



Service and Execution of Process Act 1992

No. 172 of 1992

**An Act to provide for the service and execution,
throughout the Commonwealth, of process of courts
and tribunals, and for related purposes**

[Assented to 11 December 1992]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Service and Execution of Process Act 1992*.

Commencement

2.(1) Section 1 and this section commence on the day on which this Act receives the Royal Assent.

(2) Paragraph 7(2)(a) commences when section 10 of the *Territories Law Reform Act 1992* commences.

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(3) Paragraph 7(2)(b) commences when section 19 of the *Territories Law Reform Act 1992* commences.

(4) Subject to subsection (5), the remaining provisions of this Act commence on a day to be fixed by Proclamation.

(5) If those provisions do not commence under subsection (4) within the period of 4 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.

Interpretation

3.(1) In this Act, unless the contrary intention appears:

“adjudicative function”, in relation to a tribunal, means the function of determining the rights or liabilities of a person in a proceeding in which there are 2 or more parties, including the function of making a determination:

- (a) altering those rights or liabilities; or
- (b) relating to any matters of a kind mentioned in section 48;

“appearance” means:

- (a) in Division 1 of Part 2—an appearance within the meaning of section 14; and
- (b) in Division 2 of Part 4—an appearance within the meaning of section 49;

“Australia” includes the external Territories;

“authority” means a judge, magistrate, coroner or officer of a court appointed or holding office under a law of a State;

“authority of issue”, in relation to a process, means the authority by which the process was issued;

“civil proceeding” means a proceeding other than a criminal proceeding;

“company” has the same meaning as it has in section 220 of the Corporations Law;

“court”, except in Part 7, means a court of a State and includes an authority exercising the powers of such a court;

“court of issue”, in relation to a process, means the court by which the process was issued;

“criminal proceeding” means:

- (a) a prosecution for an offence; or
- (b) a procedure, other than a prosecution, that, under a law of a State, may be used:
 - (i) to determine liability for an offence; or
 - (ii) to impose a penalty for an offence; or
- (c) a proceeding that is related to or associated with a prosecution for an offence or a procedure mentioned in paragraph (b);

but does not include:

- (d) a claim for compensation; or
- (e) a proceeding under proceeds of crime legislation;

“custodian”, in relation to a person in prison, means the officer in charge of the institution or place at which the person is detained;

“evidence that relates to matters of state” means evidence the adducing of which would:

- (a) prejudice the security, defence or international relations of Australia; or
- (b) damage relations between the Commonwealth and a State or relations between 2 or more States; or
- (c) prejudice the prevention, investigation or prosecution of offences; or
- (d) prejudice:
 - (i) the prevention or investigation of; or
 - (ii) the conduct of proceedings for recovery of civil penalties brought with respect to;
other contraventions of the law; or
- (e) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement or administration of a law of the Commonwealth or of a State; or
- (f) prejudice the proper functioning of the government of the Commonwealth or of a State; or
- (g) be contrary to the public interest for any other reason that could form the basis for a claim in a judicial proceeding that the evidence should not be disclosed;

“expenses”, in relation to a subpoena, an order under subsection 83(8) or an order under section 86 that is similar to an order under that paragraph, include the reasonable costs of:

- (a) necessary travel to and from, and accommodation at, the place where complying with the subpoena or order is required; and
- (b) finding, collating and producing a document or thing;

for the purposes of complying with the subpoena or order;

“initiating process” means a process:

- (a) by which a proceeding is commenced; or
- (b) by reference to which a person becomes a party to a proceeding;

“investigative function”, in relation to a tribunal, means the function of conducting an inquiry other than an inquiry conducted in connection with the performance of an adjudicative function;

“judgment” means:

- (a) a judgment, decree or order given, entered or made by a court in a civil proceeding under which:
 - (i) a sum of money is made payable; or

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- (ii) a person is required to do or not to do an act or thing (other than the payment of money);
not being an order made under proceeds of crime legislation (other than a pecuniary penalty order); or
 - (b) an order made by a court in a criminal proceeding under which:
 - (i) a sum of money is made payable as a debt due to the Crown in right of the Commonwealth or a State; or
 - (ii) a person is required to do or not to do an act or thing (other than the payment of money); or
 - (c) an order made by a court for the forfeiture of bail; or
 - (d) an order that:
 - (i) is made by a tribunal in connection with the performance of an adjudicative function; and
 - (ii) is enforceable without an order of a court (whether or not the order made by the tribunal must be registered or filed in a court in order to be enforceable); or
 - (e) an order, decree or judgment registered in a court under the *Foreign Judgments Act 1991*;
whether or not the judgment, decree or order is final, but does not include:
 - (f) a judgment, decree or order of a court of a foreign country that has been registered in a court in Australia otherwise than under the *Foreign Judgments Act 1991*; or
 - (g) an order, however described, imposing a fine; or
 - (h) an order relating to the granting of probate or letters of administration or the administration of the estate of a deceased person; or
 - (i) an order relating to the guardianship of a person who is incapable of managing his or her personal affairs; or
 - (j) an order relating to the management of the property of a person who is incapable of managing that property; or
 - (k) an order relating to the care, control or welfare of a child; or
 - (l) an order that, if contravened by the person to whom it is directed, will render the person liable to conviction for an offence in the State in which the order was made;
- “magistrate”**, except in sections 57 and 67, includes a justice of the peace who has power to issue warrants under a law of the State in which the justice holds that office;
- “member”**, in relation to the Australian Federal Police, includes a special member or a staff member of the Australian Federal Police;
- “order for production”** means an order made under section 39, 67 or 79;
- “person under restraint”** means a person who:
- (a) is on bail; or

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- (b) has been conditionally released from prison (whether on parole, licence, work release, home detention or otherwise) before the end of a term of imprisonment to which he or she has been sentenced; or
- (c) is subject to the supervision of another person under a probation order; or
- (d) is serving a period of home detention or a term of imprisonment by way of periodic detention; or
- (e) is subject to:
 - (i) a community service order; or
 - (ii) a community based order; or
 - (iii) an attendance order; or
 - (iv) a work and development order; or
 - (v) any other restriction on his or her movements, imposed by law or by order of a court, that is inconsistent with the person complying with a subpoena served on the person under this Act;

but does not include a person who is in prison;

“place of issue”, in relation to a process, means the State in which the process was issued;

“prescribed” means prescribed by the regulations or by rules regulating the practice and procedure of a court;

“prison” includes a gaol, lock-up or other place of detention;

“proceeding”, except in Part 4, means a proceeding in a court or before an authority (other than a tribunal that is an authority) and includes:

- (a) an interlocutory or similar proceeding; and
- (b) a proceeding heard in chambers;

“proceeds of crime legislation” means:

- (a) the *Proceeds of Crime Act 1987*; or
- (b) a law of a State that is a corresponding law within the meaning of that Act;

“registered body” has the same meaning as it has in section 363 of the Corporations Law;

“State” includes the meaning given in section 5;

“subpoena”, except in Part 4, means a process that requires a person to do one or both of the following:

- (a) to give oral evidence before a court, authority or person;
- (b) to produce a document or thing to a court, authority or person;

but does not include a process that requires a person to produce a document in connection with discovery and inspection of documents;

“tribunal” means:

- (a) a person appointed by the Governor of a State, or by or under a law of a State; or

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(b) a body established by or under a law of a State; and authorised by or under a law of the State to take evidence on oath or affirmation, but does not include:

(c) a court; or

(d) a person exercising a power conferred on the person as a judge, magistrate, coroner or officer of a court;

“warrant” means a process issued by a court, authority or tribunal in accordance with:

(a) a law of a State; or

(b) the provisions of such a law as applied by subsection 68(1) of the *Judiciary Act 1903*;

that authorises the apprehension of a person.

(2) For the purposes of the definition of “tribunal” in subsection (1), a body is taken to be authorised by or under a law of a State to take evidence on oath or affirmation if a member of the body is authorised, by or under the law by or under which the body was established, to take evidence on oath or affirmation.

(3) A reference in this Act to a subpoena issued by a court or tribunal is a reference to a subpoena issued by or out of the court or tribunal.

(4) A reference in this Act to allowances and travelling expenses includes a reference to vouchers tendered in substitution for the whole or part of those allowances and travelling expenses.

(5) A reference in this Act to a law of the Commonwealth or a State is a reference to a law (whether written or unwritten) of or in force in the Commonwealth or the State, as the case may be.

(6) A reference in this Act to a person who is in prison does not include a reference to a person who is serving a term of imprisonment by way of periodic detention.

(7) For the purposes of this Act, if a Territory does not have its own police force, the police force performing the policing functions of the Territory is taken to be the police force of the Territory.

Copies

4.(1) For the purposes of this Act, a document that is identical to a process, order or document in all material respects is taken to be a copy of the process, order or document.

(2) A document that purports to be a copy of a process, order or document is presumed to be such a copy unless evidence is adduced that raises real doubt that it is such a copy.

Territories regarded as States

5.(1) For the purposes of this Act (other than section 125), each Territory (other than a Territory that, under subsection 7(2), is taken to be part of a State or another Territory) is to be regarded as a State.

(2) For the purposes of the application of this Act in relation to a Territory (other than the Australian Capital Territory), the reference to the Governor of a State in paragraph (a) of the definition of “tribunal” in subsection 3(1) is a reference to the Administrator of the Territory.

Act to bind Crown

6. This Act binds the Crown in all its capacities.

Territories

7.(1) This Act extends to each external Territory.

