NORFOLK ISLAND

Criminal Procedure Act 2007

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NORFOLK ISLAND

CRIMINAL PROCEDURE ACT 2007

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NORFOLK ISLAND

Criminal Procedure Act 2007

An Act to reform and consolidate the law relating to criminal procedure of Norfolk Island.

BE IT ENACTED by the Legislative Assembly of Norfolk Island as follows –

CHAPTER 1 – PRELIMINARY

1 Short title

This Act may be cited as the *Criminal Procedure Act 2007*.

2 Commencement

This Act commences on the day the Criminal Code established by the *Criminal Code Act 2007* commences or the date notice of assent is published in the Gazette whichever last occurs.

3 Repeal

The Acts specified in the Schedule are, in their application to Norfolk Island, repealed to the extent there stated.

4 Application of Act

(1) This Act applies to proceedings commenced before the commencement of this Act but only if the hearing of those proceedings has not commenced.

(2) This section has effect from 1 July 2009.

5 Act binds the Administration

(1) This Act binds the Administration and also so far as possible the Crown in all its capacities.

(2) Nothing in this Act makes the Administration, or the Crown in any capacity, liable to be prosecuted for an offence.

6 Commonwealth law

The provisions of this Act have full force and effect to the extent they are not inconsistent with a law of the Commonwealth that applies in Norfolk Island.

7 Definitions

(1) Expressions used in this Act (or in a particular provision of this Act) that are defined in subsection (4) have the meanings given to them there.

(2) Unless otherwise provided, expressions used in the Code have the same meaning in this Act as in the Code.

(3) Notes included in this Act are explanatory notes and do not form part of this Act.

Note – Some expressions used in this Act are defined in the *Interpretation Act 1979*, and have the meanings given to them in that Act.

(4) An example included in this Act is part of the Act but is not exhaustive and may extend but does not limit the meaning of the Act or the particular provision to which it relates.

(5) In this Act, unless the contrary intention appears –

abnormality of mind means abnormality of mind arising from a condition of arrested or retarded development of mind or inherent causes or induced by disease, illness or injury;

adult means a person of or over the age of 18 years;

child means a person who is not an adult;

Children's Court means the Court of Petty Sessions when constituted to hear matters concerning children whether under the *Court of Petty Sessions Act 1960* or another Act.

Court includes the Court of Petty Sessions and the Supreme Court;

Crown law officer means the principal law officer of the Administration and includes his or her deputy and includes a person authorised under a law of Norfolk Island or the principal law officer or the Minister to exercise a power or perform a function in the name of or on behalf of a Crown law officer and reference to "a Crown law officer" means the principal law officer or in his or her absence the deputy;

Note: At the commencement of the Act the principal law officers were known as the Crown Counsel and Deputy Crown Counsel.

penalty means the maximum punishment by way of imprisonment or fine that may be imposed, except where there is no discretion, at the discretion of a court in respect of an offence;

Note: ***penalty unit*** is defined in the *Interpretation Act 1979* s.12A.

Police Force means the Norfolk Island Police Force;

police officer means a member of the Police Force;

the Code means the *Criminal Code*;

uncorroborated testimony means testimony that is not corroborated in some material particular by other evidence implicating the accused person;

unlawful or ***unlawfully*** means without authorization, justification or excuse;

writing includes –

(a) a seal, mark and sign that is capable of conveying meaning; and

(b) data held in electronic form that is capable of being transformed into a document;

wrongful act and like terms mean an act that is wrong by the ordinary standards of the community; a lawful act may be a wrongful act, but any act expressly declared to be lawful cannot be a wrongful act.

CHAPTER 2 – UNFITNESS TO PLEAD, MENTAL IMPAIRMENT AND MENTAL DYSFUNCTION

Division 1 – Preliminary

8 Definitions for Chapter 2

In this Chapter:

accused, for a person before the Court of Petty Sessions, means the defendant.

alternative offence, for an offence, means an offence available as an alternative to the offence.

defendant – see the *Court of Petty Sessions Act 196*0, section 4 (1).

hospital means the Norfolk Island Hospital.

medical superintendent – see the *Mental Health Act 1996* section 4.

mental dysfunction means a disturbance or defect, to a substantially disabling degree, of perceptual interpretation, comprehension, reasoning, learning, judgment, memory, motivation or emotion and "mentally dysfunctional" has a corresponding meaning.

mental health order means a mental health order under the *Mental Health Act 1996*.

serious offence means an indictable offence involving actual or threatened violence;

special hearing means a hearing conducted in accordance with section 24.

Tribunal means the Mental Health Tribunal established by the *Mental Health Act 1996*.

9 Limitation on orders and detention – non-acquittals

(1) If, under section 26(2) or 27(2), the Supreme Court makes an order that the accused be detained in custody until the Tribunal orders otherwise, the court shall indicate to the Tribunal whether, if the special hearing had been normal criminal proceedings against a person who was fit to be tried for and convicted of the offence with which the accused is charged, it would have imposed a sentence of imprisonment.

(2) If, under subsection (1), the Supreme Court indicates that it would have imposed a sentence of imprisonment, it shall nominate a term in respect of that offence, that is the best estimate of the sentence it would have considered appropriate if the special hearing had been normal criminal proceedings against a person who was fit to be tried for that offence and the person had been found guilty of that offence.

10 Limitation on orders and detention – acquittals

(1) If, under section 32 or 33, the Supreme Court makes an order that the accused be detained in custody until the Tribunal orders otherwise, the court shall indicate whether, if the accused had not been acquitted, it would have imposed a sentence of imprisonment.

(2) If, under subsection (1), the Supreme Court indicates that it would have imposed a sentence of imprisonment, it shall nominate a term in respect of that offence, that is the best estimate of the sentence it would have considered appropriate if the accused were a person who had been found guilty of that offence.

11 Limitation on Supreme Court orders

The Supreme Court shall not order that an accused be detained for a period greater than the term indicated by it under section 9(2) or 10, as the case may be.

12 Limitation on orders and detention – dismissal of charge

(1) If under section 37 or 38, the Court of Petty Sessions makes an order that the accused be detained in custody until the Tribunal orders otherwise, the Court of Petty Sessions shall indicate whether, if the charges against the accused had not been dismissed and the accused were a person who had been found guilty of the offence, it would have imposed a sentence of imprisonment.

(2) If, under subsection (1), the Court of Petty Sessions indicates that it would have imposed a sentence of imprisonment, it shall nominate a term in respect of that offence, that is the best estimate of the sentence it would have considered appropriate if the accused were a person who had been found guilty of that offence.

13 Limitation on orders and detention – Court of Petty Sessions

(1) If under section 44, the Court of Petty Sessions makes an order that the accused be detained in custody until the Tribunal orders otherwise, the Court of Petty Sessions shall indicate whether, if the hearing had been a normal criminal hearing against a person who was fit to be tried for and convicted of the offence with which the accused is charged, it would have imposed a sentence of imprisonment.

(2) If, under subsection (1), the Court of Petty Sessions indicates that it would have imposed a sentence of imprisonment, it shall nominate a term in respect of that offence, that is the best estimate of the sentence it would have considered appropriate if the hearing had been a normal criminal hearing against a person who was fit to be tried for that offence and the person had been found guilty of that offence.

14 Limitation on Court of Petty Sessions orders

The Court of Petty Sessions shall not order that an accused be detained for a period greater than the term indicated by it under section 12(2) or 13(2).

15 How relevant court may inform itself

For sections 9, 10, 12 and 13, in determining the sentence it would have imposed, the relevant court may inform itself and consider the evidence and submissions that it would were the court determining the sentence to be imposed in normal criminal proceedings.

16 Criteria for detention

For this Part, other than Division 5 (except section 44), in making a decision which could include an order for detention, the Supreme Court or Court of Petty Sessions shall consider the following criteria:

(a) the nature and extent of the accused's mental dysfunction or mental impairment, including the effect it is likely to have on the person's behaviour in the future;

(b) whether or not, if released –

(i) the accused's health and safety is likely to be substantially impaired; or

(ii) the accused is likely to be a danger to the community;

(c) the nature and circumstances of the offence with which the accused is charged;

(d) the principle that a person should not be detained in prison unless no other reasonable option is available;

(e) any recommendation made by the Tribunal as to how the accused should be dealt with.

17 Assessment whether emergency detention required

(1) If, in proceedings before the Court of Petty Sessions, it has reasonable grounds for believing that an accused requires immediate treatment or care by reason of his or her being mentally dysfunctional or mentally impaired, the Court of Petty Sessions may, without requiring the accused to submit to the jurisdiction of the Tribunal, order that –

(a) the accused be taken by a police officer to the hospital for examination by a medical practitioner or a psychiatrist for the purpose of determining whether the accused is mentally dysfunctional or mentally impaired but a medical practitioner who believes the defendant may be suffering from a mental impairment must seek the opinion of a psychiatrist (unless the medical practitioner is a psychiatrist); and

(b) the accused may only be released into the custody of a police officer –

(i) by the medical superintendent; or

(ii) if the accused is found to be mentally dysfunctional or mentally impaired requiring detention and care – by the medical superintendent and if the person has been examined by a psychiatrist other than the medical superintendent – with the approval of the psychiatrist; and

(c) on being so released, the accused be dealt with in 1 of the following ways:

(i) subject to subsection (2) be admitted to bail by the Clerk of the Court of Petty Sessions;

(ii) be held in the custody of a police officer who shall cause the accused to be brought before a court as soon as practicable for

the purpose of the court determining whether or not to grant bail;

(2) If, when making an order under subsection (1)(c)(i), the Court of Petty Sessions specifies terms and conditions on which bail is to be granted, the Clerk may grant bail subject to those terms and conditions.

(3) If, under this section, an accused who is taken to the hospital –

(a) is released or discharged from the hospital, whether or not detained for care, otherwise than into the custody of a police officer; or

(b) leaves the hospital, otherwise than in the custody of a police officer;

a police officer may arrest the accused without warrant for the purposes of the terms of the order being satisfied.

Division 2 – Unfitness to plead

18 Referral to Tribunal

(1) If –

(a) a person has been committed for trial for an indictable offence; and

(b) the issue of fitness to plead to the charge is raised by a party to the proceedings or by the Supreme Court; and

(c) the court is satisfied that there is a question as to the person's fitness to plead to the charge;

the court shall order the person to be examined by a psychiatrist and upon completion of the psychiatrist's examination to submit to the jurisdiction of the Tribunal to enable the Tribunal to determine, having regard to the opinion of the psychiatrist who examined the person and such other matters as may be relevant, whether or not the person is fit to plead to the charge.

(2) If the Supreme Court makes an order under subsection (1), it shall adjourn the proceedings to which the order relates and shall make any orders it considers appropriate, including the granting of bail to the person who is the subject of the order.

(3) If, on the hearing of an information laid before the Court of Petty Sessions –

(a) the issue of fitness to plead is raised by a party to the proceedings or by the Court of Petty Sessions; and

(b) the Court of Petty Sessions is satisfied that there is a question as to the person's fitness to plead;

the Court of Petty Sessions shall order the person to be examined by a psychiatrist and upon completion of the psychiatrist's examination submit to the jurisdiction of the Tribunal to enable the Tribunal to determine, having regard to the opinion of the

psychiatrist who examined the person and such other matters as may be relevant, whether or not the person is fit to plead to the charge.

19 Person found fit to plead

If the Tribunal notifies the Supreme Court that it has determined that a person who is the subject of an order under section 18 (1) is fit to plead to a charge –

(a) the proceedings brought against the person in respect of the offence charged shall continue in accordance with ordinary criminal procedures; or

(b) if the court considers it appropriate –

(i) the court shall discharge the jury originally empanelled for the proceedings and empanel a new jury; and

(ii) the proceedings shall recommence in accordance with ordinary criminal procedures.

20 Action pending determination by Tribunal

If –

(a) an accused is charged with a serious offence or a non-serious offence; and

(b) the Supreme Court has made an order under section 17(1); and

(c) a jury has been empanelled for the proceedings;

the court may, having regard to the time that is likely to be taken by the Tribunal before it makes its determination, discharge the jury.

21 Temporary unfitness to plead – non-serious offence

(1) This section applies if –

(a) an accused is charged with an offence other than a serious offence; and

(b) the Supreme Court has made an order under section 28 (1) in relation to the accused; and

(c) the Tribunal notifies the court that it has determined that the accused is unfit to plead to a charge but is likely to become fit within 12 months after the determination.

(2) If this section applies, the Supreme Court shall –

(a) if a jury has been empanelled – discharge the jury; and

(b) make the orders it considers appropriate in relation to the accused; and

(c) adjourn the proceedings.

(3) The orders the Supreme Court may make under subsection (2)(b) include the following:

(a) an order requiring the accused to be detained in custody;

(b) an order requiring the accused to submit to the jurisdiction of the Tribunal to enable the Tribunal to make a mental health order.

22 Temporary unfitness to plead – serious offence

(1) This section applies if –

(a) an accused is charged with a serious offence; and

(b) the Supreme Court has made an order under section 18(1) in relation to the accused; and

(c) the Tribunal notifies the court that it has determined that the accused is unfit to plead to the charge but is likely to become fit within 12 months after the determination.

(2) If this section applies, the Supreme Court shall –

(a) if a jury has been empanelled – discharge the jury; and

(b) order that the accused be detained in custody or released on bail; and

(c) adjourn the proceedings.

23 Special hearings

(1) The Supreme Court shall conduct a special hearing in relation to an accused who is the subject of an order under section 18 (1), if the Tribunal notifies the court that –

(a) it has determined that the accused is unfit to plead to a charge and is unlikely to become fit within 12 months after the determination; or

(b) having determined that the accused was unfit to plead to a charge but was likely to become fit within 12 months after the determination, it has determined that, the period of 12 months having elapsed, the accused remains unfit to plead.

(2) If subsection (1) (a) applies, the Supreme Court shall, if a jury has been empanelled, discharge the jury.

24 Nature and conduct of special hearing

(1) Subject to this section, the Supreme Court shall conduct a special hearing as nearly as possible as if it were an ordinary criminal proceeding.

(2) A special hearing shall be a trial by jury –

(a) unless –

(i) the Supreme Court is satisfied that the accused is capable of making an election to have a special hearing to be a trial by a single judge without a jury before the court first fixes a date for the hearing; and

(ii) the accused makes the election before that date; or

(b) unless –

(i) the Supreme Court is satisfied that the accused is incapable of making the election mentioned in paragraph (a) (i); and

(ii) before the court first fixes a date for the hearing, any legal representative or guardian of the accused notifies the court that, in his or her opinion, it is in the best interests of the accused for the special hearing to be a trial by a single judge without a jury.

(3) If –

(a) the accused makes an election under subsection (2) (a) (ii); or

(b) a legal representative or guardian notifies the Supreme Court under subsection (2) (b) (ii);

the special hearing shall be by single judge without a jury.

(4) Despite subsection (2) (b), if before the date fixed by the Supreme Court for the hearing –

(a) the court is satisfied that the accused is capable of making the election mentioned in subsection (2) (a) (i); and

(b) the accused notifies the court that he or she objects to the special hearing being a trial by a single judge without a jury;

the special hearing shall be a trial by jury.

(5) Unless the Supreme Court otherwise orders, the accused shall have legal representation at a special hearing.

(6) A determination by the Tribunal that the accused is unfit to plead to the charge is not to be taken to be an impediment to his or her being represented at a special hearing.

(7) At a special hearing, the accused is to be taken to have pleaded not guilty in respect of the offence charged.

(8) If a special hearing is a trial by jury, the Supreme Court shall, at the commencement of the hearing, explain to the jury –

(a) the meaning of unfitness to plead; and

(b) that the accused is unfit to plead to the charge in accordance with ordinary criminal procedures; and

(c) that the purpose of the special hearing is to ensure that, despite the unfitness of the accused to plead in accordance with ordinary criminal procedures, the accused should be acquitted unless it can be proved beyond reasonable doubt that, on the evidence available, the accused engaged in the conduct required for the offence charged (or an alternative offence); and

(d) the actions that are available to the jury under section 25; and

(e) the legal and practical consequences of those actions.

25 Verdicts available at special hearing

(1) At a special hearing that is a trial by jury, the jury shall, if satisfied beyond reasonable doubt that the accused engaged in the conduct required for the offence charged (or an alternative offence, if not satisfied in relation to the offence charged), advise the court accordingly.

(2) If the jury is not satisfied in accordance with subsection (1) –

(a) the jury shall return a verdict of not guilty in respect of the offence charged; and

(b) the accused shall be dealt with as though the jury had returned that verdict at an ordinary trial.

(3) If, at a special hearing by a single judge without a jury, the judge is not satisfied beyond reasonable doubt that the accused engaged in the conduct required for the offence charged (or an alternative offence, if not satisfied in relation to the offence charged) –

(a) the judge shall find the accused not guilty of the offence charged; and

(b) the accused shall be dealt with as if the accused had been found not guilty at an ordinary trial.

(4) If, at a special hearing, the jury (or, if the special hearing is by a single judge without a jury, the judge) is satisfied beyond reasonable doubt that the accused engaged in the conduct required for the offence charged (or an alternative offence, if not satisfied in relation to the offence charged), the finding –

(a) is not a basis in law for recording a conviction for the offence charged (or an alternative offence); and

(b) except as provided in section 28 (Action if accused becomes fit to plead after special hearing), bars further prosecution of the accused for any offence in relation to the conduct.

