfolk Island on the      day of      at      o'clock in the      noon to be examined by the said Court touching your estate and effects and as to the property and means you have or have had of paying and discharging the said sums (*or sum*) and as to the disposal you have made of your property and as to your intention to leave Norfolk Island without paying the said sums (*or sum*) or to depart elsewhere within the said Territory with intent to evade payment thereof and as to the mode in which you incurred the liability (and as to your neglect or refusal to comply with an order for the delivery of goods detained without just cause after due notice and to pay the value thereof to the plaintiff).

Dated this      day of      20 .

Clerk of Court of Petty Sessions

Note - When the original order has been made by a Magistrate out of session this and the following forms should be modified accordingly.

## Form 80

*Order for Commitment in Default of Payment*

In the Court of Petty Sessions at Norfolk Island

To A.B. of

WHEREAS the said Court did on the      day of      order that you should pay to C.D. the sum of \$      and costs which by the said order were fixed at the sum of \$      (or the sum of \$      for costs) and the said sums (or sum) (or \$      part of, *etc, as the case may be*) are still wholly due and unpaid, and it has been proved against you that having been duly summoned (or summoned and examined) [*here set out the specific offence found, eg "It has been proved to the satisfaction of the Court that you contracted the liability under false pretences or by means of fraud or breach of trust" or "it has been proved to the satisfaction of the Court that you have or have had since the date of the order against you sufficient means and ability to pay the sum in respect of which you have made default and have refused or neglected (or refuse or neglect) to pay the sum" or "it has been proved to the satisfaction of the Court that you have neglected or refused to comply with an order for the delivery of goods detained without just cause after due notice and have not paid the value thereof to the plaintiff".*]:

It is adjudged that unless you pay into the said Court immediately (or within      days) or by the following instalments upon the following days (that is to say): - [*here set out dates and sums*] the said sum together with the sum of \$      for the costs of the summons (or summons and examination) you be committed to prison for the term of      (or until you shall have paid or satisfied the said order and the sums hereinbefore ordered to be paid for costs, or until you shall be otherwise discharged by due course of law).

Dated at      this      day of      20      .

J.S.  
Magistrate.

....

---

**NOTES**

The *Court of Petty Sessions Act 1960* as shown in this consolidation comprises Act No. 6 of 1960 and amendments as indicated in the Tables below.

<b>Enactment</b>	<b>Number and year</b>	<b>Date of commencement</b>	<b>Application saving or transitional provision</b>
<i>Court of Petty Sessions Act 1960</i>	6 of 1960	14.4.60	3
<i>Court of Petty Sessions Act 1966</i>	4 of 1966	14.2.66	
<i>Court of Petty Sessions (Amendment) Act 1976</i>	9 of 1976	21.10.76	
<i>Court of Petty Sessions Act 1979</i>	3 of 1980	17.1.80	2
<i>Ordinances Revision (Decimal Currency) Act 1979</i>	31 of 1980	15.1.81	
<i>Ordinances Revision (Age of Majority) Act 1980</i>	34 of 1980	15.1.81	



Enactment	Number and year	Date of commencement	Application saving or transitional provision
<i>Court of Petty Sessions (Amendment) Act 1980</i>	35 of 1980	15.1.81	3
<i>Court of Petty Sessions (Amendment) Act 1982</i>	10 of 1982	30.9.82	
<i>Statute Law Revision (Penalties and Fees) Act 1984</i>	9 of 1985	13.5.85	4
<i>Court of Petty Sessions (Amendment) Act 1984</i>	16 of 1985	19.7.85	
<i>Court of Petty Sessions Amendment Act 1988</i>	26 of 1988	24.12.88	
<i>Court of Petty Sessions Amendment No. 2 Act 1988</i>	31 of 1988	24.12.88	
<i>Court of Petty Sessions Amendment Act 1991</i>	2 of 1991	7.2.91	
<i>Statute Law Revision (Ministerial Powers) Act 1992</i>	9 of 1992	27.8.92	
<i>Indictable Offences Procedures Act 1994</i>	21 of 1994	29.9.94	
<i>Court of Petty Sessions Amendment Act 1998</i>	20 of 1998	29.4.99	
<i>Statutes Amendment (Public Sector Management) Act 1999</i>	9 of 2000	9.3.01	
<i>Court of Petty Sessions (Amendment) Act 2006</i>	9 of 2006	28.4.06	5
<i>Sentencing Act 2007</i>	14 of 2007	30.11.2007	

Enactment	Number and year	Date of commencement	Application saving or transitional provision
<i>Sentencing (Amendment) Act 2007</i>	1, 2008	4.1.2008 (s. 177 to have effect from 30.11.2007) NB – amends Sched 3 of that Act which then inserts prev ss 174-228 back into CPS Act 1960	

[Previously consolidated as at 4 January 2008]

<i>Justice Legislation (Miscellaneous Amendments) Act 2009</i>	14, 2009	11.09.2009
--	----------	------------

<i>Court of Petty Sessions (Amendment) Act 2011</i>	2, 2011	25.03.2011
---	---------	------------

[Previously consolidated as at 1 April 2011]

<i>Interpretation (Amendment) Act 2012</i> [to substitute throughout — Commonwealth Minister for Minister; and to substitute Minister for executive member]	14, 2012	28.12.12
--	----------	----------