(2) For the purposes of this Act:

- (a) the Christmas Island Territory is taken to be part of Western Australia; and
- (b) the Territory of Cocos (Keeling) Islands is taken to be part of Western Australia; and
- (c) the Jervis Bay Territory, the Australian Antarctic Territory and the Territory of Heard Island and McDonald Islands are taken to be part of the Australian Capital Territory; and
- (d) the Territory of Ashmore and Cartier Islands is taken to be part of the Northern Territory; and
- (e) the Coral Sea Islands Territory is taken to be part of Norfolk Island.

Effect on the operation of other laws

8.(1) This Act does not affect a decision of a court or tribunal to allow substituted service of a process.

(2) This Act does not affect the operation of:

- (a) the *Transfer of Prisoners Act 1983*, or a law of a State that, in an instrument published under section 5 of that Act, is declared to be a State transfer law of the State; or
- (b) the *Removal of Prisoners (Territories) Act 1923*; or
- (c) the *Removal of Prisoners (Australian Capital Territory) Act 1968* of the Australian Capital Territory; or
- (d) the *Family Law Act 1975*, or the regulations or Rules of Court made under that Act.

(3) This Act does not affect the operation of a law of a State so far as the law provides for service of a subpoena on a person:

- (a) only after permission or leave has been given; or
- (b) only if it is served not less than a specified number of days,

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being greater than 14 days, before the date for compliance with the subpoena.

(4) Subject to this Act, this Act applies to the exclusion of a law of a State with respect to:

- (a) the service or execution in another State of process of that State that is process to which this Act applies; or
- (b) the service or execution in another State of judgments of a court of that State that are judgments to which this Act applies; or
- (c) the service or execution in another State of judgments to which this Act applies that are orders of a tribunal of that State.

Service on companies and registered bodies

9.(1) Service of a process, order or document under this Act on a company is to be effected by leaving it at, or by sending it by post to, the company's registered office.

(2) Without limiting the operation of subsection (1), a process, order or document may be served on a company by delivering a copy of it personally to each of 2 directors of the company who reside in Australia.

(3) If a liquidator of a company has been appointed, a process, order or document may be served on the company by leaving it at, or by sending it by post to, the last address of the office of the liquidator notice of which has been lodged under the Corporations Law.

(4) If an official manager of a company has been appointed, a process, order or document may be served on the company by leaving it at, or by sending it by post to, the last address of the office of the official manager notice of which has been lodged under the Corporations Law.

(5) Service of a process, order or document under this Act on a registered body is to be effected by leaving it at, or by sending it by post to, the body's registered office.

(6) If the registered body is a registered foreign company, a process, order or document may be served by leaving it at, or by sending it by post to:

- (a) the address of a local agent of the foreign company notice of which has been lodged under the Corporations Law; or
- (b) if a notice or notices of a change or alteration in that address has or have been so lodged—the address shown in that last-mentioned notice or the later or latest of those last-mentioned notices.

(7) Without limiting the operation of subsections (5) and (6), a process, order or document may be served on a registered body by

delivering a copy of it personally to each of 2 directors of the registered body who reside in Australia.

(8) If a liquidator of a registered body has been appointed, a process, order or document may be served on the registered body by leaving it at, or by sending it by post to, the last address of the office of the liquidator notice of which has been lodged under the Corporations Law.

(9) Sections 220 and 363 of the Corporations Law do not apply to a process, order or document that may be served under this Act.

(10) For the purposes of this section:

- (a) the situation of a company's registered office is to be determined in the way provided in subsection 220(2) of the Corporations Law; and
- (b) the situation of a registered body's registered office is to be determined in the way provided in subsection 363(2) of the Corporations Law.

(11) In this section:

“**director**” has the same meaning as it has in the Corporations Law;
“**local agent**” has the same meaning as it has in the Corporations Law;
“**official manager**” has the same meaning as it has in the Corporations Law;
“**registered foreign company**” has the same meaning as it has in section 363 of the Corporations Law;
“**registered office**” has the same meaning as it has in the Corporations Law.

Service on other bodies corporate

10.(1) Service of a process, order or document under this Act may be served on a body corporate that is not a company or a registered body in accordance with this section.

(2) If a law of the State in which service is to be effected provides that service may be effected on the body corporate at a particular place, service may be effected by:

- (a) leaving the process, order or document at that place; or
- (b) sending the process, order or document to that place by post.

(3) If a law of the State in which service is to be effected does not provide that service may be effected on the body corporate at a particular place, service may be effected by:

- (a) leaving the process, order or document at the body corporate's principal office or principal place of business; or
- (b) by sending the process, order or document to that principal office or that principal place of business by post.

Proof of service

11.(1) Subject to subsections (2) and (8), service of a process, order or document under this Act is taken to have been proved only if the following are proved:

- (a) the identity of the person who served it;
- (b) the time at which and the day on which it was served;
- (c) the place at which it was served;
- (d) the way in which it was served;
- (e) if service was effected in a way that required the person served to be identified—the way in which the person served was identified.

(2) Subsection (1) does not apply to service by post.

(3) Service of a process, order or document under this Act by post on an individual is taken to have been proved only if the following are proved:

- (a) it was sent by pre-paid post, addressed to the person, to the person's last known address;
- (b) the day on which it was posted.

(4) Service of a process, order or document under this Act by post on a company, a registered body or any other body corporate is taken to have been proved only if the following are proved:

- (a) it was sent by pre-paid post, addressed to the company, registered body or other body corporate, to an address for service on the company, registered body or other body corporate under section 9 or 10;
- (b) the day on which it was posted.

(5) Service of a process, order or document under this Act may be proved:

- (a) by affidavit sworn before:
 - (i) any justice of the peace having jurisdiction in the State or part of the State in which the service was effected; or
 - (ii) a Commissioner for Affidavits or Declarations; or
 - (iii) a notary public for that State or part of that State; or
 - (iv) a person who is a barrister or a solicitor, or both; or
- (b) in any way in which the service might have been proved if it had been effected within the State in which the process, order or document was issued.

(6) It is only necessary to call the deponent to give evidence of service if a court, authority or tribunal, or a person appearing before a court, authority or tribunal, so requires.

(7) For the purposes of paragraph (1)(e), evidence of a statement that:

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(a) is made by a person served; and
(b) concerns the person's identity or office;
is admissible as evidence of the person's identity or office.

(8) The court, authority or tribunal before which service on a person is to be proved may dispense with all or any of the requirements of subsection (1) if it is satisfied that personal service of the process, order or document in question was effected on the person.

(9) For the purposes of this Act, a document that purports to have been signed by a person acknowledging that the person has received a specified postal article is admissible as evidence that the person received the article.

(10) For the purposes of this Act, a document that purports to have been signed by a person acknowledging that a court, authority, tribunal or body for which the person is acting has received a specified postal article is admissible as evidence that the court, authority, tribunal or body received the article.

(11) A process, order or document served by post under this Act is presumed to have been served on the fourth day after the day it was posted unless evidence is adduced that raises real doubt that the process, order or document was delivered by post to the person to whom it was addressed within 4 days after the day it was posted.

Effect of service

12. Subject to this Act, service of a process under this Act:
(a) has the same effect; and
(b) may give rise to the same proceedings;
as if the process had been served in the place of issue.

PART 2—SERVICE OF PROCESS IN CIVIL AND CRIMINAL PROCEEDINGS

Division 1—Initiating process in civil proceedings

Application of Division

13. This Division applies to civil proceedings in a court.

Meaning of appearance

14. A reference in this Division to an appearance includes a reference to a notice in writing:

- (a) that a person served with an initiating process gives to the court of issue; and
- (b) that contains a statement that the person:
 - (i) acknowledges service of the process; or
 - (ii) intends to make a submission regarding an issue arising

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in the proceeding in relation to which the process has been issued; or

(iii) intends to contest the court's jurisdiction to hear the proceeding; and

(c) that:

(i) complies with any requirements with which the notice must comply under a law of the place of issue (including rules governing the procedure of the court); or

(ii) the court determines to be acceptable despite any non-compliance with such requirements.

Initiating process may be served in any part of Australia

15.(1) An initiating process issued in a State may be served in another State.

(2) Service on an individual must be effected in the same way as service of such an initiating process in the place of issue.

(3) Service on a company or a registered body must be effected in accordance with section 9.

(4) Service on any other body corporate must be effected in accordance with section 10.

(5) Service on a body politic (for example, the Commonwealth or a State) must be effected in the same way in which process of the Supreme Court of the State in which service is to be effected may be served on the body politic.

Information to be provided

16. Service is effective only if copies of such notices as are prescribed are attached to the process, or the copy of the process, served.

Time for appearance

17.(1) If the person served is required or permitted to enter an appearance under a law of the place of issue, the period after service within which the person may enter an appearance is:

(a) 21 days; or

(b) such shorter period as the court of issue, on application, allows.

(2) The matters that the court must take into account in determining an application to allow a shorter period include:

(a) urgency; and

(b) the places of residence or business of the parties; and

(c) whether a related or similar proceeding has been commenced against the person or another person.

Appearance to state address for service

18.(1) An appearance entered after service of the initiating process must state an address within Australia as an address for service.

(2) The appearance is effective only if it contains an address for service.

(3) The court of issue must set aside the appearance if, on application by the party by whom or on whose behalf the process was served, the court is satisfied that the address for service contained in the appearance is false or misleading.