26 Non-acquittal at special hearing – non-serious offence

(1) This section applies if –

(a) an accused is charged with an offence other than a serious offence; and

(b) at a special hearing that is a trial –

(i) by a single judge without a jury – the judge is satisfied beyond reasonable doubt that the accused engaged in the conduct required for the offence charged (or an alternative offence, if not satisfied in relation to the offence charged); or

(ii) by jury – the jury advises the court under section 25(1).

(2) If this section applies, the Supreme Court may make the orders that it considers appropriate, including the following:

(a) that the accused be detained in custody until the Tribunal orders otherwise;

(b) that the accused submit to the jurisdiction of the Tribunal to enable the Tribunal to make a mental health order.

27 Non-acquittal at special hearing – serious offence

(1) This section applies if –

(a) an accused is charged with a serious offence; and

(b) at a special hearing that is a trial –

(i) by a single judge without a jury – the judge is satisfied beyond reasonable doubt that the accused engaged in the conduct required for the offence charged (or an alternative offence, if not satisfied in relation to the offence charged); or

(ii) by jury – the jury advises the court under section 25(1).

(2) If this section applies, the Supreme Court shall order that the accused be detained in custody until the Tribunal orders otherwise unless, in consideration of the criteria for detention in section 16, it is satisfied that it is more appropriate to order that the accused submit to the jurisdiction of the Tribunal to enable the Tribunal to make a mental health order.

(3) If the Supreme Court is satisfied under subsection (2), it shall make an order accordingly.

28 Action if accused becomes fit to plead after special hearing

(1) This section applies if –

(a) the Supreme Court makes an order under section 26 or section 27 in relation to an accused; and

(b) the offence in relation to which the order is made is punishable by imprisonment for 5 years or longer; and

(c) the Tribunal later decides the accused is fit to plead in relation to the offence.

(2) A Crown law officer must consider whether to take further proceedings against the accused in relation to the offence.

(3) If further proceedings are taken and the accused is found guilty of the offence charged (or an alternative offence), the court must, in deciding the sentence for the offence, take into account any time the accused has spent in custody or detention in relation to the offence.

Division 3 – Acquittal on grounds of mental impairment

29 Acquittal on grounds of mental impairment

(1) An accused is entitled to be acquitted of an indictable offence on the grounds of mental impairment if it is established on the balance of probabilities that, at the time of the alleged offence, the accused was, as a result of mental dysfunction or mental impairment –

(a) incapable of knowing what he or she was doing; or

(b) incapable of understanding that what he or she was doing was wrong.

(2) A defendant cannot be acquitted under subsection (1) if the mental dysfunction or mental impairment was caused by or was the result of the taking by the defendant of a substance unless the taking of the substance was —

(a) involuntary;

(b) the result of fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress, or force; or

(c) prescribed for medical purposes by a registered medical practitioner and the effect or likely effect on the defendant was not known to the medical practitioner or the defendant

and was not the result of an habitual or addicted taking.

(3) The onus of establishing that an accused is entitled to be acquitted on the ground of mental impairment lies on the party seeking the acquittal.

(4) Evidence adduced by the prosecution to establish that an accused is entitled to be acquitted on the grounds of mental impairment is inadmissible except with the leave of the Supreme Court.

30 Plea of not guilty by reason of mental impairment

If an accused pleads not guilty by reason of mental impairment, the Supreme Court shall enter a verdict of not guilty on that ground with respect to the offence charged if –

(a) the court considers the verdict appropriate; and

(b) the prosecution agrees to the entering of the verdict.

31 Explanation to jury

If, on the trial by jury of an accused charged with an indictable offence, evidence is adduced that tends to establish that the accused is entitled to be acquitted on the grounds of mental impairment, the court shall explain to the jury the verdicts that may be returned at the trial and the legal and practical consequences of those verdicts.

32 Court orders following acquittal – non-serious offence

(1) If an accused has been charged with an indictable offence other than a serious offence and is acquitted on the grounds of mental impairment, the Supreme Court may –

(a) make an order requiring the accused to submit to the jurisdiction of the Tribunal to enable the Tribunal to make recommendations as to how he or she should be dealt with; or

(b) make any other orders it considers appropriate.

(2) If –

(a) the Supreme Court makes an order under subsection (1) (a); and

(b) the Tribunal notifies the court of its recommendations;

the court shall, in consideration of the Tribunal's recommendations, make any further orders it considers appropriate.

(3) The orders the Supreme Court may make under subsections (1) and (2) incude the following:

(a) that the accused be detained in custody until the Tribunal orders otherwise;

(b) that the accused submit to the jurisdiction of the Tribunal to enable the Tribunal to make a mental health order.

33 Court orders following acquittal – serious offence

(1) If an accused is charged with a serious offence and is acquitted on the grounds of mental impairment, the Supreme Court shall order that the accused be detained in custody until the Tribunal orders otherwise unless, in consideration of the criteria for detention in section 16, it is satisfied that it is more appropriate to order that the accused submit to the jurisdiction of the Tribunal to enable the Tribunal to make a mental health order.

(2) If the Supreme Court is satisfied under subsection (1), it shall make an order accordingly.

Note: 1. For detention in custody see Mental Health Act 1996 s. 37F.

2. For mental health orders see Mental Health Act 1996 ss. 30 & 30A.

Division 4 – Dismissal by Court of Petty Sessions on grounds of mental impairment

34 Meaning of *serious offence* in Division 4

In this Division —

serious offence means an offence involving actual or threatened violence.

35 Dismissal on grounds of mental impairment

(1) An accused is entitled to have charges against him or her dismissed on the grounds of mental impairment if it is established on the balance of probabilities that, at the time of the alleged offence, the accused was, as a result of mental dysfunction –

(a) incapable of knowing what he or she was doing; or

(b) incapable of understanding that what he or she was doing was wrong.

(2) An accused cannot have charges dismissed under subsection (1) if the mental dysfunction was caused by or was the result of the taking by the defendant of a substance unless the taking of the substance was —

(a) involuntary;

(b) the result of fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress, or force; or

(c) prescribed for medical purposes by a registered medical practitioner and the effect or likely effect on the defendant was not known to the medical practitioner or the defendant

and was not the result of an habitual or addicted taking.

(3) The onus of establishing that the accused is entitled to have charges against him or her dismissed on the grounds of mental impairment lies on the party seeking the dismissal.

(4) Evidence adduced by the prosecution to establish that the accused is entitled to have charges against him or her dismissed on the grounds of mental impairment is inadmissible except with the leave of the Court of Petty Sessions.

36 Plea of not guilty by reason of mental impairment

If an accused pleads not guilty by reason of mental impairment, the Court of Petty Sessions shall find the accused not guilty on that ground with respect to the offence charged if –

(a) the Court of Petty Sessions considers the finding appropriate; and

(b) the prosecution agrees to the finding.

37 Court of Petty Sessions orders following dismissal – non-serious offence

(1) If an accused has been charged with an offence other than a serious offence and the charges are dismissed on the ground of mental impairment, the Court of Petty Sessions may –

(a) make an order requiring the accused to submit to the jurisdiction of the Tribunal to enable the Tribunal to make recommendations as to how he or she should be dealt with; or

(b) make any other orders it considers appropriate.

(2) If –

(a) the Court of Petty Sessions makes an order under subsection (1)(a); and

(b) the Tribunal notifies the Court of Petty Sessions of its recommendations;

the Court of Petty Sessions shall, in consideration of the Tribunal's recommendations, make any further orders it considers appropriate.

(3) The orders the Court of Petty Sessions may make under subsections (1) and (2) include the following:

(a) that the accused be detained in custody until the Tribunal orders otherwise;

(b) that the accused submit to the jurisdiction of the Tribunal to enable the Tribunal to make a mental health order.

38 Court of Petty Sessions orders following dismissal – serious offence

(1) If an accused is charged with a serious offence and the charges against him or her are dismissed on the ground of mental impairment, the Court of Petty Sessions shall order that the accused be detained in custody until the Tribunal orders otherwise unless, in consideration of the criteria for detention in section 16, it is satisfied that it is more appropriate to order that the accused submit to the jurisdiction of the Tribunal to enable the Tribunal to make a mental health order.

(2) If the Court of Petty Sessions is satisfied as mentioned in subsection (1), it shall make an order accordingly.

Division 5 – Referral of mentally dysfunctional or mentally impaired persons to Tribunal following conviction

39 Application of Division 5

This Division applies if –

(a) a person has been convicted of an offence in the Supreme Court or Court of Petty Sessions; and

(b) that court is satisfied that the convicted person is mentally dysfunctional or mentally impaired.

40 Referral to Tribunal

(1) If this Division applies, the relevant court may, before sentencing the convicted person, order him or her to submit to the jurisdiction of the Tribunal to enable the Tribunal –

(a) to determine whether or not the person is mentally dysfunctional or mentally impaired; and

(b) if the Tribunal determines that the person is mentally dysfunctional or mentally impaired – to make recommendations as to how the person should be dealt with.

(2) If the Tribunal notifies the relevant court that a convicted person is mentally dysfunctional or mentally impaired, the court shall, in consideration of the Tribunal's recommendations, make any order it considers appropriate.

(3) The orders that the court may make under subsection (2) include an order that the person submit to the jurisdiction of the Tribunal to enable the Tribunal to make a mental health order.

(4) If the relevant court orders a person who is found by the Tribunal to be mentally dysfunctional or mentally impaired to be sentenced to a period of imprisonment, the court shall not order the person to be imprisoned for a period greater than any period of imprisonment to which the person could have been sentenced, apart from that finding.

Division 6 – Summary proceedings against mentally dysfunctional or mentally impaired persons

41 Application of Division 6

This Division applies to criminal proceedings (not including committal proceedings) with respect to –

(a) summary offences; and

(b) indictable offences that may be heard and determined summarily.

42 Indictable offences heard and determined summarily

Proceedings to which this Division applies with respect to an indictable offence shall be heard and determined summarily if –

(a) the Court of Petty Sessions is satisfied that the accused is unable, by reason of mental dysfunction or mental impairment, to elect to have the case heard summarily; and

(b) the prosecution agrees to the offence being heard and determined summarily.

43 Powers of Court of Petty Sessions

(1) This section applies where, in proceedings to which this Division applies before the Court of Petty Sessions, that court is satisfied that –

(a) the accused is mentally dysfunctional or mentally impaired; and

(b) on an outline of the facts to be alleged in the proceedings, or any other evidence the Court of Petty Sessions considers relevant, it would be appropriate to deal with the person under this Division.

(2) If this section applies, the Court of Petty Sessions may by order –

(a) dismiss the charge and require the accused to submit to the jurisdiction of the Tribunal to enable the Tribunal to make a mental health order; or

(b) dismiss the charge unconditionally.

(3) In determining whether to make an order under subsection (2)(a) or (b), the Court of Petty Sessions shall have regard to –

(a) the nature and seriousness of the mental dysfunction or mental impairment; and

(b) the period for which the mental dysfunction or mental impairment is likely to continue; and

(c) the extent to which by reason of the accused's mental dysfunction or mental impairment the accused is likely to do serious harm to himself or herself or others; and

(d) whether the Tribunal could make an order under the *Mental Health Act 1996*, section 35; and

(e) the seriousness of the alleged offence; and

(f) the antecedents of the accused; and

(g) the effectiveness of any order previously made under subsection (2)(a) or (b), including to the extent to which –

(i) the order assisted the accused to obtain appropriate treatment and care for his or her mental dysfunction or mental impairment; and

(ii) access to that treatment and care has enabled the accused to modify his or her behaviour, being behaviour of a kind that has previously resulted in the accused having been charged with an offence.

(4) Despite subsection (2), the Court of Petty Sessions may only make an order under that subsection in relation to proceedings with respect to an indictable offence that may be heard and determined summarily with the consent of a Crown law officer.

(5) If the Court of Petty Sessions makes an order under subsection (2)(a), the order operates as a stay of proceedings, or of further proceedings, against the accused in relation to the offence.

(6) If the Court of Petty Sessions makes an order under subsection (2), that court shall not make an order for reparation, conditional release (with or without conviction), or community service, in relation to the offence.

(7) An order under subsection (2) does not constitute a finding that an offence has or has not been committed.

(8) In proceedings to which this section applies, to determine whether an accused is mentally dysfunctional or mentally impaired, the Court of Petty Sessions may make any orders it considers appropriate, including the following:

(a) that the accused submit to the jurisdiction of the Tribunal;

(b) that the proceedings be adjourned;

(c) that the person be released on bail.

(9) If the Court of Petty Sessions makes an order under subsection (8) (a), the Tribunal shall notify the Court of Petty Sessions about each of the matters referred to in subsection (3)(a) to (d).

44 Fitness to plead – Court of Petty Sessions

(1) This section applies to an indictable offence that can be heard and determined summarily if the Court of Petty Sessions is of the opinion that the case can properly be disposed of summarily having regard to –

(a) any relevant representations made by the accused; and

(b) any relevant representations made by the prosecutor in the presence of the accused; and

(c) the circumstances and, in particular, the degree of seriousness of the case; and

(d) any other circumstances that appear to the Court of Petty Sessions to make it more appropriate for the case to be dealt with on indictment rather than summarily.

(2) If this section applies and –

(a) the Tribunal determines that the accused charged with a serious offence is unfit to plead; and

(b) after hearing the charge, the Court of Petty Sessions is satisfied beyond reasonable doubt that the accused engaged in the conduct required for the offence charged;

the Court of Petty Sessions shall order that the accused be detained in custody until the Tribunal orders otherwise unless, in consideration of the criteria for detention in section 16, it is satisfied that it is more appropriate to order that the accused submit to the jurisdiction of the Tribunal to enable the Tribunal to make a mental health order.

(3) If, under subsection (2), the Court of Petty Sessions is satisfied that it is more appropriate to order that the accused submit to the jurisdiction of the Tribunal to enable the Tribunal to make a mental health order, it shall make an order to that effect.

(4) If this section applies and –

(a) the Tribunal determines that the accused charged with an offence other than a serious offence is unfit to plead; and

(b) after hearing the charge, the Court of Petty Sessions is satisfied beyond reasonable doubt that the accused engaged in the conduct required for the offence charged;

the Court of Petty Sessions may make any orders it considers appropriate, including the following:

(c) that the accused be detained in custody until the Tribunal orders otherwise;

(d) that the accused submit to the jurisdiction of the Tribunal to enable the Tribunal to make a mental health order.

(5) The Court of Petty Sessions shall conduct a hearing under this section as nearly as possible as if it were a normal criminal proceeding.

(6) In a hearing under this section –

(a) if legal representation is available to the accused – the accused shall have legal representation unless the Court of Petty Sessions otherwise orders; and

(b) the accused is to be taken to have pleaded not guilty in respect of the offence charged.

(7) If the Court of Petty Sessions is satisfied beyond reasonable doubt that the accused engaged in the conduct required for the offence charged, the finding –

(a) is not a basis in law for recording a conviction for the offence charged; and

(b) except as provided in section 57, bars further prosecution of the accused for any offence in relation to the conduct.

(8) In this section:

serious offence means an offence involving actual or threatened violence.

Note: Indictable and summary offences are described in the *Interpretation Act 1979* ss. 38 and 39.

45 Action if accused becomes fit to plead after hearing

(1) This section applies if –

(a) the Court of Petty Sessions makes an order under section 44(2), (3) or (4) in relation to an accused; and

(b) the offence in relation to which the order is made is punishable by imprisonment for 5 years or longer; and

(c) the Tribunal later decides the accused is fit to plead in relation to the offence.

(2) The Crown law officer must consider whether to take further proceedings against the accused in relation to the offence.

(3) If further proceedings are taken and the accused is found guilty of the offence charged, the court must, in deciding the sentence for the offence, take into account any time the accused has spent in custody or detention in relation to the offence.

46 How Court of Petty Sessions may be informed

For this Division, the Court of Petty Sessions may inform itself as it considers appropriate.

CHAPTER 3 — CRIMINAL INVESTIGATION

Division 1 — Preliminary

47 Definitions for Chapter 3

In this Chapter:

assisting officer, in relation to a warrant, means—

(a) a police officer assisting in executing the warrant; or

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

Commonwealth Crimes Act means the *Crimes Act 1914* (Cwlth).

conveyance includes an aircraft, vehicle or vessel.

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

executing officer, in relation to a warrant, means—

(a) the police officer named in the warrant by the issuing officer as being responsible for executing the warrant; or

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

(c) another police officer whose name has been written in the warrant by the police officer named in the warrant under paragraph (b).

frisk search means—

(a) a search of a person conducted by quickly running the hands over the person's outer garments; and

(b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

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

(a) a judge, or the registrar of the Supreme Court; or

(b) a magistrate.

offence means an offence against a Norfolk Island law.

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

(a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes, socks and hat; and

(b) an examination of those items.

premises includes a place and a conveyance.

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

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

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

(a) requiring the person to remove all of his or her garments; and

(b) an examination of the person's body (but not of the person's body cavities) and of those garments.

thing relevant to an indictable offence means—

(a) anything with respect to which an indictable offence has been committed or is suspected, on reasonable grounds, to have been committed; or

(b) anything that is suspected, on reasonable grounds, to afford evidence of the commission of an indictable offence; or

(c) anything that is suspected, on reasonable grounds, to be intended to be used for the purpose of committing an indictable offence.

thing relevant to a summary offence means—

(a) anything with respect to which a summary offence has been committed or is suspected, on reasonable grounds, to have been committed; or

(b) anything that is suspected, on reasonable grounds, to afford evidence of the commission of a summary offence; or

(c) anything that is suspected, on reasonable grounds, to be intended to be used for the purpose of committing a summary offence.

warrant means a warrant under this Part.