#### Table of Amendments

ad = added or inserted	am = amended	rep = repealed	rs = repealed and substituted
------------------------	--------------	----------------	-------------------------------

Provision affected	How affected
1	am 4, 1966
8	am 16, 1985
21	am 4, 1966
33A	ad 31, 1988
33B	ad 2, 1991
	am 2, 2011
66-69	rep 14, 2007
73	am 21, 1994

ad = added or inserted      am = amended      rep = repealed      rs = repealed and substituted

Provision affected	How affected	
74(1)	am	21, 1994
74(2)	am	21, 1994
84-87	rep	14, 2007
107,116 & 117	rep	9, 1976; 3, 1980 26, 1988 as am by 31, 1988
118	am	34, 1980
140	am	35, 1980; 26, 1988 as am by 31, 1988
148(1)	rs	10, 1982
148(1A)	ad	10, 1982
149	am	16, 1985
158(9)	am	31, 1980
161(1)	am	31, 1980
<b>NB – sections. 174-228 rep by Act 14, 2007;(Sentencing Act 2007; reinstated by Act 1 of 2008 (Sentencing (Amdt) Act 2007)</b>		1, 2008 ; also see Schedule 3 of Sentencing Act 2007
	rs	20, 1994
180	rs	20, 1994
	rep	14, 2007
	reinstated	1, 2008
181	rs	20, 1998
182	rs	20, 1998
182A	ad	20, 1998
183	rs	20, 1998
184	rs	20, 1998
184A	ad	20, 1998
184B	ad	20, 1998
185	rs	20, 1998
186	rs	20, 1998
187	rs	20, 1998
188	rs	20, 1998
189	rs	20, 1998
190	rs	20, 1998
191	rs	20, 1998
192	rs	20, 1998
193	rs	20, 1998
194	rs	20, 1998
195(2), (5), (6)	am	31, 1980
	rs	20, 1998
196	rs	20, 1998

ad = added or inserted	am = amended	rep = repealed	rs = repealed and substituted
Provision affected	How affected		
197	rs	20, 1998	
198	rs	20, 1998	
199	am	31, 1980	
	rs	20, 1998	
200	rs	20, 1998	
201	rs	20, 1998	
202	rs	20, 1998	
203	rs	20, 1998	
204	rs	20, 1998	
205	rs	20, 1998	
206	rs	20, 1998	
207	rs	20, 1998	
208	rs	20, 1998	
209	rs	20, 1998	
210	rs	20, 1998	
211	rs	20, 1998	
212	rs	20, 1998	
213	rs	20, 1998	
214	rs	20, 1998	
215	rs	20, 1998	
216	rs	20, 1998	
217	rs	20, 1998	
218	rs	20, 1998	
219	rs	20, 1998	
220	rs	20, 1998	
220A	ad	20, 1998	
	rep	9, 2000	
220B	ad	20, 1998	
220C	ad	20, 1998	
220D	ad	20, 1998	
220E	ad	20, 1998	
220F	ad	20, 1998	
220G	ad	20, 1998	
220H	ad	20, 1998	
220I	ad	20, 1998	
220J	ad	20, 1998	
220K	ad	20, 1998	
220L	ad	20, 1998	
220M	ad	20, 1998	
220N	ad	20, 1998	
220O	ad	20, 1998	
220P	ad	20, 1998	
220Q	ad	20, 1998	

ad = added or inserted      am = amended      rep = repealed      rs = repealed and substituted

Provision affected	How affected	
220R	ad	20, 1998
220S	ad	20, 1998
220T	ad	20, 1998
220U	ad	20, 1998
220V	ad	20, 1998
220W	ad	20, 1998
220X	ad	20, 1998
220Y	ad	20, 1998
220Z	ad	20, 1998
220ZA	ad	20, 1998
200ZB	ad	20, 1998
220ZC	ad	20, 1998
220ZD	ad	20, 1998
220ZE	ad	20, 1998
220ZF	ad	20, 1998
220ZG	ad	20, 1998
220ZH	ad	20, 1998
220ZI	ad	20, 1998
220ZJ	ad	20, 1998
220ZK	ad	20, 1998
220ZL	ad	20, 1998
221(2)	am	31, 1980; 26, 1988 as am by 31, 1988; 14, 2009
222(1)	am	31, 1980; 26, 1988 as am by 31, 1988
224	am	31, 1980
229(2)	am	31, 1980
232(2)	am	31, 1980; 9, 1985
246(1)	am	31, 1980; 9, 1985
246A	ad	16, 1985
247A	ad	9, 1992
248	am	31, 1988; 9, 2006
Schedule 3 — Forms		
3	am	4, 1966
9,	am	31, 1980
32, 39	am	31, 1980
51, 52,	am	31, 1980
53, 66	am	31, 1980
67, 79	am	31, 1980
80	am	31, 1980

....

**NB – sections 174 – 228 were repealed by Act 14 of 2007 [commenced 30 November 2007]; and reinstated by Act 1 of 2008 (section 177 of Act 14 of 2007 deemed to have effect from 30 November 2007.)**

© Norfolk Island Government 10 June 2013

The *Copyright Act 1968* of the Commonwealth of Australia permits certain reproduction and publication of this legislation. For reproduction or publication beyond that permitted by the Act, written permission must be sought from the Legislative Counsel, Administration of Norfolk Island, Norfolk Island, South Pacific 2899.