(4) Subsection (3) does not limit the court's power to set aside an appearance.

(5) For the purposes of this Act, if the appearance would not have been required to contain an address for service had the initiating process been served in the same State as the State of the court of issue:

- (a) the appearance is taken to contain an address for service if it states an address of the person entering the appearance; and
- (b) that address is taken to be the address for service.

Security for costs

19.(1) The court may, on application by the person served, order that:

- (a) the party by whom or on whose behalf the process was served give such security as the court specifies for the first-mentioned person's costs of and incidental to the proceeding; and
- (b) the proceeding be stayed until the security is given.

(2) Subsection (1) does not limit the court's power to make an order requiring security for costs.

Stay of proceedings

20.(1) This section does not apply in relation to a proceeding in which the Supreme Court of a State is the court of issue.

(2) The person served may apply to the court of issue for an order staying the proceeding.

(3) The court may order that the proceeding be stayed if it is satisfied that a court of another State that has jurisdiction to determine all the matters in issue between the parties is the appropriate court to determine those matters.

(4) The matters that the court is to take into account in determining whether that court of another State is the appropriate court for the proceeding include:

- (a) the places of residence of the parties and of the witnesses likely to be called in the proceeding; and

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- (b) the place where the subject matter of the proceeding is situated; and
 - (c) the financial circumstances of the parties, so far as the court is aware of them; and
 - (d) any agreement between the parties about the court or place in which the proceeding should be instituted; and
 - (e) the law that would be most appropriate to apply in the proceeding; and
 - (f) whether a related or similar proceeding has been commenced against the person served or another person;
- but do not include the fact that the proceeding was commenced in the place of issue.

(5) The court's order may be made subject to such conditions as the court considers just and appropriate in order to facilitate determination of the matter in issue without delay or undue expense.

(6) The court may determine the application for an order without a hearing unless the applicant or a party objects.

(7) For the purposes of determining the application, the court may hold a hearing by video link or telephone.

(8) A person who is entitled to practise as a barrister, solicitor or both before a court in:

- (a) the place of issue; or
- (b) another State in which a person is participating in the hearing by video link or telephone;

has a right of audience before the court at the hearing.

(9) This section does not affect the court's power to stay a proceeding on a ground other than the ground mentioned in subsection (3).

(10) This section does not affect the operation of:

- (a) the *Jurisdiction of Courts (Cross-vesting) Act 1987*; or
- (b) a corresponding law of a State.

No restraint of proceedings

21. If an initiating process has been served under this Division, a court of a State that is not the place of issue must not restrain a party in the proceeding from taking a step in the proceeding on the ground that the place of issue is not the appropriate forum for the proceeding.

Division 2—Initiating process in criminal proceedings

Application of Division

22. This Division applies to criminal proceedings.

Initiating process

23. In this Division, a reference to initiating process includes a reference to a process, issued in relation to an offence, that first notifies a person that, in specified circumstances:

- (a) no further action will be taken in relation to the offence; or
- (b) liability for the offence may be determined without an appearance by the person before a court.

Initiating process may be served in any part of Australia

24.(1) An initiating process issued in a State may be served in another State.

(2) Service on an individual must be effected in the same way as service of such an initiating process in the place of issue.

(3) Service on a company or a registered body must be effected in accordance with section 9.

(4) Service on any other body corporate must be effected in accordance with section 10.

Time for service

25.(1) If the person served is required or permitted to do an act specified or referred to in the process not later than a particular day, service is only effective if the period between service and that day is not less than:

- (a) 21 days; or
- (b) such shorter period as a court or authority, on application, allows.

(2) The matters that the court or authority is to take into account in determining an application to allow a shorter period include:

- (a) urgency; and
- (b) the place of residence or business of the person to be served; and
- (c) whether a related or similar proceeding has been commenced against the person or another person.

(3) In this section:

“**court or authority**” means the court in which, or the authority before whom, the proceeding in relation to which an initiating process has been issued will or might be heard.

Division 3—Other process

Application of Division

26. This Division applies to criminal proceedings and civil proceedings in a court or before an authority.

Other process may be served in any part of Australia

27.(1) A process issued in a State, other than an initiating process or a subpoena, may be served in another State.

(2) Service on an individual must be effected in the same way as service of such a process in the place of issue.

(3) Service on a company or a registered body must be effected in accordance with section 9.

(4) Service on any other body corporate must be effected in accordance with section 10.

(5) Service on a body politic (for example, the Commonwealth or a State) must be effected in the same way in which process of the Supreme Court of the State in which service is to be effected may be served on the body politic.

PART 3—SERVICE OF SUBPOENAS

Division 1—Service of subpoenas generally

Application of Division

28. This Division applies to a subpoena, issued by a court or an authority, that is addressed to a person:

- (a) who is not in prison; or
- (b) who is in prison but who need not attend before the court or authority for the purpose of complying with the subpoena.

Subpoenas may be served in any part of Australia

29.(1) A subpoena issued in a State by a court or an authority may be served in another State.

(2) Service must be effected in the same way as service of a subpoena in the place of issue.

(3) Service is effective only if the subpoena contains an address for service of the person (if any) at whose request the subpoena was issued.

Time for service

30.(1) Service of the subpoena is effective only if the period between service and the day on which the person to whom the subpoena is addressed is required to comply with the subpoena is not less than:

- (a) 14 days; or
- (b) such shorter period as the court of issue or the authority of issue, on application, allows.

(2) The court or authority may allow a shorter period only if it is satisfied that:

- (a) the giving of the evidence likely to be given by the person to

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whom the subpoena is addressed, or the production of a document or thing specified in the subpoena, is necessary in the interests of justice; and

- (b) there will be enough time for the person:
 - (i) to comply with the subpoena without hardship or serious inconvenience; and
 - (ii) to make an application under section 33.
- (3) In granting an application, the court or authority:
 - (a) is to impose a condition that the subpoena not be served after a specified day; and
 - (b) may impose other conditions.

Information to be provided

31. Service of the subpoena is effective only if:

- (a) copies of such notices as are prescribed; and
- (b) in a case where an application under paragraph 30(1)(b) has been granted—a copy of the order granting the application;

are attached to the subpoena, or the copy of the subpoena, served.

Expenses

32.(1) Service of the subpoena is effective only if, at the time of service or at some other reasonable time before the person to whom the subpoena is addressed is required to comply with it, allowances and travelling expenses sufficient to meet the person's reasonable expenses of complying with the subpoena are paid or tendered to the person.

(2) Nothing in this section affects the operation of subsection 11AA(9) of the *Christmas Island Act 1958* or subsection 15AC(9) of the *Cocos (Keeling) Islands Act 1955*.

Application for relief from subpoena

33.(1) This section applies if the person served with the subpoena has a right under the law of the place of issue to apply to a court or authority to set aside or obtain other relief in respect of the subpoena.

(2) Without limiting the ways in which, under the law of the place of issue, the application may be made, it may be made by transmitting the application to the court or authority by fax.

(3) Within 24 hours after making the application, the person must cause a copy of the application to be served on the person (if any) at whose request the subpoena was issued at the person's address for service.

(4) For the purposes of calculating the 24 hour period, a day that is:

- (a) a Saturday; or

- (b) a Sunday; or
- (c) a public holiday or bank holiday in the place in which the application is to be served;

does not count.

(5) Without limiting the ways in which, under the law of the place of issue, service may be effected, it may be effected by transmitting the copy to that address by fax.

(6) The court or authority may determine the application without a hearing unless the applicant, or the person (if any) at whose request the subpoena was issued, objects.

(7) For the purposes of determining the application, the court or authority may hold a hearing by video link or telephone.

(8) A person who is entitled to practise as a barrister, solicitor or both before a court in:

- (a) the place of issue of the subpoena; or
- (b) another State in which a person is participating in the hearing by video link or telephone;

has a right of audience before the court or authority at the hearing.

Subpoenas not requiring attendance

34.(1) If the subpoena only requires production of a document or thing, it may be complied with by delivering the document or thing, not less than 24 hours prior to the date for compliance, to the Registrar or Clerk:

- (a) of the court that issued the subpoena; or
- (b) of the court of which the authority that issued the subpoena is a member or officer;

as the case requires.

(2) If the subpoena is complied with in that way, the person to whom the subpoena is addressed is not required to attend the court or authority on the date for compliance.

Entitlement to expenses

35.(1) A person served with the subpoena is entitled to payment of an amount equal to the reasonable expenses incurred by the person in complying with the subpoena.

- (2) The amount must be paid:
 - (a) if the subpoena was issued at the request of a person—by that person; or
 - (b) in any other case—by the State in which the subpoena was issued.

(3) The court or authority that issued the subpoena may make orders to ensure that the person complying with the subpoena receives the exact amount of the person's reasonable expenses in so complying.

(4) If the subpoena was issued by a court, the orders may be made by an officer of the court if the rules governing the procedure of the court so provide.

(5) A reference in this section to the reasonable expenses incurred by a person in complying with a subpoena includes, in the case of a person under restraint, a reference to the reasonable expenses incurred by the person in complying with section 36 (whether or not the person was able to comply with the subpoena).

(6) Nothing in this section affects the operation of subsection 11AA(9) of the *Christmas Island Act 1958* or subsection 15AC(9) of the *Cocos (Keeling) Islands Act 1955*.

Persons under restraint

36. (1) Service of a subpoena under this Division on a person under restraint does not relieve the person from a restriction or obligation imposed by or under a law of a State on the person because the person is a person under restraint.