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

48 Search of transgender or intersex person

(1) If a transgender or intersex person is searched under this Part, the person may require that the search be conducted by either a male or a female.

(2) If the transgender or intersex person requires that the search be conducted by a male, the person is taken, for this Part, to be male.

(3) If the transgender or intersex person requires that the search be conducted by a female, the person is taken, for this Part, to be female.

49 Application of chapter 3

(1) This chapter is not intended to limit or exclude the operation of any other law of Norfolk Island relating to—

(a) the search of persons or premises; or

(b) arrest and related matters; or

(c) the stopping, detaining or searching of conveyances; or

(d) the seizure of things.

(2) To avoid any doubt, it is declared that even though another law ofNorfolk Island provides power to do 1 or more of the things referred to in subsection (1), a similar power given by this Part may be used despite the existence of the power under the other law.

Division 2 Preventative action

50 Police powers of entry

A police officer may enter premises, and may take the action that is necessary and reasonable to prevent the commission or repetition of an offence or of a breach of the peace or to protect life or property—

(a) when invited onto the premises by a person who is or is reasonably believed to be a resident of the premises for the purpose of giving assistance to a person on the premises who has suffered, or is in imminent danger of suffering, physical injury at the hands of some other person; or

(b) under a warrant issued under section 51; or

(c) in circumstances of seriousness and urgency, in accordance with section 52.

51 Issue of warrant

(1) If a magistrate is satisfied, by information on oath, that—

(a) there are reasonable grounds to suspect that a person on premises has suffered, or is in imminent danger of, physical injury at the hands of another person and needs assistance to prevent, or deal with, the injury; and

(b) a police officer has been refused permission to enter the premises for the purpose of giving assistance to the firstmentioned person;

the magistrate may issue a warrant in writing authorising a police officer, with the assistance that is necessary and reasonable and by the force that is necessary and reasonable—

(c) to enter the premises specified in the warrant at any time within 24 hours after the issue of the warrant; and

(d) subject to any conditions specified in the warrant, to take the action that is necessary to prevent the commission or repetition of an offence or of a breach of the peace or to protect life or property.

(2) The police officer applying for a warrant shall give the further information about the grounds on which the warrant is sought, either orally on oath or by affidavit, that the magistrate requires.

52 Entry in emergencies

A police officer may enter premises where the officer believes on reasonable grounds that—

(a) an offence or a breach of the peace is being or is likely to be committed, or a person has suffered physical injury or there is imminent danger of injury to a person or damage to property; and

(b) it is necessary to enter the premises immediately for the purpose of preventing the commission or repetition of an offence or a breach of the peace or to protect life or property.

53 Seizure of firearms—warrants and emergencies

(1) If a police officer enters premises under section 50 (Police powers of entry), section 51 (Issue of warrant) or section 52 (Entry in emergencies), the police officer may seize any firearm, any ammunition for a firearm and any licence to possess or use a firearm—

(a) in or on those premises; or

(b) in or on a motor vehicle under the control of a person who ordinarily lives on those premises or is apparently connected with the circumstances giving rise to the entry of the police officer onto the premises;

if the police officer has reasonable grounds for believing that the seizure is necessary to prevent the commission or repetition of an offence or of a breach of the peace or to protect life or property.

(2) A firearm, ammunition or licence may be seized by a police officer under subsection (1)—

(a) despite the fact that the owner of the firearm, ammunition or licence is unknown; or

(b) irrespective of whether the owner of the firearm, ammunition or licence is connected with the circumstances giving rise to the entry of the police officer onto the premises.

(3) A police officer who is authorised under subsection (1) to seize a firearm, ammunition or licence in or on premises or in or on a motor vehicle may search the premises or the motor vehicle for any firearm, ammunition or licence and use the force that is reasonably necessary for the purpose.

(4) A firearm, ammunition or licence seized under subsection (1) must be returned to the licensee at the end of 60 days after the seizure if, before the end of that period—

(a) a prosecution for an offence arising out of circumstances in which a police officer has entered premises under section 50 (Police powers of entry), section 51 (Issue of warrant) or section 52 (Entry in emergencies) has not been instituted; or

(b) an application for a protection order that is a domestic violence order under the *Domestic Violence Act 1995* has not been made.

(5) However, a firearm, ammunition or licence seized under subsection (1) must not be returned if the registrar would otherwise be entitled under the *Firearms Act 1997* to be in possession of the firearm, ammunition or licence.

(6) A word or expression used in the *Firearms Act 1997* has the same meaning in this section.

54 Seizure of firearms—protection orders

(1) In enforcing an order under the *Domestic Violence Act 1995*, section 15 (Protection orders-firearms), a police officer may—

(a) enter premises where the respondent named in the order is reasonably believed to be living or staying; and

(b) seize any firearm, any ammunition and any licence to possess or use a firearm—

(i) in or on the premises; or

(ii) in or on a motor vehicle under the control of someone who ordinarily lives on the premises or is apparently connected with the circumstances giving rise to the entry of the police officer onto the premises.

(2) A firearm, ammunition or licence may be seized by a police officer under subsection (1)—

(a) despite the fact that the owner of the firearm, ammunition or licence is unknown; or

(b) irrespective of whether the owner of the firearm, ammunition or licence is connected with the circumstances giving rise to the entry of the police officer onto the premises.

(3) A police officer who is authorised under subsection (1) to seize a firearm, ammunition or licence in or on premises or in or on a motor vehicle may search the premises or the motor vehicle for any firearm, ammunition or licence and use the force that is reasonably necessary for the purpose.

(4) Subsection (3) does not authorise a search at any time during the period commencing at 9 pm on a day and ending at 6 am on the following day unless the police officer is satisfied that—

(a) it would not be practicable to conduct the search at another time; or

(b) it is necessary to do so to prevent the concealment, loss or destruction of the firearm, ammunition or licence.

(5) If—

(a) a firearm, ammunition or licence has been seized under subsection (1) for the purpose of enforcing an order mentioned in that subsection; and

(b) the licence has not been cancelled or suspended under the *Domestic Violence Act 1995*, section 15;

the firearm, ammunition or licence shall be returned to the licensee if—

(c) the licensee produces to the registrar of firearms a certificate of the registrar of the Court of Petty Sessions to the effect that the order is no longer in force; and

(d) the registrar of firearms is not aware of any other court orders in force requiring the seizure of the firearm, ammunition or licence; and

(e) the registrar of firearms is not otherwise entitled under the *Firearms Act 1997* to be in possession of the firearm, ammunition or licence.

(6) If a firearm is seized under subsection (1), the firearm shall be taken to have been seized by a police officer in accordance with the *Firearms Act 1997*.

(7) An expression that is used in this section and in the *Firearms Act 1997* has, in this section, the same meaning as in that Act.

55 Power to conduct search of person for knife

(1) Subject to subsection (2), if a police officer suspects on reasonable grounds that a person who is in a public place or school has a knife in his or her possession, the police officer may—

(a) conduct a frisk search or an ordinary search of the person; and

(b) seize any knife found as a result of the search.

(2) A police officer may conduct a search of a person under subsection (1) only if the police officer—

(a) provides evidence to the person that he or she is a police officer, unless the police officer is in uniform; and

(b) informs the person of the reason for the search.

(3) As soon as practicable after a search has been conducted under subsection (1), the police officer who conducted the search shall record the time, location and nature of the search.

Division 3 Search warrants

56 When search warrants can be issued

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

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

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

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

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

(a) the offence to which the warrant relates;

(b) a description of the warrant premises, or the name or description of the person to whom it relates;

(c) the kinds of evidential material that are to be searched for under the warrant;

(d) the name of the police officer who is to be responsible for executing the warrant (unless he or she inserts in the warrant the name of another police officer);

(e) the period, not exceeding 7 days, that the warrant remains in force;

(f) subject to subsection (9), the times when the search is authorised.

(6) For a warrant in relation to premises, the warrant shall state—

(a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in subsection (5) (c)) found at the premises in the course of the search that the executing officer or an assisting officer believes on reasonable grounds to be—

(i) evidential material in relation to an offence to which the warrant relates; or

(ii) a thing relevant to another offence that is an indictable offence

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

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

(7) For a warrant to search a person, the warrant shall state—

(a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in subsection (5)(c)) found, in the course of the search, on or in the possession of the person or in a recently used conveyance, being a thing that the executing officer or an assisting officer believes on reasonable grounds to be—

(i) evidential material in relation to an offence to which the warrant relates; or

(ii) a thing relevant to another offence that is an indictable offence;

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

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

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

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

(a) it would not be practicable to conduct the search at another time; or

(b) it is necessary to do so to prevent the concealment, loss or destruction of evidence relating to the offence.

(10) If the application for the warrant is made under section 67, this section applies as if—

(a) subsections (1) and (2) referred to 48 hours rather than 72 hours; and

(b) subsection (5) (e) referred to 48 hours rather than 7 days.

57 The things that are authorised by search warrant

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

(a) to enter the warrant premises and, if the premises are a conveyance, to enter the conveyance, wherever it is; and

(b) to search for and record fingerprints found at the premises and to take samples of things found at the premises for forensic purposes; and

(c) to search the premises for the kinds of evidential material specified in the warrant, and to seize things of that kind found at the premises; and

(d) to seize other things found at the premises in the course of the search that the executing officer or an assisting officer believes on reasonable grounds to be—

(i) evidential material in relation to an offence to which the warrant relates; or

(ii) evidential material in relation to any indictable offence; or

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

(e) to seize other things found at the premises in the course of the search that the executing officer or an assisting officer believes on reasonable grounds to be seizable items; and

(f) if the warrant so allows—to conduct an ordinary search or a frisk search of a person at or near the premises if the executing officer or an assisting officer suspects on reasonable grounds that the person has any evidential material or seizable items in his or her possession.

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

(a) to search the person as specified in the warrant, things found in the possession of the person and any recently used conveyance for things of the kind specified in the warrant; and

(b) to—

(i) seize things of that kind; or

(ii) record fingerprints from things; or

(iii) to take forensic samples from things;

found in the course of the search; and

(c) to seize other things found in the course of the search on, or in the possession of, the person or in the conveyance that the executing officer or an assisting officer believes on reasonable grounds to be—

(i) evidential material in relation to an offence to which the warrant relates; or

(ii) a thing relevant to any indictable offence; or

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

(d) to seize other things found in the course of the search that the executing officer or an assisting officer believes on reasonable grounds to be seizable items.

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

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

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

58 Availability of assistance and use of force in executing warrant

In executing a warrant—

(a) the executing officer may obtain the assistance that is necessary and reasonable in the circumstances; and

(b) the executing officer, or a police officer assisting in executing the warrant, may use the force against persons and things that is necessary and reasonable in the circumstances; and

(c) an assisting officer may use the force against things that is necessary and reasonable in the circumstances.

59 Details of warrant to be given to occupier etc

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

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

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

(4) The executing officer shall identify himself or herself to the person at the premises or the person being searched.

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

60 Specific powers available to police officers executing warrant

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

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

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

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

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

(a) for not more than 1 hour; or

(b) for a longer period if the occupier of the premises consents in writing.

(3) If—

(a) the execution of a warrant is stopped by an order of a court; and

(b) the order is later revoked or reversed on appeal; and

(c) the warrant is still in force;

the execution of the warrant may be completed.

61 Use of equipment to examine or process things

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

(2) If—

(a) it is not practicable to examine or process them at the warrant premises; or

(b) the occupier of the premises (or his or her representative) consents in writing;

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

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

(a) inform the occupier of the address of the place and the time when the examination or processing will be carried out; and

(b) allow the occupier (or his or her representative) to be present during the examination or processing.

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

(a) the equipment is suitable for the examination or processing; and

(b) the examination or processing can be carried out without damage to the equipment or the thing.

62 Use of electronic equipment at premises

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

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

(a) seize the equipment and any disk, tape or other associated device; or

(b) if the material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced; or

(c) if the material can be transferred to a disk, tape or other storage device that—

(i) is brought to the premises; or

(ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;

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

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

(a) it is not practicable to put the material in documentary form under subsection (2) (b) or to copy the material under subsection (2) (c); or

(b) possession by the occupier of the equipment could constitute an offence.

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

(a) evidential material may be accessible by operating electronic equipment at the premises; and

(b) expert assistance is required to operate the equipment; and

(c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;

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

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

(6) The equipment may be secured—

(a) for a period not exceeding 24 hours; or

(b) until the equipment has been operated by the expert;

whichever happens first.

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

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

(a) that the executing officer or assisting officer intends to apply for an extension under subsection (7); and

(b) that the occupier is entitled to be heard in relation to the application.

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

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

63 Compensation for damage to electronic equipment

(1) If—

(a) damage is caused to equipment as a result of it being operated under section 61 or 62; and

(b) the damage resulted from—

(i) insufficient care being exercised in selecting the person who was to operate the equipment; or

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

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

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

64 Copies of seized things to be provided

(1) If a police officer seizes from warrant premises—

(a) a document, film, computer file or other thing that can be readily copied; or

(b) a storage device the information in which can be readily copied;

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

(2) Subsection (1) does not apply if—

(a) the seized item was seized under section 62 (2) (b) or (c); or

(b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

65 Occupier entitled to be present during search

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

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

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

66 Receipts for things seized under warrant

(1) If a thing is seized under a warrant or moved under section 61 (2), the executing officer or an assisting officer shall provide a receipt for the thing.

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

67 Warrants by telephone or other electronic means

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

(a) in an urgent case; or

(b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

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

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

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

(a) a warrant in the terms of the application should be issued urgently; or

(b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;

the issuing officer may complete and sign the same form of warrant that would be issued under section 56.

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

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

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

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

(9) If—

(a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and

(b) the form of warrant signed by the issuing officer is not produced in evidence;

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

68 Restrictions on personal searches

A warrant may not authorise a strip search or a search of a person's body cavities.

Division 4 Powers to stop and search

69 Stopping, searching and detaining people

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

(a) a person is carrying, or otherwise has in his or her possession, a thing (the ***relevant thing***) relevant to an indictable offence or a thing stolen or otherwise unlawfully obtained; and

(b) it is necessary to exercise a power under subsection (2) to prevent the thing from being concealed, lost or destroyed; and

(c) it is necessary to exercise the power without the authority of a search warrant because the circumstances are serious and urgent.

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

(a) stop and detain the person; and

(b) conduct a frisk search or ordinary search of the person for the relevant thing; and

(c) seize the thing if the officer finds it.

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

(a) it is necessary to seize it to prevent its concealment, loss or destruction; and

(b) it is necessary to seize it without the authority of a search warrant because the circumstances are serious and urgent.

(4) A frisk search under this section may only be carried out by a person of the same sex as the person being searched.

(5) As soon as possible after exercising a power under subsection (2), the police officer must make a written record of—

(a) the date, time and place of exercising the power; and

(b) details of its exercise; and

(c) any details of the person known to the police officer; and

(d) the grounds for suspecting the relevant matter mentioned in subsection (1).

(6) The police officer must exercise his or her powers under this section subject to section 70.

70 How a police officer exercises a power under s 69

In exercising a power under section 69 in relation to a person, a police officer must not detain the person for longer than is necessary and reasonable to conduct a frisk search or ordinary search of the person.

71 Stopping, searching and detaining conveyances

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

(a) a thing relevant to an indictable offence or a thing stolen or otherwise unlawfully obtained, is in or on a conveyance; and

(b) it is necessary to exercise a power under subsection (2) to prevent the thing from being concealed, lost or destroyed; and

(c) it is necessary to exercise the power without the authority of a search warrant because the circumstances are serious and urgent.

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

(a) stop and detain the conveyance; and

(b) search the conveyance and any container in or on the conveyance, for the relevant thing; and

(c) seize the thing if he or she finds it there.

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

(a) it is necessary to seize it to prevent its concealment, loss or destruction; and

(b) it is necessary to seize it without the authority of a search warrant because the circumstances are serious and urgent.

(4) The police officer shall exercise his or her powers under this section subject to section 72.

72 How a police officer exercises a power under section 71

In exercising a power under section 71 in relation to a conveyance, a police officer—

(a) may use the assistance that is necessary; and

(b) shall search the conveyance in a public place or in some other place where members of the public have ready access; and

(c) shall not detain the conveyance for longer than is necessary and reasonable to search it and any container found in or on the conveyance; and

(d) may use the force that is necessary and reasonable in the circumstances, but shall not damage the conveyance or any container found in or on the conveyance by forcing open a part of the conveyance or container unless—

(i) any person apparently in charge of the conveyance has been given a reasonable opportunity to open that part or container; or

(ii) it is not possible to give any such person that opportunity.

Division 5 Arrest and related matters

73 Requirement to provide name etc

(1) If—

(a) a police officer has reason to believe that an offence has been or may have been committed; and

(b) believes on reasonable grounds that a person may be able to assist him or her in inquiries in relation to that offence; and

(c) the name or address (or both) of that person is unknown to the officer;

the officer—

(d) may request the person to provide his or her name or address (or both) to the officer; and

(e) if making such a request—shall inform the person of the reason for the request.

(2) If a police officer—

(a) makes a request of a person under subsection (1); and

(b) informs the person of the reason for the request; and

(c) complies with subsection (3) if the person makes a request under that subsection;

the person shall not, without reasonable excuse—

(d) fail to comply with the request; or

(e) give a name or address that is false in a material particular.

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

(a) his or her name or the address of his or her place of duty; or

(b) his or her name and that address; or

(c) if he or she is not in uniform and it is practicable for the police officer to provide the evidence—evidence that he or she is a police officer;

the police officer shall not—

(d) fail to comply with the request; or

(e) give a name or address that is false in a material particular.

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

Penalty: 5 penalty units.

74 Power of arrest without warrant by police officers

(1) A police officer may, without warrant, arrest a person for an offence if the police officer suspects on reasonable grounds that—

(a) the person has committed or is committing the offence; and

(b) proceedings by summons against the person would not achieve 1 or more of the following purposes:

(i) ensuring the appearance of the person before a court in respect of the offence;

(ii) preventing a repetition or continuation of the offence or the commission of another offence;

(iii) preventing the concealment, loss or destruction of evidence relating to the offence;

(iv) preventing harassment of, or interference with, a person who may be required to give evidence in proceedings in respect of the offence;

(v) preventing the fabrication of evidence in respect of the offence;

(vi) preserving the safety or welfare of the person.

(2) A police officer may, without warrant, arrest a person for a domestic violence offence if the police officer suspects on reasonable grounds that the person has committed or is committing the offence.

(3) If—

(a) a person has been arrested under subsection (1) or (2) in connection with an offence; and

(b) before the person is charged with the offence, the police officer in charge of the investigation into the offence does not have, or ceases to have, reasonable grounds to suspect that—

(i) the person committed the offence; or

(ii) for a person arrested under subsection (1)—holding the person in custody is necessary to achieve any of the purposes referred to in subsection(1)(b);

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

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

(5) In this section:

domestic violence offence—an offence that a person is suspected of committing is a ***domestic violence offence*** if the conduct making up the offence is domestic violence under the *Domestic Violence Act 1995*.

75 Arrest without warrant in possession

(1) This section applies if—

(a) a warrant has been issued for the arrest of a person; and

(b) a police officer encounters the person or is otherwise in a position to arrest the person but is not carrying the warrant at the time.

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

(a) arrest the person; and

(b) for a warrant for the arrest of a person for the commission of an offence—cause the person (and any property found in the person's possession) to be brought before a magistrate to be dealt with according to law.

(3) In this section:

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

76 Arrest of prisoner unlawfully at large

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

(2) The police officer shall, as soon as practicable after the arrest, cause the person to be brought before a magistrate.

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

(a) authorising a police officer or corrections officer to take the person to a correctional centre or other place of detention stated in the warrant; and

(b) directing that the person, having been conveyed to that place in accordance with the warrant, be detained there to undergo the term of imprisonment or other detention that the person is required by law to undergo.

(4) In this section:

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

77 Arrest without warrant for offences committed outside Norfolk Island

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

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

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

(4) If a person is brought before a magistrate under subsection (3), the magistrate may—

(a) discharge the person; or

(b) commit the person to custody, or admit the person to bail, pending—

(i) the execution under a law of the Commonwealth of a warrant for the person's arrest; or

(ii) the person's discharge or release under subsection (7).

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

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

(7) If—

(a) a person is admitted to bail under this section; and

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

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

(8) If—

(a) a person has been committed to custody or admitted to bail under this section; and

(b) a warrant for the arrest of the person is not executed within 7 days after the person is committed to custody or admitted to bail;

a magistrate may, by order, discharge the person from custody or release the person from bail.

(9) In this section:

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

78 Power of arrest without warrant by other persons

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

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

79 Warrants for arrest

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

(a) the information is on oath; and

(b) subject to subsection (3), the informant has given the issuing officer an affidavit setting out the reasons why the warrant is sought, including the following reasons:

(i) the reasons why it is believed that the person committed the offence;

(ii) the reasons why it is claimed that proceedings by summons would not achieve 1 or more of the purposes set out in section 74 (1) (b);

(c) if the issuing officer has requested further information about the reasons for which the issue of the warrant is sought—that information has been provided to the officer; and

(d) the issuing officer is satisfied that there are reasonable grounds for the issue of the warrant.

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

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

(4) This section does not apply to the issue of a warrant under the Bail Act 2005, section 40 (Failure to appear).

80 Power to enter premises to arrest offender

(1) Subject to subsection (3), if—

(a) an officer has, under a warrant, power to arrest the person for an offence; and

(b) the officer believes on reasonable grounds that the person is on any premises;

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

(2) Subject to subsection (3), if—

(a) an officer has the power under section 74 to arrest the person without warrant for an offence; and

(b) the offence is an indictable offence or relevant summary offence; and

(c) the police officer believes on reasonable grounds that the person is on any premises;

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

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

(a) it would not be practicable to arrest the person, either at the dwelling house or elsewhere, at another time; or

(b) it is necessary to do so to prevent the concealment, loss or destruction of evidence relating to the offence.

(4) In this section:

dwelling house includes a conveyance, and a room in a hotel, motel, boarding house or club, where people ordinarily sleep at night.

relevant summary offence means an offence against—

(a) section 358 of the *Criminal Code* (Possession of offensive weapons and disabling substances); or

(b) section 359 of the *Criminal Code* (Possession of offensive weapons and disabling substances with intent); or

(c) section 198 of the *Criminal Code* (Minor theft); or

(d) the *Road Traffic Act 1982*, section 32 (Driving under the influence).

81 Use of force in making arrest

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

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

(a) the officer believes on reasonable grounds that it is necessary to do so to protect life or to prevent serious injury to the officer or another person; and

(b) if the person is attempting to escape arrest by fleeing—the person has, if practicable, been called on to surrender and the officer believes on reasonable grounds that the person cannot be apprehended in any other way.

82 Persons to be informed of grounds of arrest

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

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

(3) Subsection (1) does not apply to the arrest of the other person if—

(a) the other person should, in the circumstances, know the substance of the offence for which he or she is being arrested; or

(b) the other person's actions make it impracticable for the person making the arrest to inform the other person of the offence for which he or she is being arrested.

83 Power to conduct frisk search of arrested person

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

(a) conduct a frisk search of the person at or soon after the time of arrest; and

(b) seize any seizable items found as a result of the search.

(2) The police officer may arrange for another police officer to conduct the frisk search if, having regard to section 100 (Conduct of ordinary searches and frisk searches), the officer considers that it would be more appropriate for the other officer to conduct the frisk search.

(3) The other police officer is authorised—

(a) to conduct the frisk search; and

(b) to seize any seizable items found as a result of the search.

84 Power to conduct ordinary search of arrested person

(1) If a police officer suspects on reasonable grounds that a person who has been arrested is carrying—

(a) evidential material in relation to any offence; or

(b) a seizable item;

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

(2) The police officer may arrange for another police officer to conduct the ordinary search if, having regard to section 100 (Conduct of ordinary searches and frisk searches), the officer considers that it would be more appropriate for the other officer to conduct the frisk search.

(3) The other police officer is authorised—

(a) to conduct the ordinary search; and

(b) to seize anything mentioned in subsection (1) found as a result of the search.

85 Power to conduct search of arrested person's premises

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

(a) evidential material in relation to any offence; or

(b) seizable items.

86 Power to conduct search at police station

(1) If—

(a) a person has been brought to a police station following arrest for an offence; and

(b) an ordinary search of the person has not been conducted;

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

(2) If—

(a) a person is in lawful custody in a police station; and

(b) a police officer—

(i) of the rank of sergeant or higher; or

(ii) who is for the time being in charge of the police station;

suspects on reasonable grounds that it is prudent to do so to ascertain whether the person is carrying any evidential material in relation to any offence or seizable items;

the police officer may cause a frisk search or an ordinary search of the person to be conducted.

(3) If a person is searched under this section and as a result of the search is found to be carrying—

(a) evidential material in relation to any offence; or

(b) a seizable item;

the police officer conducting the search may seize that thing.

(4) If a person is searched under this section, the police officer who conducts or causes the search to be conducted shall make a record of the reasons for the search and of the type of search.

87 Power to conduct strip search

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

(2) A strip search may be conducted if—

(a) a police officer suspects on reasonable grounds that the person has in his or her possession—

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

(ii) a seizable item; or

(b) the police officer suspects on reasonable grounds that a visual inspection of the person's body will provide evidence of the person's involvement in an offence;

and—

(c) the police officer suspects on reasonable grounds that it is necessary to conduct a strip search of the person to recover that thing or to discover that evidence; and

(d) an officer in charge has approved the conduct of the search.

(3) Subject to section 88, a strip search may also be conducted if the person consents in writing.

(4) Subject to section 88, a strip search may be conducted in the presence of a medical practitioner who may assist in the search.

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

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

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

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

88 Rules for conduct of strip search

(1) A strip search—

(a) shall be conducted in a private area; and

(b) subject to subsection (6), shall be conducted by a police officer who is of the same sex as the person being searched; and

(c) subject to subsections (3) and (4), shall not be conducted in the presence or view of a person who is of the opposite sex to the person being searched; and

(d) shall not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search; and

(e) shall not be conducted on a person who is under 10; and

(f) if the person being searched is at least 10 but under 18, or is incapable of managing his or her affairs—

(i) may only be conducted if the person has been arrested and charged or if a court orders that it be conducted; and

(ii) shall be conducted in the presence of a parent or guardian of the person being searched or, if that is not acceptable to the person, in the presence of another person (other than a police officer) who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person; and

(g) shall not involve a search of a person's body cavities; and

(h) shall not involve the removal of more garments than the police officer conducting the search believes on reasonable grounds to be necessary to determine whether the person has in his or her possession the item searched for or to establish the person's involvement in the offence; and

(i) shall not involve more visual inspection than the police officer believes on reasonable grounds to be necessary to establish the person's involvement in the offence.

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

(a) the seriousness of the offence; and

(b) the age or any disability of the person; and

(c) any other matters the court thinks fit.

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

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

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

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

(a) of the same sex as the person to be searched; and

(b) who has been requested to conduct the search by a police officer;

may conduct the search.

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

89 Safekeeping of things seized

(1) A police officer who seizes a thing as a result of searching a person in lawful custody under this Division shall—

(a) make a record of the thing seized, including a description of it and the date when it was seized; and

(b) give the thing seized and the record of it to the police officer for the time being in charge of the police station where the person was searched.

(2) A police officer for the time being in charge of a police station is responsible for the safekeeping of any thing seized as a result of a search of a person in lawful custody under this Part conducted at that place.

(3) A police officer who has responsibility for the safekeeping of a thing under subsection (2) shall, on release of the person from whom it was seized, take reasonable steps to return the thing to that person or to the owner of the thing if that person is not entitled to possession, unless the thing affords evidence in relation to an offence.

(4) If a thing is not returned to the person from whom it was seized or the owner under subsection (3), the police officer responsible for the safekeeping of the thing shall—

(a) make a note on the record made under subsection (1) (a) indicating the thing has been retained; and

(b) take reasonable steps to give a copy of that record to the person from whom the thing was seized.

90 Taking fingerprints, recordings, samples of handwriting or photographs

(1) In this section and in sections 91 and 92:

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

(2) A police officer shall not—

(a) take identification material from a person who is in lawful custody in respect of an offence except in accordance with this section; or

(b) require any other person to submit to the taking of identification material, but nothing in this paragraph prevents such a person consenting to the taking of identification material.

(3) If a person is in lawful custody for an offence, a police officer of the rank of sergeant or higher, or for the time being in charge of a police station, may take identification material from the person, or cause identification material from the person to be taken, if any 1 or more of the following paragraphs apply:

(a) the identification material is prints of the person's fingers or photographs of the person;

(b) the person consents in writing;

(c) the police officer believes on reasonable grounds that it is necessary to do so to—

(i) establish who the person is; or

(ii) identify the person as the person who committed the offence; or

(iii) provide evidence of, or relating to, the offence;

(d) the police officer suspects on reasonable grounds that the person has committed another offence and the identification material is to be taken for the purpose of identifying the person as the person who committed the other offence or of providing evidence of, or relating to, the other offence.

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

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

(a) is incapable of managing his or her affairs; and

(b) has not been arrested and charged;

unless a court orders that the material be taken.

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

(a) the seriousness of the offence; and

(b) the age or any disability of the person; and

(c) any other matters as the court thinks fit.

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

(a) a parent or guardian of the person; or

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

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

(a) is not a suspect; and

(b) is incapable of managing his or her affairs;

if a court orders that the material be taken.

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

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

(a) is at least 18; and

(b) is capable of managing his or her affairs; and

(c) is not a suspect;

if the person consents in writing.

91 Destruction of identification material

(1) If—

(a) identification material is taken under section 90; and

(b) a period of 12 months has elapsed since the material was taken; and

(c) proceedings in respect of an offence to which the identification material relates have not been instituted or have been discontinued;

the material shall be destroyed as soon as practicable.

(2) If identification material has been taken from a person under section 90 and—

(a) the person is found to have committed an offence to which the identification material relates, but no conviction is recorded; or

(b) the person is acquitted of such an offence and—

(i) no appeal is lodged against the acquittal; or

(ii) an appeal is lodged against the acquittal and the acquittal is confirmed or the appeal is withdrawn;

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

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

(a) the period of 12 months referred to in subsection (1); or

(b) that period as previously extended under this subsection.

92 Offence of refusing to allow identification material to be taken

(1) If a person is convicted of an offence, the judge or magistrate presiding at the proceedings where the person was convicted may order—

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

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

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

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

Maximum penalty: $10 000, imprisonment for 12 months or both.

93 Identification parades—general

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

(2) Subject to subsection (3) and to section 94, an identification parade—

(a) may be held if the suspect agrees; or

(b) shall be held if—

(i) the suspect has requested that an identification parade be held; and

(ii) it is reasonable in the circumstances to do so.

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

(a) he or she is entitled to refuse to take part in the parade; and

(b) if he or she refuses to take part in the parade without reasonable excuse, evidence of that refusal and of any identification of the suspect by a witness as a result of having seen a photograph or of having seen the suspect otherwise than during an identification parade may be given in any subsequent proceedings in relation to an offence; and

(c) in addition to any requirement under section 94, a legal representative or other person of the suspect's choice may be present while the person is deciding whether to take part in the parade, and during the holding of the parade, if arrangements for that person to be present can be made within a reasonable time.

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

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

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

(a) the parade shall consist of at least 9 persons;

(b) each of the persons who is not the suspect shall—

(i) resemble the suspect in age, height and general appearance; and

(ii) not have features that will be visible during the parade that are markedly different from those of the suspect as described by the witness before viewing the parade;

(c) unless it is impracticable for another police officer to arrange or conduct the parade, no police officer who has taken part in the investigation relating to the offence may take part in the arrangements for, or the conduct of, the parade;

(d) no person in the parade is to be dressed in a way that would obviously distinguish him or her from the other participants;

(e) if it is practicable to do so, numbers should be placed next to each participant to allow the witness to make an identification by indicating the number of the person identified;

(f) the parade may take place so that the witness can view the parade without being seen if the witness requests that it take place in that way and—

(i) a legal representative or other person of the suspect's choice is present with the witness; or

(ii) the parade is recorded by a video recording;

(g) nothing is to be done that suggests or is likely to suggest to a witness which member of the parade is the suspect;

(h) if the witness so requests—members of the parade may be required to speak, move or adopt a specified posture but, if this happens, the witness shall be reminded that the members of the parade have been chosen on the basis of physical appearance only;

(i) the suspect may select where he or she wishes to stand in the parade;

(j) if more than 1 witness is to view the parade—

(i) each witness shall view the parade alone; and

(ii) the witnesses are not to communicate with each other at a time after arrangements for the parade have commenced and before each of them has viewed the parade; and

(iii) the suspect may change places in the parade after each viewing;

(k) each witness shall be told that—

(i) the suspect may not be in the parade; and

(ii) if he or she is unable to identify the suspect with reasonable certainty he or she shall say so;

(l) the parade shall be recorded by a video recording if it is practicable to do so and, if that is done, a copy of the video recording shall be made available to the suspect or his or her legal representative as soon as it is practicable to do so;

(m) if the parade is not recorded by a video recording—

(i) the parade shall be photographed in colour; and

(ii) a print of a photograph of the parade that is at least 250mm x 200mm in size shall be made available to the suspect or his or her legal representative; and

(iii) the police officer in charge of the parade shall take all reasonable steps to record everything said and done at the parade and shall make a copy of the record available to the suspect or his or her legal representative;

(n) the suspect may have present during the holding of the parade a legal representative or other person of his or her choice if arrangements for that person to be present can be made within a reasonable time.

(7) The following questions are to be decided according to the common law:

(a) whether or not evidence of a suspect having refused to take part in an identification parade is admissible;

(b) if evidence of the refusal is admissible—what inferences (if any) may be drawn by a court or jury from the refusal;

(c) whether, after such a refusal, evidence of alternative methods of identification is admissible.

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

94 Identification parades for suspects under 18 etc

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

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

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

(a) is at least 10 but under 18; and

(b) is capable of managing his or her affairs;

unless 1 of the following paragraphs applies:

(c) the suspect agrees to or requests in writing the holding of the parade and a parent or guardian of the suspect agrees in writing to the holding of the parade or, if the parent or guardian is not acceptable to the suspect, another person (other than a police officer) who is capable of representing the interests of the suspect and who, as far as is practicable in the circumstances, is acceptable to the suspect agrees in writing to the holding of the parade;

(d) if—

(i) 1 of those persons agrees in writing to the holding of the parade but the other does not; and

(ii) a court orders that the parade be held.