(2) Subject to subsection (3), action may not be taken against a person under restraint in respect of failure to comply with a subpoena served on the person under this Division if:

- (a) by leaving, or remaining outside, the State in which the person is under restraint, or a particular place in the State, in order to comply with the subpoena, the person might breach a restriction, or be unable to comply with an obligation, imposed on the person by or under the order or restriction to which the person is subject; and
- (b) as soon as practicable after being served with the subpoena, the person:
 - (i) has informed the person's supervisor of the service of the subpoena; and
 - (ii) has informed the person (if any) at whose request the subpoena was issued, and the court of issue or authority of issue, of the restriction or obligation; and
- (c) unless the law of the State does not permit the restriction or obligation to be varied so as to allow the person to comply with the subpoena—the person has taken such steps as are, in all the circumstances (including, in particular, the time left for compliance), reasonable to have the restriction or obligation varied so as to allow the person so to comply; and
- (d) the person does not succeed in the steps (if any) taken by the person in order to have the restriction or obligation varied in time reasonably to allow compliance with the subpoena; and

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- (e) the person has, as soon as practicable, informed the person (if any) at whose request the subpoena was issued, and the court of issue or authority of issue:
 - (i) of any steps the person took in an attempt to have the restriction or obligation varied, and that the restriction or obligation has not been varied; or
 - (ii) that the law of the State does not permit such a variation; as the case requires.

(3) Subsection (2) does not apply to action taken under this Act in relation to failure to comply with the subpoena.

(4) The reference in subparagraph (2)(b)(i) to the supervisor of a person under restraint is a reference to:

- (a) if the person under restraint is on bail subject to a condition that he or she periodically reports to the police—any police officer at the police station at which he or she is required to report; or
- (b) if the person under restraint is on bail subject to a condition that he or she periodically reports to an officer of a correction service of a State—that officer; or
- (c) in any other case—the person who, under a law of a State or the order of a court, supervises compliance with the order or restriction to which the person under restraint is subject.

(5) A reference in subsection (2) to varying a restriction or obligation so as to allow a person to comply with a subpoena includes a reference to giving a consent or permission so as to allow the person so to comply.

Issue of warrants for non-compliance with subpoenas

37.(1) If a person (other than a person under restraint) served with a subpoena under this Division fails to comply with the subpoena, a court or authority of the place of issue of the subpoena may issue such warrant as it might have issued had the subpoena been served in its place of issue.

(2) If a person under restraint served with a subpoena under this Division fails to comply with the subpoena, a court or authority that could have issued a warrant under subsection (1) if the person were not a person under restraint may issue a warrant to have the person apprehended and brought before a court, authority or person to give evidence, or produce a document or thing, or both.

(3) If a person under restraint served with a subpoena under this Division fails to comply with the subpoena and also fails to comply with section 36, a court or authority of the place of issue of the subpoena may, as an alternative to issuing a warrant under subsection

(2), issue such warrant as it might have issued had the subpoena been served in its place of issue.

Division 2—Service of subpoenas addressed to persons in prison

Application of Division

38. This Division applies to a subpoena, issued by a court or an authority, that is addressed to a person (in this Division called the “prisoner”) who:

- (a) is in prison in a State other than the place of issue; and
- (b) is required to attend before a court, authority or person for the purposes of complying with the subpoena.

Order for production

39.(1) The court of issue or the authority of issue may order that the prisoner be produced at the time and place specified in the subpoena as the time and place at which compliance with the subpoena is required.

(2) The court or authority may make an order only if it is satisfied that:

- (a) the giving of the evidence that the prisoner is likely to give, or the production of a document or thing specified in the subpoena, is necessary in the interests of justice; and
- (b) there will be enough time:
 - (i) for compliance with the order; and
 - (ii) to permit the making of applications under sections 43 and 44.

(3) Before making an order the court or authority may:

- (a) require the person (if any) at whose request the subpoena was issued to give such security as the court or authority specifies for ensuring compliance with an order under section 45; and
- (b) stay the proceeding for the making of the order until the security is given.

(4) An order:

- (a) may be made subject to specified conditions; and
- (b) must be addressed to the custodian of the prisoner.

Service of order for production

40.(1) Subject to any conditions specified under paragraph 39(4)(a), the order for production and the subpoena, or a copy of both the order and the subpoena, must be served on the custodian of the prisoner, together with a copy, or a further copy, of both the order and the subpoena for service on the prisoner.

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(2) Service of the order for production and subpoena must be effected in the same way as service of a subpoena in the place of issue.

(3) Service of the order for production and subpoena is effective only if the subpoena contains an address for service of the person (if any) at whose request the subpoena was issued.

(4) The custodian, or, if more than one person is the custodian of the prisoner, any such custodian, must comply with the order for production even if that custodian:

- (a) is not the person named in the order as the custodian of the prisoner; or
- (b) is not the custodian who was served with the order for production and subpoena.

(5) As soon as practicable after receiving the order for production and subpoena, the custodian must serve a copy of the order and a copy of the subpoena on the prisoner.

(6) If:

- (a) the copies are so served; and
- (b) the prisoner is released from prison at a time sufficiently prior to the date for compliance with the subpoena to make compliance with the subpoena reasonably practicable;

then:

- (c) the prisoner:
 - (i) is taken to have been served with the subpoena under section 29; and
 - (ii) subject to paragraph 42(2)(b), is required to comply with the subpoena; and
- (d) sections 35, 36 and 37 apply in relation to the subpoena as if it had been issued under Division 1; and
- (e) section 36 so applies as if the subpoena had been served on the day of release.

(7) The custodian need not comply with the order for production if the person to whom the subpoena is addressed is released from prison before the time for compliance.

Information to be provided

41. Service of the subpoena is effective only if copies of such notices as are prescribed are attached to the subpoena, or copy of the subpoena, served.

Expenses

42.(1) Service of the order for production is effective only if, at the time of service or at some other reasonable time before the date for compliance with the order, there are paid or tendered to the custodian

the allowances and travelling expenses that would have been required under section 32 to have been paid or tendered to the prisoner if he or she were not in prison.

(2) If, before the time for compliance with the order for production, the person to whom the order relates is released from prison:

(a) the custodian, or a person acting on his or her behalf, must, as soon as practicable, pay or tender to the person the allowances and travelling expenses paid or tendered to the custodian under subsection (1); and

(b) the person is not required to comply with the subpoena to which the order relates unless the allowances and travelling expenses were paid or tendered to the person, by the custodian or another person, no later than a reasonable time after the time when the person ceased to be in prison.

Application for relief from subpoena

43.(1) This section applies if the prisoner has a right under the law of the place of issue to apply to a court or authority to set aside or obtain other relief in respect of the subpoena.

(2) Without limiting the ways in which, under the law of the place of issue, the application may be made, it may be made by transmitting the application to the court or authority by fax.

(3) Within 24 hours after making the application, the prisoner must cause a copy of the application to be served on the person (if any) at whose request the subpoena was issued at the person's address for service.

(4) For the purposes of calculating the 24 hour period, a day that is:

(a) a Saturday; or

(b) a Sunday; or

(c) a public holiday or bank holiday in the place in which the application is to be served;

does not count.

(5) Without limiting the ways in which, under the law of the place of issue, service may be effected, it may be effected by transmitting the copy to that address by fax.

(6) The court or authority may determine the application without a hearing unless the prisoner, or the person (if any) at whose request the subpoena was issued, objects.

(7) For the purposes of determining the application, the court or authority may hold a hearing by video link or telephone.

(8) A person who is entitled to practise as a barrister, solicitor or both before a court in:

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- (a) the place of issue of the subpoena; or
- (b) another State in which a person is participating in the hearing by video link or telephone;

has a right of audience before the court or authority at the hearing.

(9) If the court or authority sets aside or grants other relief in respect of the subpoena, it is to make any necessary consequential order in respect of the order for production.

Application for relief from order for production

44.(1) Subject to subsection (2), the court or authority that made the order for production may, on application by the custodian or the prisoner, set aside or vary the order.

(2) The prisoner may only make an application on the ground that compliance with the order would have a substantial detrimental effect on his or her health or safety.

(3) Without limiting the ways in which, under the law of the place of issue, the application may be made, it may be made by transmitting the application to the court or authority by fax.

(4) Within 24 hours after making the application, the applicant must cause copies of the application to be served:

- (a) on the person (if any) at whose request the subpoena was issued at the person's address for service; and
- (b) if the applicant is the custodian—on the prisoner; and
- (c) if the applicant is the prisoner—on the custodian.

(5) For the purposes of calculating the 24 hour period, a day that is:

- (a) a Saturday; or
- (b) a Sunday; or
- (c) a public holiday or bank holiday in the place in which the application is to be served;

does not count.

(6) Without limiting the ways in which, under the law of the place of issue, service on the person under paragraph (4)(a) may be effected, it may be effected by transmitting the copy to that address by fax.

(7) Without limiting the matters that the court or authority may take into account in determining the application, the court or authority is to take into account:

- (a) public safety; and
- (b) the prisoner's health and safety.

(8) The court or authority may determine the application without a hearing unless the custodian, the prisoner, or the person (if any) at whose request the subpoena was issued, objects.

(9) For the purposes of determining the application, the court or authority may hold a hearing by video link or telephone.

(10) A person who is entitled to practise as a barrister, solicitor or both before a court in:

- (a) the place of issue of the subpoena; or
- (b) another State in which a person is participating in the hearing by video link or telephone;

has a right of audience before the court or authority at the hearing.