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

(a) the seriousness of the offence; and

(b) the age or any disability of the person; and

(c) any other matters as the court thinks fit.

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

(a) a parent or guardian of the suspect; or

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

95 Identification by means of photographs

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

(a) the suspect has refused to take part in an identification parade; or

(b) the holding of an identification parade would be—

(i) unfair to the suspect; or

(ii) unreasonable in the circumstances.

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

(a) the police officer shall show to the witness photographs or pictures of at least 9 different persons;

(b) each photograph or picture of a person who is not the suspect shall be of a person who—

(i) resembles the suspect in age and general appearance; and

(ii) does not have features visible in the photograph or picture that are markedly different from those of the suspect as described by the witness before viewing the photographs or pictures;

(c) the police officer shall not, in doing so, act unfairly towards the suspect or suggest to the witness that a particular photograph or picture is the photograph or picture of the suspect or of a person who is being sought by the police in respect of an offence;

(d) if practicable, the photograph or picture of the suspect shall have been taken or made after he or she was arrested or was considered as a suspect;

(e) the witness shall be told that a photograph or picture of the suspect may not be amongst those being seen by the witness;

(f) the police officer shall keep, or cause to be kept, a record identifying each photograph or picture that is shown to the witness;

(g) the police officer shall notify the suspect or his or her legal representative in writing that a copy of the record is available for the suspect;

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

(3) If—

(a) a photograph or picture of a person who is suspected in relation to the commission of an offence is shown to a witness; and

(b) the photograph was taken or the picture made after the suspect was arrested or was considered to be a suspect; and

(c) proceedings in relation to the offence referred to in paragraph (a) or another offence arising out of the same course of conduct for which the photograph was taken or picture made are brought against the suspect before a jury; and

(d) the photograph or picture is admitted into evidence;

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

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

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

(a) a suspect comes into custody in respect of the offence; and

(b) an identification parade is to be held in relation to the suspect;

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

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

her with particulars of any such picture shown to the witness and the comments (if any) of the witness about the picture.

(7) If a suspect is in custody in respect of an offence and a police officer investigating the offence wishes to investigate the possibility that a person other than the suspect committed the offence, subsection (4) does not prevent a police officer from taking action referred to in that subsection for the purpose of assisting a witness to describe the features of a person other than the suspect.

96 Identification procedures if more than 1 suspect

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

(a) the officer is attempting to ascertain—

(i) which of the suspects committed an offence; or

(ii) if the suspects may have been jointly involved in the offence—the identities of the suspects; and

(b) for that purpose, the officer intends to conduct an identification parade or to identify a person by showing a photograph or a picture of a suspect to a person.

97 Descriptions

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

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

(3) If—

(a) a record of a description of a person is made under subsection (1); and

(b) the person is charged with an offence to which the description relates;

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

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

(a) place the person in danger; or

(b) expose the person to harassment or unreasonable interference;

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

98 Examination

(1) In this section:

examination means an examination of the body of the person charged and includes the taking of samples of the person's blood, saliva or hair.

(2) An examination of a person under this section may be conducted if—

(a) the person consents; or

(b) an order is made under subsection (3).

(3) If a person (the ***person charged***) is in lawful custody on a charge of committing an offence and a magistrate is satisfied, on the balance of probabilities, that the offence—

(a) is of such a nature; and

(b) has been committed under such circumstances;

that there are reasonable grounds for believing that an examination of the person charged will afford evidence as to the commission of the offence, the magistrate may order an examination of the person.

(4) If the person charged is not present at the time that the order is made, a copy of the order shall be given to the person.

(5) If an order is made under subsection (3) or a person charged consents to an examination, a police officer may request a medical practitioner to carry out the examination and, if the medical practitioner agrees to carry it out, shall give the medical practitioner a copy of the order.

(6) A medical practitioner carrying out an examination may be assisted by 1 or more persons acting under the direction of the medical practitioner.

(7) An examination of the person charged—

(a) shall be carried out in circumstances affording reasonable privacy to the person; and

(b) for an examination which includes the external examination of the genital or anal area, the buttocks, or, for a female, the breasts— shall not be carried out in the presence or in view of a person of the opposite sex to the person being examined; and

(c) shall not be carried out in the presence or view of a person whose presence is not necessary for the purposes of the examination; and

(d) shall not involve the removal of more clothing than is necessary for carrying out the examination; and

(e) shall not involve more visual inspection than is necessary for carrying out the examination.

(8) Subsection (7) does not prevent an examination being carried out by a medical practitioner of the opposite sex to the person being examined.

(9) A medical practitioner carrying out an examination under this section, an assistant of the medical practitioner or a police officer, may use reasonable force to enable the examination to be carried out including the prevention of loss, destruction or contamination of a sample.

(10) Samples taken from a person charged with an offence shall be destroyed as soon as practicable after the conclusion of the proceedings relating to the offence and the exhaustion of any right of appeal.

(11) No action or proceeding, civil or criminal, lies against—

(a) a person who conducts, or assists in conducting, an examination under this section (including such a person who uses reasonable force as provided in subsection (9)); or

(b) a police officer who uses reasonable force as provided in that subsection.

(12) This section does not apply to a child.

Division 6 — General

99 Assisting officers—search and arrest of persons

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

100 Conduct of ordinary searches and frisk searches

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

101 Announcement before entry

(1) Subject to subsection (3), a police officer shall, before any person enters premises under a warrant, for the purpose of executing an order mentioned in section 55(1) or to arrest a person—

(a) announce that he or she is authorised to enter the premises; and

(b) give any person at the premises an opportunity to allow entry to the premises.

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

(a) the safety of a person (including a police officer); or

(b) that the effective execution of the warrant, order or arrest is not frustrated.

(3) This section does not apply to an entry made under section 53.

102 Offence of making false statements in warrants

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

Penalty: imprisonment for 2 years.

103 Offences relating to telephone warrants

A person shall not—

(a) state in a document that purports to be a form of warrant under section 67 the name of an issuing officer unless that officer issued the warrant; or

(b) state on a form of warrant under that section a matter that, to the person's knowledge, departs in a material particular from the form authorised by the issuing officer; or

(c) purport to execute, or present to a person, a document that purports to be a form of warrant under that section that the person knows—

(i) has not been approved by an issuing officer under that section; or

(ii) to depart in a material particular from the terms authorised by an issuing officer under that section; or

(d) give to an issuing officer a form of warrant under that section that is not the form of warrant that the person purported to execute.

Maximum penalty: imprisonment for 2 years.

104 Return of seized knife or thing

(1) If a knife is seized under section 55, the person from whom it was seized or, if that person is under 16 years of age, his or her parent or guardian is entitled to have the knife returned if—

(a) a prosecution for an offence against section 360 of the *Criminal Code* in respect of that knife has not been commenced before the end of 60 days after the seizure; or

(b) a prosecution for an offence against section 360 in respect of that knife has been commenced before the end of 60 days after the seizure and the prosecution (and any appeal to a court in relation to that prosecution) has been completed without the knife having been forfeited under section 107.

(2) Subject to any contrary order of a court, if a police officer seizes a thing under Division 2, 3 or 4, the police officer shall return it if—

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

(b) if the thing was seized under section 69 (Stopping, searching and detaining people) or section 71 (Stopping, searching and detaining conveyances)—

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

(ii) the period of 60 days after its seizure ends;

whichever first occurs;

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

(3) If a thing is seized under section 69 (Stopping, searching and detaining people) or section 71 (Stopping, searching and detaining conveyances), at the end of the 60 days specified in subsection (1) the police officer shall take reasonable steps to return the thing to the person from whom it was seized or to the owner if that person is not entitled to possess it unless—

(a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or

(b) the police officer may retain the thing because of an order under section 105; or

(c) the police officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of Norfolk Island) to retain, destroy or dispose of the thing.

105 Court of Petty Sessions may permit thing to be retained

(1) If a thing is seized under section 69 (Stopping, searching and detaining people) or section 71 (Stopping, searching and detaining conveyances), and—

(a) before the end of 60 days after the seizure; or

(b) before the end of a period previously specified in an order of a court under this section;

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

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

(a) for the purposes of an investigation as to whether an offence has been committed; or

(b) to enable evidence of an offence to be secured for the purposes of a prosecution;

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

(3) Before making the application, the police officer shall—

(a) take reasonable steps to discover who has an interest in the retention of the thing; and

(b) if it is practicable to do so, notify each person who the police officer believes to have such an interest of the proposed application.

106 Laws relating to taking forensic samples not affected

Nothing in this Part is intended to limit or exclude the operation of a law of Norfolk Island relating to the taking of forensic samples (excluding identification material as defined in section 90).

107 Forfeiture of knife

(1) A knife seized under section 55 (Power to conduct search of person for knife) is forfeited to the Territory if the person from whom the knife was seized is convicted or found guilty of an offence against section 360 of the Criminal Code (Possession of knife in public place or school) in relation to the knife.

(2) If there are reasonable grounds for believing that the person who was in possession of a knife forfeited under subsection (1) was the owner of the knife, it may be destroyed or disposed of in the way the commissioner of police directs.

(3) If there are reasonable grounds for believing that the person who was in possession of a knife forfeited under subsection (1) was not the owner of the knife, it may be destroyed or disposed of in the way the commissioner of police directs if—

(a) 6 months have elapsed since the person was found guilty of an offence against section 360 of the *Criminal Code* in relation to the knife; and

(b) reasonable attempts have been made to ascertain the whereabouts of the owner of the knife.

108 Seizure of forfeited articles

(1) A member of the police force may, without warrant, seize any article that is forfeited, or that he or she has reasonable grounds for believing is forfeited, under any law in force in Norfolk Island and take that article before the Court of Petty Sessions.

(2) If any article is brought before the court under subsection (1), the court may, subject to the giving of the notice (if any) to the person (if any) that the court directs, order that the article be condemned or delivered to the person that the court is satisfied is entitled to the article.

3) If a prosecution is pending in relation to an article, the court shall not make an order under subsection (2) in relation to the article until the prosecution is determined.

(4) All articles condemned under subsection (2) as forfeited shall be transferred to the Chief Executive Officer to be dealt with under section 109.

109 Disposal of forfeited articles by Chief Executive Officer

(1) The Chief Executive Officer must sell or otherwise dispose of an article transferred to the Chief Executive Officer under section 108 (4).

(2) The Chief Executive Officer must pay the proceeds of the sale to the Public Account.

110 When case not to be proceeded with gaoler to discharge prisoner on certificate from Minister, etc

The Minister may, in respect of any person under committal for trial, and in all cases if any person is remanded to prison, and if the Crown law officer in his or her discretion thinks fit not further to proceed, transmit at any time a certificate to the judges of the Supreme Court, any one of whom may by warrant direct the gaoler in whose custody the prisoner, or person under remand, may be to discharge him or her from custody in respect of the offence mentioned in the warrant, and, if the gaoler neglects so to do, he or she shall be liable to a fine of 1 penalty unit, to be recovered by action of debt in the name of the Administration.

Note 1 If a form is approved under s 215 for a certificate, the form must be used.

CHAPTER 4 — INVESTIGATION OF EXTRATERRITORIAL OFFENCES

111 Interpretation for chapter 4

(1) In this chapter:

appropriate authority, in relation to a State or another Territory, means an authority exercising in relation to the police force of that State or Territory functions corresponding to those of the commissioner of police in relation to the Australian Federal Police.

corresponding law means a law of a State or another Territory declared under section 112 to be a corresponding law.

night means the period commencing at 7 pm in each evening and ending at 7 am in the following morning.

offence to which this Act applies means an indictable offence against the law of a reciprocating State (being an offence arising from an act, omission or state of affairs that, if done or occurring in the Norfolk Island would attract criminal liability under the law of Norfolk Island).

owner, in relation to an object, includes a person entitled to possession of the object.

premises means a building, structure or place (whether or not built on and whether enclosed or unenclosed), and includes an aircraft, vessel or vehicle.

reciprocating State means a State or another Territory—

(a) where a corresponding law is in force; and

(b) in relation to which arrangements are in force under section 116.

search warrant means a warrant under this Part authorising a search of premises.

telephone includes any telecommunication device.

(2) For this Part—

(a) anything obtained by the commission of an offence, used for the purpose of committing an offence, or in respect of which an offence has been committed; or

(b) anything that may afford evidence of the commission of an offence; or

(c) anything intended to be used for the purpose of committing an offence;

is an object relevant to the investigation of the offence.

112 Declaration of corresponding law

The Minister may, in writing, declare a law of a State or another Territory to be a corresponding law.

113 Issue of search warrants

(1) If, on the application of a police officer, a magistrate is satisfied that there are reasonable grounds to believe—

(a) that an offence to which this Act applies has been, or is intended to be, committed; and

(b) that there is in any premises an object relevant to the investigation of that offence;

the magistrate may issue a search warrant in respect of those premises.

(2) An application for the issue of a search warrant may be made either personally or by telephone.

(3) The grounds of an application for a search warrant shall be verified by affidavit.

(4) An application for the issue of a search warrant shall not be made by telephone unless in the opinion of the applicant a search warrant is urgently required and there is insufficient time to make the application personally.

(5) If an application for the issue of a search warrant is made by telephone—

(a) the applicant shall inform the magistrate of his or her name and of his or her rank and number in the police force, and the magistrate, on receiving that information, is entitled to assume, without further inquiry, that the applicant is a police officer; and

(b) the applicant shall inform the magistrate of the grounds on which he or she seeks the issue of the search warrant; and

(c) if it appears to the magistrate from the information given by the applicant that there are proper grounds for the issue of a search warrant—he or she shall inform the applicant of the facts on which he or she relies as grounds for the issue of the warrant, and shall not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts; and

(d) if the applicant gives the undertaking—the magistrate may then make out, and sign, a search warrant, noting on the warrant the facts on which he or she relies as grounds for the issue of the warrant; and

(e) the search warrant shall be deemed to have been issued, and shall come into force, when signed by the magistrate; and

(f) the magistrate shall inform the applicant of the terms of the warrant; and

(g) the applicant shall, as soon as practicable after the issue of the warrant, forward to the magistrate an affidavit verifying the facts referred to in paragraph (c).

(6) A magistrate by whom a search warrant is issued shall file the warrant, or a copy of the warrant, and the affidavit verifying the grounds on which the application for the warrant was made, in the Court of Petty Sessions.

114 Authority given by search warrant

(1) A search warrant authorises any police officer, with the assistants that he or she thinks necessary, to enter and search the premises in respect of which the warrant was issued and anything in those premises.

(2) Subject to any direction by a magistrate authorising execution of a search warrant at night, or during specified hours of the night, it shall not be executed at night.

(3) A police officer, or a person assisting him or her, may use the force that is reasonably necessary for the execution of a search warrant.

(4) A police officer executing a search warrant may seize and remove any object that he or she believes on reasonable grounds to be relevant to the investigation of the offence in relation to which the warrant was issued.

(5) An object seized and removed under subsection (4) shall be dealt with in accordance with arrangements in force under section 116.

(6) A police officer who executes a search warrant—

(a) shall prepare a notice containing—

(i) his or her own name and rank; and

(ii) the name of the magistrate who issued the warrant and the date and time of its issue; and

(iii) a description of any objects seized and removed under the warrant; and

(b) shall, as soon as practicable after execution of the warrant, give the notice to the occupier of the premises in respect of which the warrant was issued or leave it for him or her in a prominent position on those premises.

(7) A search warrant, if not executed at the end of 1 month from the date of its issue, shall then expire.

115 Offence of hindering execution of search warrant

A person who, without lawful excuse, hinders a police officer, or a person assisting him or her, in the execution of a search warrant shall be guilty of an offence punishable, on conviction, by imprisonment for a period not exceeding 6 months, a fine of 20 penalty units or both.

116 Ministerial arrangements for transmission and return of objects seized under chapter 4 or corresponding law

(1) The Minister may enter into arrangements with a Minister of State of a State or another Territory to whom the administration of a corresponding law is committed under which—

(a) objects seized under this Part that may be relevant to the investigation of an offence against the law of the State or Territory in which the corresponding law is in force—

(i) are to be transmitted to the appropriate authority of that State or Territory for the purposes of investigation of, or proceedings in respect of, that offence; and

(ii) when no longer required for the purposes of any such investigation or proceedings, are (unless disposed of by order or direction of a court) to be returned to the commissioner of police; and

(b) objects seized under the corresponding law that may be relevant to the investigation of an offence against the territory law—

(i) are to be transmitted to the commissioner of police; and

(ii) when no longer required for the purposes of investigation of an offence or proceedings in respect of an offence, are (unless disposed of by order or direction of a court) to be returned to the appropriate authority of the State or Territory where they were seized.

(2) The owner of an object returned to the commissioner of police under arrangements under subsection (1) is entitled to the return of the object.

(3) The right given by subsection (2) is enforceable by action in detinue or like action in any court of competent jurisdiction.

CHAPTER 5 — PROCEDURE, EVIDENCE, VERDICT, ETC

117 What defects do not vitiate indictment

No indictment shall be held bad or insufficient for want of an averment of any matter unnecessary to be proved, or necessarily implied, nor for the omission of the words ‘as appears by the record’, or ‘with force and arms’, or ‘against the peace’, nor for the insertion or omission of the words ‘against the form of the statute’, nor for designating any person by a name of office, or other descriptive appellation, instead of his or her proper name, nor for omitting to state the time when the offence was committed, nor for stating the time wrongly, if time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or a day that never happened, nor for want of a proper or perfect venue, or a proper or formal conclusion, nor for want of or imperfection in any addition of the accused, nor for want of any statement of the value or price of any matter or thing, or the amount of damage, or injury, in any case if such value, or price, or amount, is not of the essence of the offence.