(11) If the court or authority sets aside or varies the order for production, it is to make any necessary consequential order in respect of the subpoena.

Entitlement to expenses

45.(1) A person who has incurred reasonable expenses as a result of compliance (by that person or another person) with the order for production is entitled to payment of an amount equal to those expenses.

(2) The amount must be paid:

- (a) if the subpoena was issued at the request of a person—by that person; or
- (b) in any other case—by the State in which the subpoena was issued.

(3) The court or authority that issued the order for production may make orders to ensure that the person who incurred those expenses receives the exact amount of those expenses.

(4) If the subpoena was issued by a court, the orders may be made by an officer of the court if the rules governing the procedure of the court so provide.

(5) Nothing in this section affects the operation of subsection 11AA(9) of the *Christmas Island Act 1958* or subsection 15AC(9) of the *Cocos (Keeling) Islands Act 1955*.

Custody of prisoner etc.

46.(1) The custodian of the prisoner, and any escort of the prisoner arranged by the custodian, have:

- (a) custody of the prisoner; and
- (b) while the prisoner is outside the State in which he or she was in prison—the same powers of detention and disposition of the prisoner as the custodian has in relation to the prisoner in that State; and
- (c) power to do such things as are necessary to ensure that the prisoner is:

- (i) produced in compliance with the order; and

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(ii) afterwards returned to the prison in which the prisoner was in prison.

(2) Without limiting subsection (1), the custodian or the escort may, in any State, require that a person in charge of a prison in the State:

- (a) receive the prisoner and keep the prisoner in custody for such time as the custodian or the escort requires; and
- (b) surrender custody of the prisoner to the custodian or the escort at the time and in the way that the custodian or the escort requires.

(3) The person so required must comply with such requirements as are reasonable.

(4) Subject to any conditions specified in writing by the custodian as conditions to be complied with while the prisoner is outside the State in which he or she was in prison, the law in force in the State that relates to the liability of a person who escapes from lawful custody applies to the prisoner while the prisoner is outside the State for the purposes of compliance with the order for production.

(5) Subsection (4) does not apply to lawful custody in respect of an offence against a law of the Commonwealth.

(6) A person who is serving a sentence of imprisonment in a State is taken to be serving that sentence while the person is outside the State for the purposes of compliance with the order for production so long as the person remains in the custody of the custodian or escort, or in custody arranged by the custodian or escort.

PART 4—SERVICE OF PROCESS OF TRIBUNALS

Division 1—Preliminary

Interpretation

47. In this Part:

“**proceeding**” means a proceeding in a tribunal in connection with the performance of an adjudicative function by the tribunal;

“**subpoena**” means a process that requires a person to do one or both of the following:

- (a) to give oral evidence before a tribunal;
- (b) to produce a document or thing to a tribunal;

but does not include a process that requires a person to produce a document in connection with discovery and inspection of documents;

“**tribunal of issue**”, in relation to a process, means the tribunal by which the process was issued.

Division 2—Service of initiating and other process related to adjudicative functions

Application of Division

- 48.** This Division applies with respect to a proceeding that concerns:
- (a) real property within the State in which the tribunal is established; or
 - (b) a contract, wherever made, for the supply of goods or the provision of services of any kind (including financial services) within that State; or
 - (c) an act or omission within that State; or
 - (d) the carrying on of a profession, trade or occupation within that State; or
 - (e) a pension or benefit under a law of that State; or
 - (f) the validity of an act or transaction under a law of that State.

Meaning of appearance

49. A reference in this Division to an appearance includes a reference to a notice in writing:

- (a) that a person served with an initiating process gives to the tribunal of issue; and
- (b) that contains a statement that the person:
 - (i) acknowledges service of the process; or
 - (ii) intends to make a submission regarding an issue arising in the proceeding in relation to which the process has been issued; or
 - (iii) intends to contest the tribunal's jurisdiction to hear the proceeding; and
- (c) that:
 - (i) complies with any requirements with which the notice must comply under a law of the place of issue (including rules governing the procedure of the tribunal); or
 - (ii) the tribunal determines to be acceptable despite any non-compliance with such requirements.

Initiating process may be served in any part of Australia

50.(1) An initiating process issued in a State may be served in another State.

(2) Service on an individual must be effected in the same way as service of such an initiating process in the place of issue.

(3) Service on a company or a registered body must be effected in accordance with section 9.

(4) Service on any other body corporate must be effected in accordance with section 10.

(5) Service on a body politic (for example, the Commonwealth or a State) must be effected in the same way in which process of the Supreme Court of the State in which service is to be effected may be served on the body politic.

Information to be provided

51. Service is effective only if copies of such notices as are prescribed are attached to the process, or the copy of the process, served.

Time for appearance

52.(1) If the person served is required or permitted to enter an appearance under a law of the place of issue, the period after service within which that person may enter an appearance is:

- (a) 21 days; or
- (b) such shorter period as the tribunal of issue, on application, allows.

(2) If the law of the place of issue does not provide for a procedure by which the person served may enter an appearance, a step is not to be taken in the proceeding before the end of a period of 21 days, or such shorter period as the tribunal, on application, allows, after service of the process.

(3) The matters that the tribunal must take into account in determining an application to allow a shorter period include:

- (a) urgency; and
- (b) the places of residence or business of the parties; and
- (c) whether a related or similar proceeding has been commenced against the person or another person.

Appearance to state address for service

53.(1) An appearance entered after service of the initiating process must state an address within Australia as an address for service.

(2) The appearance is effective only if it contains an address for service.

(3) The tribunal must set aside the appearance if, on application by the party by whom or on whose behalf the process was served, the tribunal is satisfied that the address for service contained in the appearance is false or misleading.

(4) Subsection (3) does not limit the tribunal's power to set aside an appearance.

(5) For the purposes of this Act, if the appearance would not have been required to contain an address for service had the initiating process been served in the same State as the State in which the tribunal is established:

- (a) the appearance is taken to contain an address for service if it states an address of the person entering the appearance; and
- (b) that address is taken to be the address for service.

Security for costs

54.(1) If the tribunal has power, under a law of the place of issue, to make an order for costs in the proceeding, the tribunal may, on application by the person served, order that:

- (a) the party by whom or on whose behalf the process was served give such security as the tribunal specifies for the first-mentioned person's costs of and incidental to the proceeding; and
- (b) the proceeding be stayed until the security is given.

(2) If the tribunal's power to make an order for costs in a proceeding is limited as to amount, an order under paragraph (1)(a) that requires security to be given in excess of that amount is ineffective to the extent of the excess.

(3) Subsection (1) does not limit the tribunal's power to make an order requiring security for costs.

Other process may be served in any part of Australia

55.(1) A process issued in a State, other than an initiating process or a subpoena, may be served in another State.

(2) Service on an individual must be effected in the same way as service of such a process in the place of issue.

(3) Service on a company or a registered body must be effected in accordance with section 9.

(4) Service on any other body corporate must be effected in accordance with section 10.

(5) Service on a body politic (for example, the Commonwealth or a State) must be effected in the same way in which process of the Supreme Court of the State in which service is to be effected may be served on the body politic.

Division 3—Service of subpoenas in the performance of adjudicative functions

Subdivision A—Service of subpoenas generally

Application of Subdivision

56. This Subdivision applies to a subpoena that:

- (a) has been issued by a tribunal in connection with the performance of an adjudicative function by the tribunal; and
- (b) is addressed to a person:
 - (i) who is not in prison; or

- (ii) who is in prison but who need not attend before the tribunal for the purpose of complying with the subpoena.

Order for leave

57.(1) A court of a State in which a subpoena is issued may give leave to serve the subpoena outside the State.

- (2) The court may give leave only if it is satisfied that:
 - (a) the giving of the evidence likely to be given by the person to whom the subpoena is addressed, or the production of a document or thing specified in the subpoena, is necessary in the interests of justice; and
 - (b) there will be enough time for the person:
 - (i) to comply with the subpoena without hardship or serious inconvenience; and
 - (ii) to make an application under section 61.
- (3) In granting an application under this section, the court:
 - (a) is to impose a condition that the subpoena not be served after a specified day; and
 - (b) may impose other conditions.

(4) In this section:

“**court**” means:

- (a) in any case—a person who:
 - (i) is a magistrate or judge; and
 - (ii) is a member of, or constitutes, the tribunal that issued the subpoena; or
- (b) if the subject matter of the proceeding to which the subpoena relates has a monetary value or concerns a claim for payment of money:
 - (i) the court that would have jurisdiction to the extent of that monetary value or the amount claimed; or
 - (ii) where there is more than one such court—the court of more limited jurisdiction; or
- (c) if the subject matter of the proceeding does not have a monetary value and does not concern a claim for payment of money—a judge of any court, or a magistrate, of the place of issue of the subpoena.

Subpoenas may be served in any part of Australia

58.(1) If such leave is given, a subpoena issued in a State by a tribunal may be served in another State.

(2) Service must be effected in the same way as service of a subpoena in the place of issue.

(3) Service is effective only if the subpoena contains an address for service of the person (if any) at whose request the subpoena was issued.

Information to be provided

59. Service of the subpoena is effective only if:

- (a) copies of such notices as are prescribed; and
- (b) a copy of the order giving leave to serve the subpoena;

are attached to the subpoena, or the copy of the subpoena, served.

Expenses

60. Service of the subpoena is effective only if, at the time of service or at some other reasonable time before the person to whom the subpoena is addressed is required to comply with it, allowances and travelling expenses sufficient to meet the person's reasonable expenses of complying with the subpoena are paid or tendered to the person.

Application for relief from subpoena

61.(1) This section applies if a person has a right under the law of the place of issue to apply to the tribunal or a court to set aside or obtain other relief in respect of the subpoena.

(2) Without limiting the ways in which, under the law of the place of issue, the application may be made, it may be made by transmitting the application to the tribunal or court by fax.

(3) Within 24 hours after making the application, the person must cause a copy of the application to be served on the person (if any) at whose request the subpoena was issued at the person's address for service.

(4) For the purposes of calculating the 24 hour period, a day that is:

- (a) a Saturday; or
- (b) a Sunday; or
- (c) a public holiday or bank holiday in the place in which the application is to be served;

does not count.

(5) Without limiting the ways in which, under the law of the place of issue, service may be effected, it may be effected by transmitting the copy to that address by fax.

(6) The tribunal or court may determine the application without a hearing unless the applicant, or the person (if any) at whose request the subpoena was issued, objects.

(7) For the purposes of determining the application, the tribunal or court may hold a hearing by video link or telephone.

(8) A person who is entitled to practise as a barrister, solicitor or both before a court in:

- (a) the place of issue of the subpoena; or
- (b) another State in which a person is participating in the hearing by video link or telephone;

has a right of audience before the tribunal or court at the hearing.

Subpoenas not requiring attendance

62.(1) If the subpoena only requires production of a document or thing, it may be complied with by delivering the document or thing, not less than 24 hours before the date for compliance, to the person holding the office (however described) of secretary of the tribunal.

(2) If the subpoena is complied with in that way, the person to whom the subpoena is addressed is not required to attend the tribunal on the date for compliance.

Entitlement to expenses

63.(1) A person served with the subpoena is entitled to payment of an amount equal to the reasonable expenses incurred by the person in complying with the subpoena.

(2) The amount must be paid:

- (a) if a law of the place of issue requires another person to pay or tender the person's expenses—by that other person; or
- (b) if a law of the place of issue empowers the tribunal to order that another person pay or tender the expenses and the tribunal so orders—by that other person; or

(c) in any other case:

- (i) if the subpoena was issued at the request of a party to the proceeding to which the subpoena relates—by that party; or
- (ii) if it was issued by the tribunal of its own motion—by the State in which the subpoena was issued.

(3) If the tribunal is empowered to determine the amount that a person is to be paid for expenses and so determines, the amount of the expenses reasonably incurred by the person is taken to be the amount so determined.

(4) Subject to subsection (5), if subsection (3) does not apply, the amount of the expenses reasonably incurred by a person (other than the reasonable expenses (if any) incurred by the person in complying with section 64) is taken to be the amount that the person would be entitled to be paid if the subpoena had been issued by the Supreme Court of the place of issue in connection with proceedings before that court.

(5) If a law of the place of issue fixes the amount to be paid to the person for expenses, that amount is taken to be the amount of the expenses reasonably incurred (other than the reasonable expenses (if any) incurred by the person in complying with section 64).

(6) A reference in this section to the reasonable expenses incurred by a person in complying with a subpoena includes, in the case of a person under restraint, a reference to the reasonable expenses incurred by the person in complying with section 64 (whether or not the person was able to comply with the subpoena).

Persons under restraint

64.(1) Service of a subpoena under this Subdivision on a person under restraint does not relieve the person of an obligation imposed by or under a law of a State on the person because the person is a person under restraint.

(2) Subject to subsection (3), action may not be taken against a person under restraint in respect of failure to comply with a subpoena served on the person under this Subdivision if:

- (a) by leaving, or remaining outside, the State in which the person is under restraint, or a particular place in the State, in order to comply with the subpoena, the person might breach a restriction, or be unable to comply with an obligation, imposed on the person by or under the order or restriction to which the person is subject; and
- (b) as soon as practicable after being served with the subpoena, the person:
 - (i) has informed the person's supervisor of the service of the subpoena; and
 - (ii) has informed the person (if any) at whose request the subpoena was issued, and the tribunal of issue, of the restriction or obligation; and
- (c) unless the law of the State does not permit the restriction or obligation to be varied so as to allow the person to comply with the subpoena—the person has taken such steps as are, in all the circumstances (including, in particular, the time left for compliance), reasonable to have the restriction or obligation varied so as to allow the person so to comply; and
- (d) the person does not succeed in the steps (if any) taken by the person in order to have the restriction or obligation varied in time reasonably to allow compliance with the subpoena; and
- (e) the person has, as soon as practicable, informed the person (if any) at whose request the subpoena was issued, and the tribunal of issue:
 - (i) of any steps the person took in an attempt to have the

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restriction or obligation varied, and that the restriction or obligation has not been varied; or

(ii) that the law of the State does not permit such a variation; as the case requires.

(3) Subsection (2) does not apply to action taken under this Act in relation to failure to comply with the subpoena.

(4) The reference in subparagraph (2)(b)(i) to the supervisor of a person under restraint is a reference to:

- (a) if the person under restraint is on bail subject to a condition that he or she periodically reports to the police—any police officer at the police station at which he or she is required to report; or
- (b) if the person under restraint is on bail subject to a condition that he or she periodically reports to an officer of a correction service of a State—that officer; or
- (c) in any other case—the person who, under a law of a State or the order of a court, supervises compliance with the order or restriction to which the person under restraint is subject. .

(5) A reference in subsection (2) to varying a restriction or obligation so as to allow a person to comply with a subpoena includes a reference to giving a consent or permission so as to allow the person so to comply.

Issue of warrants for non-compliance with subpoenas

65.(1) If a person (other than a person under restraint) served with a subpoena under this Subdivision fails to comply with the subpoena, a tribunal of or magistrate in the place of issue of the subpoena may issue such warrant as the tribunal or magistrate might have issued had the subpoena been served in its place of issue.

(2) If a person under restraint served with a subpoena under this Subdivision fails to comply with the subpoena, a tribunal that or magistrate who could have issued a warrant under subsection (1) if the person were not a person under restraint may issue a warrant to have the person apprehended and brought before the tribunal that issued the subpoena to give evidence, or produce a document or thing, or both.

(3) If a person under restraint served with a subpoena under this Subdivision fails to comply with the subpoena and also fails to comply with section 64, a tribunal of or magistrate in the place of issue of the subpoena may, as an alternative to issuing a warrant under subsection (2), issue such warrant as the tribunal or magistrate might have issued had the subpoena been served in its place of issue.

Subdivision B—Service of subpoenas addressed to persons in prison

Application of Subdivision

66. This Subdivision applies to a subpoena that:

- (a) has been issued by a tribunal in connection with the performance of an adjudicative function by the tribunal; and
- (b) is addressed to a person (in this Subdivision called the “prisoner”) who:
 - (i) is in prison in a State other than the place of issue; and
 - (ii) is required to attend before the tribunal for the purpose of complying with the subpoena.

Order for production

67.(1) A court of a State in which a subpoena is issued may order that the prisoner be produced at the time and place specified in the subpoena as the time and place at which compliance with the subpoena is required.

(2) The court may make an order only if it is satisfied that:

- (a) the giving of the evidence that the prisoner is likely to give, or the production of a document or thing specified in the subpoena, is necessary in the interests of justice; and
- (b) there will be enough time:
 - (i) for compliance with the order; and
 - (ii) to permit the making of applications under sections 71 and 72.

(3) Before making an order the court may:

- (a) require the person (if any) at whose request the subpoena was issued to give such security as the court specifies for ensuring compliance with any obligations under section 73; and
- (b) stay the proceeding for the making of the order until the security is given.

(4) An order:

- (a) may be made subject to specified conditions; and
- (b) must be addressed to the custodian of the prisoner.

(5) In this section:

“court” means:

- (a) in any case—a person who:
 - (i) is a magistrate or a judge; and
 - (ii) is a member of, or constitutes, the tribunal that issued the subpoena; or
- (b) if the subject matter of the proceeding to which the subpoena relates has a monetary value or concerns a claim for payment of money:

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- (i) the court that would have jurisdiction to the extent of that monetary value or the amount claimed; or
- (ii) where there is more than one such court—the court of more limited jurisdiction; or
- (c) if the subject matter of the proceeding does not have a monetary value and does not concern a claim for payment of money—a judge of any court, or a magistrate, of the place of issue of the subpoena.

Service of order for production

68.(1) Subject to any conditions specified under paragraph 67(4)(a), the order for production and the subpoena, or a copy of both the order and the subpoena, must be served on the custodian of the prisoner, together with a copy, or a further copy, of both the order and the subpoena for service on the prisoner.

(2) Service of the order for production and subpoena must be effected in the same way as service of a subpoena in the place of issue.

(3) Service of the order for production and subpoena is effective only if the subpoena contains an address for service of the person (if any) at whose request the subpoena was issued.

(4) The custodian, or, if more than one person is the custodian of the prisoner, any such custodian, must comply with the order for production even if that custodian:

- (a) is not the person named in the order as the custodian of the prisoner; or
- (b) is not the custodian who was served with the order for production and subpoena.

(5) As soon as practicable after receiving the order for production and subpoena, the custodian must serve a copy of the order and a copy of the subpoena on the prisoner.