118 Formal objections—when to be taken

Every objection to an indictment, for any formal defect apparent on the face of it, shall be taken by demurrer or motion to quash the indictment before the jury are sworn, and every court before which any such objection is taken may thereupon cause the indictment to be forthwith amended, and afterwards the trial shall proceed as if no such defect had appeared.

119 Judgment on demurrer to indictment

In all cases the judgment against the accused on demurrer shall be that he or she 'answer over' to the charge.

120 Traversing indictment

(1) No traverse shall in any case be allowed, or trial postponed, or time to plead to the indictment given, unless the court shall so order.

(2) If the judge is of opinion that the accused ought to be allowed time, either to prepare for his or her defence, or otherwise, the judge shall postpone the trial on the terms that the judge considers appropriate, and may respite the recognisances of the prosecutor and witnesses accordingly.

121 Orders for amendment of indictment, separate trial and postponement of trial

(1) If, before trial, or at any stage of a trial, it appears to the court that the indictment is defective, the court shall make the order for the amendment of the indictment that the court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice.

(2) If, before trial, or at any stage of a trial, the court is of opinion that a person accused may be prejudiced or embarrassed in his or her defence because of being charged with more than 1 offence in the same indictment, or that for any other reason it is desirable to direct that the person should be tried separately for 1 or more offences charged in an indictment, the court may order a separate trial of a count or counts of the indictment.

(3) If, before trial, or at any stage of a trial, the court is of opinion that the postponement of the trial of a person accused is expedient as a consequence of the exercise of a power of the court under this Act to amend an indictment or to order a separate trial of a count, the court shall make any order that appears necessary.

(4) If an order of the court is made under this section for a separate trial, or for the postponement of a trial—

(a) if the order is made during a trial—the court may order that the jury are to be discharged from giving a verdict on the count or counts the trial of which is postponed, or on the indictment, as the case may be; and

(b) the procedure on the separate trial of a count and the procedure on the postponed trial shall be the same in all respects (if the jury has been discharged), as if the trial had not commenced; and

(c) the court may make the order as to admitting the accused person to bail and as to the variation of bail arrangements and otherwise that the court thinks fit.

(5) A power of the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes.

122 Amended indictment

If an indictment is amended, a note of the order for amendment shall be endorsed on the indictment, and the indictment in its amended form shall be treated as the indictment for the purposes of the trial and for the purposes of all proceedings in relation to, or consequent on, the trial.

123 Verdict and judgment valid after amendment

Every verdict, and judgment, given after the making of any amendment under this Act, shall be of the same force and effect, as if the indictment had originally been in the words, and form, in which it is after the amendment.

124 Form of record after amendment

If it is necessary at any time to draw up a formal record, in any case where an amendment has been made, the record may be drawn up in the words and form of the amended indictment, without noticing the fact of amendment.

125 Respiting undertakings on postponement

If the trial is postponed the court may respite the undertakings of the prosecutor and witnesses requiring them severally to appear and prosecute, or give evidence, at the time and place to which the trial is so postponed.

126 Separate offences—when can be joined

In every case counts may be inserted in the same indictment, against the same person, for any number of distinct offences of the same kind, not exceeding 3, committed against the same person if no more than 6 months have elapsed between the first and last of those offences.

127 Accessories may be charged together in 1 indictment

For any offence, any number of accessories to the offence, whether before or after the fact, may be charged with substantive offences in the same indictment, and be tried together, although the principal offender is not included in the indictment, or is not in custody or amenable to justice.

128 Indictment charging previous offence also

In an indictment for an offence committed after a previous conviction for an offence, whether indictable or punishable on summary conviction, it shall be sufficient, after charging the subsequent offence, to state that the accused was at a certain time and place convicted of an indictable offence, or an offence punishable on summary conviction, as the case may be, without particularly describing the previous offence.

129 Property of partners or joint owners

(1) If, in any indictment, it is necessary to mention, for any purpose, any partners, joint tenants or tenants in common, it shall be sufficient to describe them by naming 1 of them, and referring to the rest as 'another', or 'others', as the case may be.

(2) This section shall extend to all joint-stock companies, executors, administrators, and trustees.

130 Description of written instruments

If a written, or printed, instrument, or instrument partly written and partly printed, is the subject of an indictment, or it is necessary to make an averment in an indictment respecting such instrument, it shall be sufficient to describe the instrument by any name or designation by which the instrument is usually known, or by the purport of it, without setting out any copy of it, or otherwise describing it, and without stating its value.

131 General averment of intent to defraud or injure

(1) If it is necessary to allege an intent to defraud, or injure, it shall be sufficient to allege that the accused did the act with the intent, without alleging an intent to defraud, or injure, any particular person.

(2) In an indictment for doing an act fraudulently, or for a fraudulent purpose, it shall not be necessary to state what was the fraudulent intent, or purpose.

132 Indictment for murder or manslaughter

In an indictment for murder, or manslaughter, it shall not be necessary to set out the way in which, or the means by which, the death alleged was caused, but it shall be sufficient in an indictment for murder to charge that the accused did murder the deceased, and in an indictment for manslaughter to charge that the accused did kill the deceased.

133 Form of indictment against accessories to murder

In an indictment against an accessory to murder, or manslaughter, it shall be sufficient to charge the offence of the principal in the way specified, and then to charge the accused as an accessory.

134 Addition of count for assault

In an indictment for an offence against the person, if the offence includes an assault, a count may be added for the assault.

135 Indictments for conspiracy

(1) In an indictment for conspiracy it shall not be necessary to state any overt act, and each defendant in any case of conspiracy, whether or not 2 or more defendants are included in the same indictment, may be charged separately, in any count, as having conspired with divers persons, of whom it shall be sufficient to name 1 only, or as having conspired with 1 other named person only, and may be convicted on such count on proof of his or her having unlawfully conspired for the purpose alleged with any 1 such person.

(2) No more than 3 counts against the same defendant shall be inserted in any such indictment, and that the court may, in any case before plea pleaded, order the particulars to be given, that to the court shall seem meet, and that if conspiracies substantially different are charged in the same indictment, the prosecutor may be put to his or her election as to the one on which he or she will proceed.

136 Arraignment etc on charge of previous conviction

(1) No person shall be arraigned, in respect of any previous conviction charged in any indictment, unless he or she is convicted of the subsequent offence charged in the indictment.

(2) On conviction he or she shall forthwith be arraigned, and the jury shall be charged as to the previous conviction, or convictions, and the trial shall proceed in relation to them.

137 Plea of not guilty

If any person arraigned on an indictment pleads not guilty, he or she shall, without further form, be deemed to have put himself or herself on the country for trial, and the court shall, in the usual way, order a jury for his or her trial accordingly.

138 Refusal to plead

If any person being so arraigned stands mute, or will not answer directly to the indictment, the court may order a plea of not guilty to be entered on behalf of the person, and the plea so entered shall have the same effect as if he or she had actually pleaded not guilty.

139 Plea of autrefois convict etc

In any plea of autrefois convict, or of autrefois acquit, it shall be sufficient for the accused to allege that he or she has been lawfully convicted, or acquitted, as the case may be, of the offence charged in the indictment, without specifying the time or place of the previous conviction or acquittal.

140 Practice as to entering the dock

In every case the presiding judge shall have power to order the accused to enter the dock, or usual place of arraignment, or to allow him or her to remain on the floor of the court, and in either case to sit down, as the judge shall see fit.

141 Accused may be defended by lawyer

(1) An accused person has the right in any court to—

(a) make a full answer and defence to a charge by a lawyer; and

(b) reserve the person's address until after the close of the evidence for the defence.

(2) If the accused person reserves the person's address until after the close of the evidence for the defence, all evidence in reply for the prosecution must be given before the person's address.

142 Right to inspect depositions on trial

Every accused person shall be entitled on his or her trial to inspect, without fee or reward, all depositions taken against him or her and returned into, or that shall be in, the court before which he or she is under trial.

143 Power of judge to record verdict of acquittal

(1) If, on the trial of a person for an offence against this Act or any other territory law, the judge would have power to direct the jury to return a verdict of acquittal in respect of that offence, the judge may, instead of giving such a direction, make an order—

(a) discharging the jury from returning a verdict in respect of that offence; and

(b) recording a verdict of acquittal in respect of that offence.

(2) An order under subsection (1) shall, for all purposes, have the same effect as a verdict of acquittal returned by a jury.

144 Notice of alibi

(1) If a defendant is committed for trial for an indictable offence, the committing magistrate shall—

(a) inform the defendant of the requirements of subsections (2), (3), (4) and (6); and

(b) cause a copy of this section to be given to the defendant.

(2) On a trial on indictment the defendant must not, without the court's leave, present evidence in support of an alibi unless, within 14 days after the day the defendant is committed for trial, the defendant gives notice of particulars of the alibi.

(3) On a trial on indictment the defendant shall not, without the leave of the court, call any other person to give evidence in support of an alibi unless—

(a) the notice given under subsection (2) includes the name and address of the person or, if the name or address is not known to the defendant at the time he or she gives the notice, any information in his or her possession that might be of material assistance in finding the person; and

(b) if the name or the address is not included in the notice—the court is satisfied that the defendant before giving the notice took, and after giving the notice continued to take, all reasonable steps to ascertain the name or address; and

(c) if the name or the address is not included in the notice, but the defendant subsequently ascertains the name or address or receives information that might be of material assistance in finding the person—the defendant forthwith gives notice of the name, address or other information, as the case may be; and

(d) if the defendant is told by or on behalf of the prosecution that the person has not been found by the name, or at the address, given by the defendant—

(i) the defendant immediately gives notice of any information in the defendant's possession that might be of material assistance in finding the person; or

(ii) if the defendant later receives any such information—the defendant immediately gives the prosecution notice of the information.

(4) A notice purporting to be given under this section on behalf of the defendant by his or her legal practitioner shall, unless the contrary is proved, be deemed to be given with the authority of the defendant.

(5) Any evidence tendered to disprove an alibi may, subject to any direction by the court, be given before or after evidence is given in support of the alibi.

(6) A notice under this section shall be given in writing addressed to the director of public prosecutions.

(7) In this section:

evidence in support of an alibi means evidence tending to show that by reason only of the presence of the defendant at a particular place or in a particular area at a particular time he or she was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.

145 Abolition of presumption of marital coercion

Any presumption of law that an offence committed by a wife in the presence of her husband is committed under the coercion of the husband is abolished.

146 Incriminating statements admissible though on oath

No incriminating statement by the accused, offered in evidence in any case, if the statement was made voluntarily, and before any charge preferred against him or her, shall be rejected, because of the statement having been on oath.

147 Evidence of previous conviction charged in indictment

No evidence of any previous conviction, charged in an indictment, shall be offered, except in reply to evidence of character, unless the accused is convicted of the subsequent offence charged in the indictment.

148 Proof of lawful authority or excuse

If, by this Act, doing a particular act or having a specified article or thing in possession without lawful authority or excuse, is made or expressed to be an offence, the proof of lawful authority or excuse shall lie on the accused.

149 Order of closing addresses

(1) In a trial on indictment, the closing address for the defence may be given after the closing address for the prosecution.

(2) If, in the closing address for the defence in a trial on indictment, relevant facts are asserted that are not supported by any evidence that is before the jury, the prosecution may, with the leave of the court, address the jury further in reply to any such assertion.

150 Witnesses in mitigation

(1) This section applies before a court passes sentence on a convicted person.

(2) The court may, at its own initiative or at the request of the prosecution or the convicted person, summon witnesses and examine them on oath in relation to any matter in extenuation of the person's offence.

151 Conviction for alternative offence

If, on the trial of a person for an offence, it appears that the facts in evidence amount in law to another offence, he or she may notwithstanding be found guilty of and sentenced for the firstmentioned offence, and in that case shall not be liable to be prosecuted for the second mentioned offence on the same facts but the court may discharge the jury from giving any verdict on the trial, and direct the person to be indicted for the second mentioned offence.

152 After trial for offence, if alternative verdict possible, no further prosecution

No person tried for an offence, in any case where under this Act he or she may be acquitted of the offence but be found guilty of some other offence, shall be liable to prosecution on the same facts for the other offence.

153 On trial for any offence—verdict of attempt

If on the trial of a person for any offence the jury are not satisfied that he or she is guilty, but are satisfied that he or she is guilty of an attempt to commit, or of an assault with intent to commit, the same, they may acquit him or her of the offence charged, and find him or her guilty of the attempt, or assault, and he or she shall be liable to punishment accordingly.

154 Multiple alternative verdicts

If—

(a) a person is on trial for an offence against this Act; and

(b) under this Act, the jury may find the accused not guilty of the offence charged but guilty of another offence against this Act; and

(c) there is more than 1 other offence of which the accused may be found guilty;

then, notwithstanding any other provision of this Act, the accused is not liable to be convicted of more than 1 such other offence.

CHAPTER 5A – APPEALS

154A Interpretation for this Chapter

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

"***appellant***" means a person who has been found guilty and desires to appeal or to seek leave to appeal under this Chapter;

"***Court***" means the Full Court of the Federal Court of Australia;

"***sentence***" includes any order made by the Supreme Court on a finding of guilt with reference to the person found guilty or his or her property.

154B Determination of appeal in ordinary cases

(1) The Court on any such appeal against a finding of guilt shall allow the appeal if it is of the opinion that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the judgment of the Supreme Court should be set aside on the ground of the wrong decision on any question of law or that on any ground there was a miscarriage of justice and in any other case shall dismiss the appeal.

(2) The Court may, notwithstanding that it is of the opinion that the point or points raised by the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(3) Subject to the special provisions of this Division the Court shall, if it allows an appeal against a finding of guilt, quash the finding of guilt and direct a judgment and verdict of acquittal to be entered.

(4) On an appeal against a sentence the Court, if it is of the opinion that some other sentence, whether more or less severe, is warranted in law and should have been passed, shall quash the sentence and pass such other sentence in substitution therefore and in any other case shall dismiss the appeal.

154C Powers of Court in special cases

(1) Where an appellant has been found guilty of an offence and on the indictment the jury could have found him or her guilty of some other, but less serious, offence and it appears to the Court that, although he or she was not and could not be properly found guilty of the offence of which he or she was actually found guilty, the evidence given at his or her trial was such that a reasonable jury correctly instructed must find him or her guilty of the other offence, the Court may, instead of allowing the appeal, substitute for the verdict found by the jury a verdict of guilty of the other offence and pass such sentence in substitution for the sentence passed at the trial as may be warranted.

(2) Where, on the finding of guilt of the appellant, the jury have found a special verdict and the Court considers that a wrong conclusion has been arrived at by the Supreme Court on the effect of that verdict, the Court may, instead of allowing the appeal, order such conclusion to be recorded as appears to the Court to be in law required by the verdict and pass such sentence, whether more or less severe, in substitution for the sentence passed at the trial as may be warranted in law.

(3) If on any appeal it appears to the Court that, although the appellant was guilty of the conduct charged against him, he or she was in a state of abnormality of mind at the time so as not to be responsible therefore according to law, the Court may quash the sentence passed at the trial and order the appellant to be kept in strict custody in the same manner as if a jury had found that fact specially.

Note: The *Federal Court of Australia Act 1976* provides for the full court to be the appeals court from the Supreme Court of Norfolk Island (ss. 24 and 25)

154D Power to grant new trial

On an appeal against a finding of guilt on indictment the Court may, either of its own motion or on the application of the appellant, order a new trial in such manner as it thinks fit if the Court considers that a miscarriage of justice has occurred and that, having regard to all the circumstances, such miscarriage of justice can be more adequately remedied by an order for a new trial than by any other order that the Court is empowered to make.

CHAPTER 6 — EVIDENCE OF CHILDREN

155 Definitions—Chapter 6

In this Part:

court means—

(a) the Supreme Court; or

(b) the Court of Petty Sessions; or

(c) the Coroner's Court.

Court of Petty Sessions includes the Childrens Court.

prescribed witness means a child.

proceeding means a proceeding in relation to which this Part applies.

156 Sworn or unsworn evidence

For this Part, it is immaterial whether evidence is to be, or is being, given on oath or otherwise.

157 Application—Chapter 6

This Part applies in relation to—

(a) a proceeding in the Supreme Court—

(i) for a trial on indictment in relation to the alleged commission of an offence against a law in force in Norfolk Island; or

(ii) for the passing of sentence in relation to the commission of an offence against a law in force in Norfolk Island; or

(iii) by way of an appeal from a conviction, order, sentence or other decision of the Court of Petty Sessions in a proceeding in relation to which this Part applies; or

(b) a proceeding in the Court of Petty Sessions on an information in relation to the alleged commission, or commission, of an offence against a law in force in Norfolk Island; or

(c) a proceeding under the *Domestic Violence Act 1995*; or

(d) a proceeding by way of an inquest or inquiry in the Coroner's Court.

158 Location of prescribed witness giving evidence

(1) If—

(a) a prescribed witness is to give evidence in a proceeding; and

(b) the courtroom and a place other than the courtroom are equipped with, and linked by, an audiovisual link that can allow—

(i) people in the courtroom to see and hear the people at the other place; and

(ii) people at the other place to hear, or to see and hear, people in the courtroom;

the evidence of the witness must be given from the other place using the audiovisual link unless the court otherwise orders.