(6) If:

- (a) the copies are so served; and
- (b) the prisoner is released from prison at a time sufficiently prior to the date for compliance with the subpoena to make compliance with the subpoena reasonably practicable;

then:

(c) the prisoner:

- (i) is taken to have been served with the subpoena under section 58; and
- (ii) subject to paragraph 70(2)(b), is required to comply with the subpoena; and

(d) sections 63, 64 and 65 apply in relation to the subpoena as if it had been issued under Subdivision A of this Division; and

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(e) section 64 so applies as if the subpoena had been served on the day of release.

(7) The custodian need not comply with the order for production if the person to whom the subpoena is addressed is released from prison before the time for compliance.

Information to be provided

69. Service of the subpoena is effective only if copies of such notices as are prescribed are attached to the subpoena, or copy of the subpoena, served.

Expenses

70.(1) Service of the order for production is effective only if, at the time of service or at some other reasonable time before the date for compliance with the order, there are paid or tendered to the custodian the allowances and travelling expenses that would have been required under section 60 to have been paid or tendered to the prisoner if he or she were not in prison.

(2) If, before the time for compliance with the order for production, the person to whom the order relates is released from prison:

- (a) the custodian, or a person acting on his or her behalf, must, as soon as practicable, pay or tender to the person the allowances and travelling expenses paid or tendered to the custodian under subsection (1); and
- (b) the person is not required to comply with the subpoena to which the order relates unless the allowances and travelling expenses were paid or tendered to the person, by the custodian or another person, no later than a reasonable time after the time when the person ceased to be in prison.

Application for relief from subpoena

71.(1) This section applies if the prisoner has a right under the law of the place of issue to apply to the tribunal or a court to set aside or obtain other relief in respect of the subpoena.

(2) Without limiting the ways in which, under the law of the place of issue, the application may be made, it may be made by transmitting the application to the tribunal or court by fax.

(3) Within 24 hours after making the application, the prisoner must cause a copy of the application to be served on the person (if any) at whose request the subpoena was issued at the person's address for service.

(4) For the purposes of calculating the 24 hour period, a day that is:

- (a) a Saturday; or

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(b) a Sunday; or

(c) a public holiday or bank holiday in the place in which the application is to be served;

does not count.

(5) Without limiting the ways in which, under the law of the place of issue, service may be effected, it may be effected by transmitting the copy to that address by fax.

(6) The tribunal or court may determine the application without a hearing unless the prisoner, or the person (if any) at whose request the subpoena was issued, objects.

(7) For the purposes of determining the application, the tribunal or court may hold a hearing by video link or telephone.

(8) A person who is entitled to practise as a barrister, solicitor or both before a court in:

(a) the place of issue of the subpoena; or

(b) another State in which a person is participating in the hearing by video link or telephone;

has a right of audience before the tribunal or court at the hearing.

(9) If the tribunal or court sets aside or grants other relief in respect of the subpoena, it is to make any necessary consequential order in respect of the order for production.

Application for relief from order for production

72.(1) Subject to subsection (2), a court may, on the application of the custodian or the prisoner, set aside or vary the order for production.

(2) The prisoner may only make an application on the ground that compliance with the order would have a substantial detrimental effect on his or her health or safety.

(3) The application must be made to a court that could have made the order.

(4) Without limiting the ways in which, under the law of the place of issue, the application may be made, it may be made by transmitting the application to the court by fax.

(5) Within 24 hours after making the application, the applicant must cause copies of the application to be served:

(a) on the person (if any) at whose request the subpoena was issued at the person's address for service; and

(b) if the applicant is the custodian—on the prisoner; and

(c) if the applicant is the prisoner—on the custodian.

(6) For the purposes of calculating the 24 hour period, a day that is:

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- (a) a Saturday; or
- (b) a Sunday; or
- (c) a public holiday or bank holiday in the place in which the application is to be served;

does not count.

(7) Without limiting the ways in which, under the law of the place of issue, service on the person under paragraph (5)(a) may be effected, it may be effected by transmitting the copy to that address by fax.

(8) Without limiting the matters that the court may take into account in determining the application, the court is to take into account:

- (a) public safety; and
- (b) the prisoner's health and safety.

(9) The court may determine the application without a hearing unless the custodian, the prisoner, or the person (if any) at whose request the subpoena was issued, objects.

(10) For the purposes of determining the application, the court may hold a hearing by video link or telephone.

(11) A person who is entitled to practise as a barrister, solicitor or both before a court in:

- (a) the place of issue of the subpoena; or
- (b) another State in which a person is participating in the hearing by video link or telephone;

has a right of audience before the court at the hearing.

(12) If the court sets aside or varies the order for production, it is to make any necessary consequential order in respect of the subpoena.

(13) In this section:

“court” has the same meaning as in section 67.

Entitlement to expenses

73.(1) A person who has incurred reasonable expenses as a result of compliance (by that person or another person) with the order for production is entitled to be paid an amount equal to those expenses.

(2) The amount must be paid:

- (a) if the court that made the order for production orders a person to pay the amount—by that person; or

(b) in any other case:

- (i) if the subpoena was issued at the request of a party to the proceeding to which the subpoena relates—by that party; or
- (ii) if it was issued by the tribunal of its own motion—by the State in which the subpoena was issued.

Custody of prisoner etc.

74.(1) The custodian of the prisoner, and any escort of the prisoner arranged by the custodian, have:

- (a) custody of the prisoner; and
- (b) while the prisoner is outside the State in which he or she was in prison—the same powers of detention and disposition of the prisoner as the custodian has in relation to the prisoner in that State; and
- (c) power to do such things as are necessary to ensure that the prisoner is:
 - (i) produced in compliance with the order; and
 - (ii) afterwards returned to the prison in which the prisoner was in prison.

(2) Without limiting subsection (1), the custodian or the escort may, in any State, require that a person in charge of a prison in the State:

- (a) receive the prisoner and keep the prisoner in custody for such time as the custodian or the escort requires; and
- (b) surrender custody of the prisoner to the custodian or the escort at the time and in the way that the custodian or the escort requires.

(3) The person so required must comply with such requirements as are reasonable.

(4) Subject to any conditions specified in writing by the custodian as conditions to be complied with while the prisoner is outside the State in which he or she was in prison, the law in force in the State that relates to the liability of a person who escapes from lawful custody applies to the prisoner while the prisoner is outside the State for the purposes of compliance with the order for production.

(5) Subsection (4) does not apply to lawful custody in respect of an offence against a law of the Commonwealth.

(6) A person who is serving a sentence of imprisonment in a State is taken to be serving that sentence while the person is outside the State for the purposes of compliance with the order for production so long as the person remains in the custody of the custodian or escort, or in custody arranged by the custodian or escort.

Division 4—Service of subpoenas in the performance of investigative functions

Subdivision A—Service of subpoenas generally

Application of Subdivision

75. This Subdivision applies to a subpoena that:

- (a) has been issued by a tribunal in connection with the performance of an investigative function by the tribunal; and

- (b) is addressed to a person:
 - (i) who is not in prison; or
 - (ii) who is in prison but who need not attend before the tribunal for the purpose of complying with the subpoena.

Order for leave

76.(1) The Supreme Court of a State in which a subpoena is issued may, on application, give leave to serve the subpoena outside the State.

- (2) The court may give leave only if it is satisfied that:
 - (a) the evidence likely to be given by the person to whom the subpoena is addressed, or a document or thing specified in the subpoena, is relevant to the performance by the tribunal of the investigative function concerned; and
 - (b) if the evidence, document or thing may constitute or contain evidence that relates to matters of state—it is in the public interest that the evidence be given or the document or thing be produced.
- (3) In granting an application, the court:
 - (a) is to impose a condition that the subpoena not be served after a specified day; and
 - (b) may impose other conditions.

Application of other provisions

77.(1) Subject to this section, sections 58 to 65 (inclusive) (other than subsection 63(2)) apply to the subpoena as if the investigative function concerned were an adjudicative function.

(2) Any right referred to in subsection 61(1) (as that subsection applies in relation to the subpoena because of this section) that the person served with the subpoena has to apply to set aside or obtain other relief in respect of the subpoena may only be exercised by making any such application to the Supreme Court of the State in which the subpoena was issued.

(3) An amount payable to a person under subsection 63(1) (as that subsection applies in relation to the subpoena because of this section) must be paid by the State in which the subpoena was issued.

Subdivision B—Service of subpoenas addressed to persons in prison

Application of Subdivision

- 78.** This Subdivision applies to a subpoena that:
- (a) has been issued by a tribunal in connection with the performance of an investigative function by the tribunal; and
 - (b) is addressed to a person (in this Subdivision called the “prisoner”) who:

- (i) is in prison in a State other than the place of issue; and
- (ii) is required to attend before the tribunal for the purpose of complying with the subpoena.

Order for production

79.(1) The Supreme Court of a State in which a subpoena is issued may, on application, order that the prisoner be produced at the time and place specified in the subpoena as the time and place at which compliance with the subpoena is required.

- (2) The court may make an order only if it is satisfied that:
 - (a) the evidence likely to be given by the prisoner, or a document or thing specified in the subpoena, is relevant to the performance by the tribunal of the investigative function concerned; and
 - (b) if the evidence, document or thing may constitute or contain evidence that relates to matters of state—it is in the public interest that the evidence be given or the document or thing be produced.
- (3) An order:
 - (a) may be made subject to specified conditions; and
 - (b) must be addressed to the custodian for the time being of the prisoner.