(2) A court must not make an order under subsection (1) unless satisfied that—

(a) the prescribed witness prefers to give evidence in the courtroom; or

(b) the proceeding will be unreasonably delayed if an order is not made; or

(c) there is a substantial risk of the court being unable to ensure that the proceeding is conducted fairly if an order is not made.

(3) Despite subsection (1), the evidence of a child who is an accused person in a proceeding is not to be given in the way described in that subsection.

(4) While a prescribed witness is at a place other than a courtroom for the purpose of giving evidence in accordance with subsection (1), that place is taken for all purposes to be part of the courtroom.

Note: the *Evidence Act 2005* makes provison for audio and audio-visual evidence.

159 Consequential orders

(1) If a prescribed witness is to give evidence from a place other than a courtroom in accordance with section 158 (1) (Location of prescribed witness giving evidence), the court may make the orders it considers appropriate in relation to the giving of evidence by the witness.

(2) An order under subsection (1) may specify—

(a) the people who may be present at the other place with the prescribed witness; and

(b) the people in the courtroom who are to be able to be heard, or to be seen and heard, by the witness and by the people with the witness; and

(c) the people in the courtroom who are not to be able to be heard, or to be seen and heard, by the witness and by the people with the witness; and

(d) the people in the courtroom who are to be able to see and hear the witness and the people with the witness; and

(e) the stages in the proceeding during which a specified part of the order is to have effect; and

(f) the method of operation of the audiovisual link.

(3) If a prescribed witness is to give evidence from a place other than a courtroom in accordance with section 158 (1) (Location of prescribed witness giving evidence), the court may make the order it considers appropriate if satisfied that it is desirable to do so—

(a) to ensure that the proceeding is conducted fairly; or

(b) to allow the witness to identify a person or thing; or

(c) to allow the witness to take part in a view or to watch a demonstration or an experiment; or

(d) to allow part of the proceeding to be heard elsewhere than in the courtroom.

(4) Notwithstanding any other territory law, the court may direct that a person be excluded from the other place while the prescribed witness is giving evidence.

(5) Nothing in subsection (2), (3) or (4) limits the power of the court to make an order under subsection (1).

160 Jury warning about adverse inference

If, in a proceeding mentioned in section 157(a)(i) (Application—chapter 6), a prescribed witness is to give evidence from a place other than the courtroom in accordance with section 158(1) (Location of prescribed witness giving evidence), the judge must warn the jury to the effect that an inference adverse to the accused should not be drawn from the fact that the witness is giving evidence from the other place.

161 Representation of child

If—

(a) a child is to give evidence from a place other than a courtroom in accordance with section 158(1) (Location of prescribed witness giving evidence); and

(b) the child concerned is not separately represented by another person; and

(c) it appears to the court that the child should be separately represented by another person;

the court may order that the child be separately represented by another person, and the court may make any other order it considers necessary to secure that separate representation.

162 Court's discretions about orders

(1) An order under this Part may be made on the court's own initiative or on application—

(a) by a party to the proceeding; or

(b) by or on behalf of a prescribed witness; or

(c) by a parent or guardian of the prescribed witness.

(2) The court may inform itself as it considers appropriate for the purposes of making an order under this Part.

163 Amendment or revocation of order

A court may make an order for the amendment or revocation of an order made by the court in the proceeding.

164 Failure to comply with chapter 6

(1) The evidence of a prescribed witness in a proceeding is not inadmissible only because the evidence was not given in accordance with this Part.

(2) The validity of a proceeding is not affected by a failure to comply with this Part.

165 Child turning 18 during proceeding

If a person who was a prescribed witness in a proceeding turns 18 years before the proceeding is decided, the person continues to be a prescribed witness for the purpose of the proceeding.

CHAPTER 7 — EVIDENCE – SEXUAL OFFENCES

Division 1 Preliminary

166 Meaning of *sexual offence* in chapter 7

In this Part:

sexual offence means an offence against the *Criminal Code*, Part 3.6 (Sexual offences) and 3.9 (Female genital mutilation).

Division 2 Sexual offence proceedings—general

167 Meaning of *complainant* and *sexual offence proceeding* for div 2

(1) For this Division, the ***complainant***, in relation to a sexual offence proceeding, is the person, or any of the people, against whom a sexual offence the subject of the proceeding is alleged, or has been found, to have been committed.

(2) For this Division, a ***sexual offence proceeding*** is—

(a) a proceeding for a sexual offence; or

(b) a proceeding in relation to bail for a person charged with a sexual offence, whether or not the person is also charged with any other offence; or

(c) a sentencing proceeding for a person convicted of a sexual offence, whether or not the person is also convicted of any other offence; or

(d) an appeal or other review (whether by prerogative order or otherwise) arising out of a proceeding mentioned in paragraphs (a) to (c); or

(e) an interlocutory proceeding in, or a proceeding ancillary to, a proceeding mentioned in paragraphs (a) to (c).

(3) For subsection (2)(a), a ***proceeding for a sexual offence*** includes—

(a) a proceeding for a sexual offence and any other offence; and

(b) a proceeding for a sexual offence and any other offence as an alternative to the sexual offence; and

(c) a proceeding for a sexual offence that may result in a finding of guilt (or committal for trial or sentence) for any other offence.

(4) To remove any doubt, for this section, a ***proceeding*** includes a committal proceeding.

168 Evidence given in closed court

(1) This section applies if the complainant gives evidence in a sexual offence proceeding.

(2) The court may order that the court be closed to the public while all or part of the complainant's evidence (including evidence given under cross-examination) is given.

(3) However, an order under this section does not stop a person nominated by the complainant from being in court when the evidence is given.

169 Prohibition of publication of complainant's identity

(1) A person commits an offence if the person publishes, in relation to a sexual offence proceeding—

(a) the complainant's name; or

(b) protected identity information about the complainant; or

(c) a reference or allusion that discloses the complainant's identity; or

(d) a reference or allusion from which the complainant's identity might reasonably be inferred.

Penalty: 50 penalty units, imprisonment for 6 months or both.

(2) It is a defence to a prosecution for an offence against this section if the person establishes that the complainant consented to the publication before the publication happened.

(3) An offence against this section is a strict liability offence.

(4) In this section:

protected identity information means information about, or allowing someone to find out, the private, business or official address, email address or telephone number of a person.

Division 3 — Sexual offence proceedings—giving evidence from places other than courtrooms

170 Meaning of *complainant* and *sexual offence proceeding* for Division 3

(1) For this Divisionision, the ***complainant***, in relation to a sexual offence proceeding, is the person, or any of the people, against whom a sexual offence the subject of the proceeding is alleged, or has been found, to have been committed.

(2) For this Division, a ***sexual offence proceeding*** is—

(a) a proceeding for a sexual offence; or

(b) a sentencing proceeding for a person convicted of a sexual offence, whether or not the person is also convicted of any other offence; or

(c) a proceeding under the *Domestic Violence Act 1995* in relation to a sexual offence; or

(e) a proceeding by way of an inquest or inquiry in the Coroner's Court in relation to a sexual offence; or

(f) an appeal arising out of a proceeding mentioned in paragraphs (a) to (e).

(3) For subsection (2) (a), a ***proceeding for a sexual offence*** includes—

(a) a proceeding for a sexual offence and any other offence; and

(b) a proceeding for a sexual offence and any other offence as an alternative to the sexual offence; and

(c) a proceeding for a sexual offence that may result in a finding of guilt (or committal for trial or sentence) for any other offence.

(4) To remove any doubt, for this section, a ***proceeding*** includes a committal proceeding.

171 When does Division 3 apply?

This Division applies if the complainant is to give evidence in a sexual offence proceeding in a court, whether or not the evidence is to be given on oath or otherwise.

172 Complainant giving evidence from place other than courtroom

(1) If the courtroom where the sexual offence proceeding is heard and another place are linked by an audiovisual link, the complainant's evidence must be given by audiovisual link from the other place unless the court orders otherwise.

(2) The court may make an order under subsection (1) only if satisfied that—

(a) the complainant prefers to give evidence in the courtroom; or

(b) if the order is not made—

(i) the sexual offence proceeding may be unreasonably delayed; or

(ii) there is a substantial risk that the court will not be able to ensure that the sexual offence proceeding is conducted fairly.

(3) While the complainant is at the other place for the purpose of giving evidence, the place is taken for all purposes to be part of the courtroom.

173 Consequential orders under Division 4.3

(1) This section applies if the complainant is to give evidence from a place (the ***other place***) other than the courtroom where the sexual offence proceeding is heard.

(2) The court may make any order it considers appropriate—

(a) to ensure that the sexual offence proceeding is conducted fairly; or

(b) to allow the complainant to identify a person or thing; or

(c) to allow the complainant to take part in a view or to watch a demonstration or experiment; or

(d) to allow part of the sexual offence proceeding to be heard somewhere other than in the courtroom.

(3) The court may make any other order it considers appropriate, including, for example, an order specifying—

(a) who may be with the complainant at the other place; or

(b) who must not be with the complainant at the other place; or

(c) who, in the courtroom, is to be able, or must not be able, to be heard, or seen and heard, by the complainant and people in the other place with the complainant; or

(d) who, in the courtroom, is to be able to see and hear the complainant and anyone else in the other place with the complainant; or

(e) how the audiovisual link is to operate.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (sec 7(4)).

(4) The court may order that a person be excluded from the other place while the complainant is giving evidence.

(5) The court may direct that an order under this section apply only to a particular part of the sexual offence proceeding.

174 Making of orders under Division 3

(1) The court may make an order under this Division in a sexual offence proceeding on its own initiative or on the application of a party to the proceeding or the complainant.

(2) For the purpose of making an order under this Division, the court is not bound by the rules of evidence and may inform itself as it considers appropriate.

175 Jury to be warned about adverse inferences

If the complainant gives evidence from a place other than the courtroom where the sexual offence proceeding is being heard and the proceeding is before a jury, the judge must warn the jury to the effect that the jury should not draw any inference adverse to an accused person in the proceeding from the fact the evidence is given from a place other than the courtroom.

176 Failure to comply with Division 3

(1) If the complainant's evidence is not given in accordance with this Division, the evidence is not inadmissible for that reason only.

(2) Failure to comply with this Division in relation to a sexual offence proceeding does not affect the validity of the proceeding.

Division 4 — Evidence of complainant's sexual reputation and activities

177 Meaning of *complainant* and *sexual offence proceeding* for Division 4

(1) For this Division, the ***complainant***, in relation to a sexual offence proceeding, is the person, or any of the people, against whom a sexual offence the subject of the proceeding is alleged, or has been found, to have been committed.

(2) For this Division, a ***sexual offence proceeding*** is—

(a) a proceeding for a sexual offence; or

(b) a proceeding in relation to bail for a person charged with a sexual offence, whether or not the person is also charged with any other offence; or

(c) a sentencing proceeding for a person convicted of a sexual offence, whether or not the person is also convicted of any other offence; or

(d) an appeal arising out of a proceeding mentioned in paragraphs (a) to (c).

(3) For subsection (2) (a), a ***proceeding for a sexual offence*** includes—

(a) a proceeding for a sexual offence and any other offence; and

(b) a proceeding for a sexual offence and any other offence as an alternative to the sexual offence; and

(c) a proceeding for a sexual offence that may result in a finding of guilt (or committal for trial or sentence) for any other offence.

(4) To remove any doubt, for this section, a ***proceeding*** includes a committal proceeding.

178 When does Division 4 apply?

This Division applies to evidence in a sexual offence proceeding.

179 Immunity of sexual reputation

Evidence of the complainant's sexual reputation is not admissible.

180 General immunity of evidence of complainant's sexual activities

(1) Evidence of the sexual activities of the complainant is not admissible in a sexual offence proceeding without leave of the court dealing with the proceeding.

(2) Subsection (1) does not apply to evidence of the specific sexual activities of the complainant with an accused person in the sexual offence proceeding.

181 Application for leave under s 180

Application for leave under section 180 (General immunity of evidence of complainant's sexual activities) in a sexual offence proceeding must be made—

(a) in writing; and

(b) if the proceeding is before a jury—in the absence of the jury; and

(c) in the absence of the complainant, if an accused person in the proceeding requests.

182 Decision to give leave under s 180

(1) The court must not give leave under section 180 (General immunity of evidence of complainant's sexual activities) unless satisfied that the evidence—

(a) has substantial relevance to the facts in issue; or

(b) is a proper matter for cross-examination about credit.

(2) Evidence (***sexual activity evidence***) that relates to, or tends to establish, the fact that the complainant was accustomed to engage in sexual activities is not to be regarded as having a substantial relevance to the facts in issue because of any inference it may raise about general disposition.

(3) Sexual activity evidence is not to be regarded as being a proper matter for cross-examination about credit unless the evidence, if accepted, would be likely to substantially impair confidence in the reliability of the complainant's evidence.

(4) If the court gives leave under section 180, it must give written reasons for its decision.

(5) In this section:

proper matter for cross-examination about credit—evidence is a ***proper matter for cross-examination about credit*** if the credibility rule under the *Evidence Act 2004* section 102 does not apply to the evidence because of that Act, section 103 (Exception: cross-examination as to credibility).

Division 5 — Protection of counselling communications

183 Definitions—Division 5

In this Division:

counselling means counselling, therapy or treatment for an emotional or psychological condition, whether or not the counselling, therapy or treatment is provided for remuneration.

counsellor means a person who—

(a) has undertaken training or study, or has experience, relevant to the process of counselling people who have suffered harm; or

(b) is supervised by someone to whom paragraph (a) applies; or

(c) is employed by the Administration as a counsellor.

criminal proceeding means—

(a) a proceeding for any offence; or

(b) a sentencing proceeding for a person convicted of any offence; or

(c) an appeal or other review (whether by prerogative order or otherwise) arising out of a proceeding mentioned in paragraph (a) or (b); or

(d) an interlocutory proceeding in, or a proceeding ancillary to, a proceeding mentioned in paragraphs (a) to (c);

but does not include a preliminary criminal proceeding.

document recording a protected confidence includes—

(a) a copy, reproduction, republication, duplicate or summary of, or extract from, a document recording a protected confidence; and

(b) the part of a document recording a protected confidence; and

(c) the part of a document containing a report, observation, opinion, advice, recommendation or anything else in relation to a protected confidence that is—

(i) made or given by the person who made the protected confidence; or

(ii) made or given by a third party mentioned in section 184 (4) in whose presence the protected confidence is made; and

(d) a copy, reproduction, republication, duplicate or summary of, or extract from, the part of a document mentioned in paragraph (b) or (c).

harm includes—

(a) actual physical harm; and

(b) stress or shock; and

(c) prejudice to privacy; and

(d) emotional or psychological harm, including, for example, shame, humiliation and fear; and

(e) damage to reputation; and

(f) financial loss.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s 7(4)).

preliminary criminal proceeding means—

(a) a committal proceeding for any offence; or

(b) a proceeding in relation to bail for a person charged with any offence; or

(c) an appeal or other review (whether by prerogative order or otherwise) arising out of a proceeding mentioned in paragraph (a) or (b); or

(d) an interlocutory proceeding in, or a proceeding ancillary to, a proceeding mentioned in paragraphs (a) to (c).

protected confidence—see section 184.

protected confidence evidence means—

(a) oral or written evidence that would disclose a protected confidence; or

(b) a document recording a protected confidence; or

(c) oral or written evidence that would disclose the contents of a document recording a protected confidence.

184 Meaning of *protected confidence* for Division 5

(1) For this Division, a ***protected confidence*** is a counselling communication made by, to or about a person against whom a sexual offence was, or is alleged to have been, committed (the ***counselled person***).

(2) A counselling communication is a protected confidence even if—

(a) it is made before the happening, or alleged happening, of the acts constituting the sexual offence; or

(b) it is not made in relation to—

(i) the sexual offence or any sexual offence; or

(ii) a condition arising from the sexual offence or any sexual offence.

(3) For this section, a ***counselling communication*** is a communication made in circumstances that give rise to a reasonable expectation of confidentiality or a duty of confidentiality—

(a) by the counselled person to a counsellor for the purpose, or in the course, of the counselling relationship between the counselled person and the counsellor; or

(b) to or about the counselled person by the counsellor for the purpose, or in the course, of the counselling relationship between the counselled person and the counsellor; or

(c) by the counselled person to a third party mentioned in subsection (4) for the purpose, or in the course, of the counselling relationship between the counselled person and the counsellor; or

(d) to the counselled person by a third party mentioned in subsection (4) for the purpose, or in the course, of the counselling relationship between the counselled person and the counsellor; or

(e) about the counselled person by a third party mentioned in subsection (4) for the purpose, or in the course, of the counselling relationship between the counselled person and the counsellor to—

(i) the counselled person; or

(ii) the counsellor; or

(iii) another third party to whom subsection (4) applies; or

(f) about the counselled person by a counsellor to someone else who has also been a counsellor for the counselled person; or

(g) about the counselled person to a counsellor by someone else who has also been a counsellor for the counselled person.

(4) For this section, in deciding whether a communication was made in circumstances that gave rise to a reasonable expectation of confidentiality, it does not matter that the communication was made in the presence of a third party, if the third party was present to assist or encourage communication between the counselled person and counsellor or otherwise assist the counselling process.

Examples of third parties

1 a parent, partner, carer, spiritual adviser or other supportive person

2 a person present at the request of the counsellor to take notes of the counselling session

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (s 7(4)).

(5) In this section:

sexual offence includes alleged sexual offence.

185 When does Division 5 apply?

This Division applies to a protected confidence made before or after the commencement of this Division.

186 Immunity for protected confidences in preliminary criminal proceedings

(1) A protected confidence must not be disclosed in, or for the purposes of, a preliminary criminal proceeding.

(2) Without limiting subsection (1)—

(a) a person cannot be required (whether by subpoena, application, notice or any other procedure), in or in relation to a preliminary criminal proceeding, to produce a document recording a protected confidence; and

(b) protected confidence evidence is not admissible in the preliminary criminal proceeding.

Example for par (a)

A person could not be required to disclose a protected confidence in response to a request for production of documents in a preliminary criminal proceeding.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s 7(4)).

187 General immunity for protected confidences

(1) This section applies in relation to a criminal proceeding.

(2) A protected confidence must not be disclosed in, or for the purposes of, the criminal proceeding unless the court dealing with the proceeding gives leave for the disclosure.

(3) Without limiting subsection (2)—

(a) a person cannot be required (whether by subpoena, application, notice or any other procedure), in or in relation to the criminal proceeding, to produce a document recording a protected confidence, unless the court gives leave; and

(b) protected confidence evidence is not admissible in the criminal proceeding, unless the court gives leave.

Example for par (a)

A person could not be required to disclose a protected confidence in response to a request for production of documents in a criminal proceeding unless the court gives leave.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s 7(4)).

188 Application for leave to disclose protected confidence

(1) An application for leave must—

(a) be in writing; and

(b) set out the leave sought; and

(c) set out the applicant's arguments in support of the application (including the matters mentioned in section 189(2) (Threshold test—legitimate forensic purpose)).

(2) The application must also—

(a) set out briefly the nature of the protected confidence evidence (if known); and

(b) set out, or be accompanied by a copy of, any relevant documents.

189 Threshold test—legitimate forensic purpose

(1) The court must refuse the leave sought under section 188 if not satisfied that the applicant has established a legitimate forensic purpose for seeking the leave.

(2) To establish a legitimate forensic purpose, the applicant must—

(a) identify a legitimate forensic purpose for seeking the leave; and

(b) satisfy the court that there is an arguable case that the evidence in relation to which the leave is sought would materially assist the applicant in his or her case in the proceeding.

(3) The court must decide whether or not to refuse the application under this section before it conducts a preliminary examination of the protected confidence evidence under section 190.

190 Preliminary examination of protected confidence evidence

If the court is satisfied that the applicant has established a legitimate forensic purpose for seeking the leave, the court must then, in accordance with section 191, conduct a preliminary examination of the protected confidence evidence to decide whether leave should be given.

191 Procedure for preliminary examination

(1) For the preliminary examination, the court may —

(a) require anyone who has custody or control of a document recording a protected confidence to produce the document to the court for inspection; or

(b) require the counsellor concerned or, if the counsellor provides counselling on behalf of an entity, the principal or another representative of the entity—

(i) to give the court written answers to any questions; or

(ii) to attend the court for oral examination.

(2) The court must not order a person to attend for oral examination under subsection (1) (b) (ii) unless the oral examination of the person is necessary for the effective conduct of the preliminary examination.

(3) Only a person mentioned in subsection (1) may be ordered to answer questions or be examined under this section.

(4) The preliminary examination must be conducted —

(a) in the absence of the public and the jury (if any); and

(b) in the absence of the parties to the criminal proceeding and their lawyers, except to the extent otherwise decided by the court.

(5) Evidence taken at the preliminary examination must not be disclosed to the parties or their lawyers, except to the extent otherwise decided by the court or an appellate court.

(6) A record of the preliminary examination must be made, but must not be made available for public access.

192 Giving of leave to disclose protected confidence

(1) After conducting the preliminary examination of the protected confidence evidence, the court may give leave for the disclosure of the protected confidence only if satisfied that, in the circumstances of the case, the public interest in ensuring an accused person in the criminal proceeding is given a fair trial outweighs the public interest in preserving the confidentiality of the protected confidence.

(2) To remove any doubt, if the court is satisfied under subsection (1) about part of a document only, it may give leave in relation to that part and refuse leave for the rest of the document.

(3) In making a decision under subsection (1), the court must have regard to—

(a) the extent to which disclosure of the protected confidence is necessary for an accused person to make a full defence; and

(b) the public interest in ensuring that victims of sexual offences receive effective counselling or other treatment; and

(c) the extent to which disclosure of protected confidences may dissuade victims of sexual offences from seeking counselling or other treatment or diminish the value of counselling or other treatment; and

(d) whether the evidence will have a substantial probative value to a fact in issue and whether other evidence of similar or greater probative value is available about the matters to which the evidence relates; and

(e) the likelihood that disclosure of the protected confidence will affect the outcome of the case; and

(f) whether disclosure of the protected confidence is sought on the basis of a discriminatory belief or bias; and

(g) whether the person to or by whom the protected confidence was made objects to the disclosure of the protected confidence; and

(h) the nature and extent of the reasonable expectation of confidentiality for the protected confidence and the potential prejudice to the privacy of anyone, including to the extent to which any interest in confidentiality or privacy has been lessened by the passage of time or the happening of any event since the protected confidence was made.

(4) Subsection (3) does not limit the matters to which the court may have regard.

(5) Leave under this section may be given subject to restrictions.

(6) If the court refuses to give leave, and an appeal is made against the refusal, or a ground of an appeal is the refusal, the appellate court may examine the evidence taken at the preliminary examination under section 190 (Preliminary examination of protected confidence evidence), and may make the orders about the disclosure of the evidence it considers appropriate.

193 Ancillary orders for protection of person who made protected confidence

(1) The court may make the orders it considers appropriate to limit possible harm, or the extent of possible harm, to a person who made a protected confidence by the disclosure of protected confidence evidence.

(2) Without limiting subsection (1), the court may—

(a) order that the court be closed to the public while all or part of the protected confidence evidence is presented; or

(b) for a document recording a protected confidence—order that a document be edited as directed by the court or that a copy of a document (or part of a document) be disclosed instead of the original; or

(c) make orders in relation to the suppression or publication of all or any part of the protected confidence evidence; or

(d) for a document recording a protected confidence—make orders about the production or inspection of the document; or

(e) make orders in relation to the disclosure of—

(i) protected identity information about the person who made the protected confidence; or

(ii) information that discloses the identity of the person who made the protected confidence; or

(iii) information from which the identity of the person who made the protected confidence might reasonably be inferred.

(3) This section is in addition to section 169 (Prohibition of publication of complainant's identity).

(4) In this section:

protected identity information means information about, or allowing someone to find out, the private, business or official address, email address or telephone number of a person.

194 No waiver of protected confidence immunity

This Division applies whether or not a person who has made a protected confidence consents or does not object to the disclosure of the protected confidence.

195 No protected confidence immunity for medical information

(1) This Division does not apply in relation to—

(a) information obtained by a doctor because of a physical examination of a person against whom a sexual offence was, or is alleged to have been, committed; or

(b) any communication made in the course, or because, of such an examination.

196 No protected confidence immunity for communications for criminal investigations and proceedings

This Division does not apply to a communication made for the purpose of—

(a) an investigation by a law enforcement entity into the commission or alleged commission of a sexual offence; or

(b) a preliminary criminal proceeding or criminal proceeding arising from the commission or alleged commission of a sexual offence.

197 No protected confidence immunity in case of misconduct

(1) This Division does not apply in relation to a communication made, or a document prepared, in the furtherance of the commission of an offence, a fraud or an act that makes a person liable to a civil penalty.

(2) A court may find that a communication was made, or a document was prepared, in the furtherance of the commission of an offence, a fraud or an act if there are reasonable grounds for finding that—

(a) the offence, fraud or act was committed; and

(b) the communication was made, or document prepared, in the furtherance of the offence, fraud or act.

Division 6 — Sexual offence proceedings—directions and warnings to juries

198 Meaning of *complainant* and *sexual offence proceeding* for Division 6

(1) For this Division, the ***complainant***, in relation to a sexual offence proceeding, is the person, or any of the people, against whom a sexual offence the subject of the proceeding is alleged to have been committed.

(2) For this Division, a ***sexual offence proceeding*** is a proceeding for a sexual offence before a jury, and includes any of the following before a jury:

(a) a proceeding for a sexual offence and any other offence;

(b) a proceeding for a sexual offence and any other offence as an alternative to the sexual offence;

(c) a proceeding for a sexual offence that may result in a finding of guilt for any other offence.

199 Comments on complainants' evidence

If evidence is given by a complainant in a sexual offence proceeding, the judge must not give the jury any warning or suggestion to the effect that the law regards complainants to be an unreliable class of witnesses.

200 Comments on children's evidence

If evidence is given by a child in a sexual offence proceeding, the judge must not give the jury any warning or suggestion to the effect that the law regards children to be an unreliable class of witnesses.

201 Comments about lack of, or delays in making, complaint

(1) This section applies if, in a sexual offence proceeding, evidence is given, or a question is asked of a witness, that tends to suggest that—

(a) the complainant made no complaint about the alleged offence; or

(b) there was a delay in making a complaint.

(2) The judge must—

(a) give the jury a warning to the effect that the absence of, or the delay in making, the complaint does not necessarily indicate that the allegation that the offence was committed is false; and

(b) tell the jury that there may be good reasons why a victim of a sexual offence may not make, or may hesitate in making, a complaint about the offence.

Note Section 181S of the *Evidence Act 2004* (Evidence of complaint) abolishes the common law rule that complaint evidence in a sexual offence matter is admissible for the purpose of supporting the complainant's credit (by showing the complainant's consistency).

202 Directions about implied consent

In a sexual offence proceeding, the judge must, in a relevant case, direct the jury that a person is not to be regarded as having consented to a sexual act just because—

(a) the person did not say or do anything to indicate that the person did not consent; or

(b) the person did not protest or physically resist; or

(c) the person did not sustain a physical injury; or

(d) on that or an earlier occasion, the person had consented to engage in a sexual act (whether or not of the same kind) with the accused person or someone else.

203 Directions about mistaken belief about consent

In a sexual offence proceeding, the judge must, in a relevant case, direct the jury that, in deciding whether the accused person was under a mistaken belief that a person consented to a sexual act, the jury may consider whether the belief was reasonable in the circumstances.

Division 7 — Family objections

204 Application—Division 7

(1) This Division applies in relation to a criminal proceeding.

(2) This Division does not apply in relation to a proceeding for any of the following offences:

(a) an offence against the *Criminal Code* Part 3.3 (Offences endangering life or health) or Part 3.6 (Sexual offences), if the offence is against a person who is under 16 years old; or

(b) an offence if the conduct making up the offence is domestic violence under the *Domestic Violence Act 1995*.

205 Family objections to giving evidence

(1) A person who, when required to give evidence, is the domestic partner, parent or child of a defendant may make an objection (a ***family objection***) to being required, as a witness for the prosecution—

(a) to give evidence; or

(b) to give evidence of a communication between the person and the defendant.

(2) A ***domestic partner*** is a reference to someone who lives with the person in a domestic partnership, and includes a reference to a spouse of the person.

206 Time to make family objection

A person may only make a family objection before giving evidence or, if the person has started to give evidence, as soon as practicable after becoming aware of the right to object.

207 Person to be made aware of right to make family objection

If it appears to the court that a person may have a right to make a family objection, the court must satisfy itself that the person is aware of the effect of this Division as it may apply to the person.

208 Family objections to be heard in absence of jury

If there is a jury, the court must hear and decide a family objection in the absence of the jury.

209 Matters court may consider in deciding family objection

(1) A court must not require a person who makes a family objection to give the evidence if the court finds that—

(a) there is a likelihood that harm would or might be caused (directly or indirectly) to the person, or to the relationship between the person and the defendant, if the person gives the evidence; and

(b) the nature and extent of that harm outweighs the desirability of having the evidence given.

(2) In making a decision under subsection (1), the court must take into account matters including the following:

(a) the nature and seriousness of the offence for which the defendant is being prosecuted;

(b) the substance and importance of any evidence that the person might give and the weight likely to be attached to it;

(c) whether any other evidence about the matters to which the evidence of the person would relate is reasonably available to the prosecution;

(d) the nature of the relationship between the defendant and the person;

(e) whether, in giving the evidence, the person would have to disclose something that was received by the person in confidence from the defendant.

210 Prosecution not to comment about family objections

If the court has made a decision on a family objection by a person, the prosecution must not comment on any of the following:

(a) the objection;

(b) the decision on the objection;

(c) the failure of the person to give evidence.

211 Comments by judge and parties about failure to give evidence by family members

(1) This section applies to a proceeding for an indictable offence in which a defendant's family member fails to give evidence.

(2) The judge or a party (other than the prosecution) may comment on the failure to give evidence.

(3) However, unless the comment is made by another defendant in the proceeding, the comment must not suggest that the family member failed to give evidence because—

(a) the defendant was guilty of the offence; or

(b) the family member believed the defendant to be guilty of the offence.

(4) If 2 or more defendants are being tried together for the offence, and any defendant comments on the failure of any other defendant's family member to give evidence, the judge may do either or both of the following:

(a) comment on the failure to give evidence;

(b) comment on the defendant's comment.

(5) In this section:

family member, of a defendant, means the defendant's domestic partner, parent or child at the time of the failure to give evidence.

Note For the meaning of ***domestic partner***, see the s 205.

CHAPTER 8 — PUBLICATION OF EVIDENCE

212 Application—chapter 8

This Part applies to a proceeding in the Supreme Court or the Magistrates Court, or to an inquest or inquiry under the *Coroners Act 1993*.

213 Prohibition of publication of evidence etc

(1) If it appears to a court that—

(a) the publication of evidence, given or intended to be given, in a proceeding before the court, is likely to prejudice the administration of justice; or

(b) in the interests of the administration of justice, it is desirable that the name of a party to, or a witness, or intended witness, in a proceeding before the court be not published;

the court may, at any time during or after the hearing of the proceeding, make an order—

(c) forbidding the publication of the evidence or a specified part of the evidence, or of a report of the evidence, either absolutely or subject to any conditions that the court specifies or for any period that is specified; or

(d) forbidding the publication of the name of the party or witness.

(2) If a court makes an order under subsection (1), the court may, if it considers appropriate, also direct that people specified by the court, or everyone except people so specified, must remain outside the courtroom for the period that the court specifies.

214 Noncompliance with s 213 order

(1) A person who contravenes an order or direction under section 213 commits an offence.

Penalty: 50 penalty units, imprisonment for 6 months or both.

(2) For section 213 and this section, the publication of a reference or allusion to a party to, or a witness in, a proceeding is, if the reference or allusion is such as to disclose the identity of the party or witness, taken to be a publication of the name of the party or witness.

CHAPTER 9 — MISCELLANEOUS

215 Approved forms

(1) The Minister may, in writing, approve forms for this Act.

(2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

216 Regulation-making power

(1) The Administrator may make regulations for this Act.

(2) A regulation may prescribe the amounts, or the way of calculating amounts, payable to a court in relation to the cost of, or incidental to, the provision of an audiovisual link or audio link and ancillary equipment for the Evidence Act 2004 chapter 4B (Use of audiovisual links and audio links).

SCHEDULE

Acts Repealed

(Section 3)

Acts of Norfolk Island

Name of Act	Extent of repeal
Criminal Law (Amendment) Act 2004	The whole.
Crimes Act 1900 (N.S.W.) in its Application to Norfolk Island by the *Criminal Law Act 1960*	Parts 10, 11, 12, 13, 14 (Chapter 1 and Chapter 4), and Part 16.

NOTES

The *Criminal Procedure Act 2007* as shown in this consolidation comprises Act No. 12 of 2007 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commencement	Application saving or transitional provision
Criminal Procedure Act 2007	12, 2007	1.1.2008	
Justice Legislation (Miscellaneous Amendments) Act 2009	14, 2009	11.09.2009	NB – new sec 4 of *Criminal Procedure Act 2007* has effect from 1.07.09
[Previously consolidated as at 2 April 2009]			
Interpretation (Amendment) Act 2012 [to substitute throughout — Commonwealth Minister for Minister; and to substitute Minister for executive member]	14, 2012	28.12.12	
[Previously consolidated as at 2 April 2013]			
Public Service Act 2014	11, 2014	Sch 3 (item 6): 23 Dec 2014	

Ordinance	Registration	Commencement	Application, saving and transitional provision
Norfolk Island Continued Laws Amendment Ordinance 2015 (No. 2, 2015) (now cited as Norfolk Island Continued Laws Ordinance 2015 (see F2015L01491))	17 June 2015 (F2015L00835)	Sch 1 (items 57–60, 344, 345): 18 June 2015 (s 2(1) item 1)	Sch 1 (items 344, 345)
as amended by			
Norfolk Island Continued Laws Amendment (2016 Measures No. 2) Ordinance 2016 (No. 5, 2016)	10 May 2016 (F2016L00751)	Sch 4 (item 17): 1 July 2016 (s 2(1) item 4)	—

Table of Amendments

ad = added or inserted am = amended rep = repealed rs = repealed and substituted

Provisions affected	How affected	
4	rs	14, 2009
5	am	Ord No 2, 2015
7	am	11, 2014; Ord No 2, 2015 (as am by Ord No 5, 2016)
112	am	Ord No 2, 2015
154A	ad	14, 2009
154B	ad	14, 2009
154C	ad	14, 2009
154D	ad	14, 2009
215	am	Ord No 2, 2015

ad = added or inserted am = amended rep = repealed rs = repealed and substituted

Provisions affected	**How affected**
216	am Ord No 2, 2015