Application of other provisions

80.(1) Subject to this section, sections 68 to 74 (inclusive) (other than subsections 72(3) and (13) and 73(2)) apply to the subpoena, and to an order for production made in connection with the subpoena, as if the investigative function concerned were an adjudicative function.

(2) Any right referred to in subsection 71(1) (as that subsection applies in relation to the subpoena because of this section) that the person served with the subpoena has to apply to set aside or obtain other relief in respect of the subpoena may only be exercised by making any such application to the Supreme Court of the State in which the subpoena was issued.

(3) An application under subsection 72(1) (as that subsection applies in relation to the order for production because of this section) must be made to the Supreme Court of the State in which the subpoena was issued.

(4) An amount payable to a person under subsection 73(1) (as that subsection applies in relation to the order for production because of this section) must be paid by the State in which the subpoena was issued.

PART 5—EXECUTION OF WARRANTS

Division 1—General

Application of Division

- 81.** This Division applies in relation to all warrants other than:
- (a) warrants issued by tribunals; and
 - (b) warrants issued under Part 7.

Persons subject to warrants may be apprehended

82.(1) Subject to subsection (2), the person named in a warrant issued in a State may be apprehended in another State.

(2) This section does not apply in relation to a person who is in prison.

(3) The person may be apprehended by:

- (a) an officer of the police force of the State in which the person is found; or
- (b) the Sheriff of that State, or any of the Sheriff's officers; or
- (c) a member of the Australian Federal Police.

(4) It is not necessary to produce the warrant when the person is apprehended.

(5) Even though a person has been released under subsection 83(3), (4) or (7), the person may be re-apprehended under the same warrant.

(6) The warrant or a copy of the warrant must be produced when the person is re-apprehended.

Procedure after apprehension

83.(1) As soon as practicable after being apprehended, the person is to be taken before a magistrate of the State in which the person was apprehended.

(2) The warrant or a copy of the warrant must be produced to the magistrate if it is available.

(3) If the warrant or a copy of the warrant is not produced, the magistrate may:

- (a) order that the person be released; or
- (b) adjourn the proceeding for such reasonable time as the magistrate specifies and remand the person on bail or in such custody as the magistrate specifies.

(4) If the warrant or a copy of the warrant is not produced when the proceeding resumes, the magistrate may:

- (a) order that the person be released; or
- (b) if reasonable cause is shown, adjourn the proceeding for such

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further reasonable time as the magistrate specifies and remand the person on bail or in such custody as the magistrate specifies.

(5) The total time of the adjournments referred to in paragraphs (3)(b) and (4)(b) must not exceed 5 days.

(6) The magistrate may resume the proceeding at any time before the end of a period of adjournment if the warrant or a copy of the warrant becomes available.

(7) If the warrant or a copy of the warrant is not produced when the proceeding resumes after the further adjournment, the magistrate must order that the person be released.

(8) Subject to subsections (10) and (14) and section 84, if the warrant or a copy of the warrant is produced, the magistrate must order:

- (a)** that the person be remanded on bail on condition that the person appear at such time and place in the place of issue of the warrant as the magistrate specifies; or
- (b)** that the person be taken, in such custody or otherwise as the magistrate specifies, to a specified place in the place of issue of the warrant.

(9) The order may be subject to other specified conditions.

(10) The magistrate must order that the person be released if the magistrate is satisfied that the warrant is invalid.

(11) The magistrate may suspend an order made under paragraph (8)(b) for a specified period.

(12) On suspending the order, the magistrate must order that the person be remanded:

- (a)** on bail; or
- (b)** in such custody as the magistrate specifies;

until the end of that period.

(13) An order of a magistrate under this section may be executed according to its tenor.

(14) For the purposes of a proceeding under this section:

- (a)** the magistrate may adjourn the proceeding and remand the person on bail, or in such custody as the magistrate specifies, for the adjournment; and
- (b)** the magistrate is not bound by the rules of evidence; and
- (c)** it is not necessary that a magistrate before whom the proceeding was previously conducted continue to conduct the proceeding.

(15) Nothing in this section affects the operation of Part IC of the *Crimes Act 1914*.

Additional provisions relating to persons under restraint

84.(1) If a person is taken before a magistrate under section 83, the magistrate must, before dealing with the matter, make reasonable enquiries of the person to ascertain whether he or she is a person under restraint.

(2) If the person informs the magistrate that he or she is on bail, the magistrate must, before dealing with the matter, make reasonable enquiries of the person to ascertain the reporting requirements (if any) to which the person is subject.

(3) The person must not:

- (a) fail to answer the magistrate's enquiries under subsection (1) or (2); or
- (b) knowingly give a false or misleading answer to any of those enquiries.

Penalty: \$3,000.

(4) If the person under restraint is not on bail:

(a) the magistrate must:

- (i) adjourn the proceeding for such reasonable time, not exceeding 7 days, as the magistrate specifies; and
- (ii) remand the person:
 - (A) on bail on condition that the person appear when the proceeding resumes; or
 - (B) in such custody as the magistrate specifies for the time of the adjournment; and
- (iii) as soon as practicable after the adjournment, cause notice of the person's apprehension to be given, by telephone or fax, to the person in charge of the correction service of the State in which the person is under restraint; and

(b) when the proceeding resumes:

- (i) the person so informed; and
- (ii) a supervisor of the person under restraint; may make submissions to the magistrate.

(5) If the person under restraint is on bail, the magistrate may, on the application of:

- (a) any officer of the police force of any State; or
- (b) any member of the Australian Federal Police; or
- (c) the person under restraint;

adjourn the proceeding for such reasonable time, not exceeding 7 days, as the magistrate specifies.

(6) If the magistrate adjourns the proceeding under subsection (5):

- (a) he or she must:
 - (i) remand the person under restraint:

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- (A) on bail on condition that the person appear when the proceeding resumes; or
 - (B) in such custody as the magistrate specifies for the time of the adjournment; and
 - (ii) if the person is subject to a requirement to report to an officer of a correction service of a State—as soon as practicable after the adjournment, cause notice of the person’s apprehension to be given, by telephone or fax, to the person in charge of that correction service; and
 - (iii) if the person is subject to a requirement to report to the police in a State other than the State in which he or she is apprehended—as soon as practicable after the adjournment, cause notice of the person’s apprehension to be given, by telephone or fax, to a police officer at the police station at which the person is required to report; and
- (b) when the proceeding resumes:
- (i) the person’s supervisor; and
 - (ii) any officer of the police force of any State; and
 - (iii) any member of the Australian Federal Police;
- may make submissions to the magistrate.

(7) If a person under restraint who is named in a warrant is remanded on bail under an order made under paragraph 83(8)(a), it is a condition to which the grant of bail is subject that the person must return as soon as practicable to the State in which he or she was under restraint.

(8) Where an order is made under paragraph 83(8)(b) in relation to a person under restraint, a magistrate may make orders relating to the return of the person, in such custody or otherwise as the magistrate specifies, to the State in which he or she was under restraint.

(9) The regulations may provide that, for the purposes of this section, the holder of a specified office in a State is taken to be the person in charge of the correction service of the State.

(10) In this section:

“**supervisor**”, in relation to a person under restraint, means a person who, under the law of a State or the order of a court, supervises compliance with the order or restriction to which the person under restraint is subject.

Procedure on remand on bail

85.(1) If a magistrate has made an order under paragraph 83(8)(a) or (12)(a), the magistrate must prepare, or cause to be prepared, an instrument setting out the conditions to which the grant of bail is subject.

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(2) The instrument must be signed by:

- (a) the magistrate, or the person who prepared the instrument; and
- (b) the person who is the subject of the order.

(3) The person, and the court, authority, tribunal or person before which or whom the person has been remanded to appear, must each be given a copy of the instrument.

(4) The magistrate must revoke the order and make an order under paragraph 83(8)(b) or (12)(b) if the person:

- (a) refuses to sign the instrument; or
- (b) does not comply with a condition to which the grant of bail is subject and that condition is a condition precedent to the person's release on bail.

Review

86.(1) If an order has been made under section 83, the apprehended person or a person to whom the warrant was directed may apply to the Supreme Court of the State in which the order was made for review of the order.

(2) The application must be made within 7 days after the making of the order.

(3) The respondent is to be:

- (a) if the application is made by the apprehended person—the Commissioner of the police force of the State in which the person was apprehended; or
- (b) if the application is made by a person to whom the warrant was directed—the apprehended person.

(4) Service of the notice of application on the respondent must be effected in the same way as service of a notice of an appeal to the Supreme Court of the State in a criminal proceeding.

(5) If, under the order, the apprehended person is remanded on bail, notice of the application must be served in the same way on any person providing surety for the granting of the bail.

(6) The Supreme Court may, pending its review:

- (a) stay the execution of the order; and
- (b) order the person to be remanded on bail or in such custody as the Supreme Court specifies.

(7) The review is to be by way of rehearing.

(8) The Supreme Court may confirm, vary or revoke the order.

(9) If the order is revoked, the Supreme Court may make a new order.

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(10) The Supreme Court may suspend an order for a specified period if it is an order of a kind that a magistrate may suspend under section 83.

(11) The order as confirmed or varied, or the new order, may be executed according to its tenor.

(12) If the order as confirmed or varied, or the new order, is an order that is similar to an order mentioned in paragraph 83(8)(a):

- (a) the Supreme Court must cause an instrument of the type mentioned in subsection 85(1) to be prepared; and
- (b) subject to subsection (13), subsections 85(2), (3) and (4) apply.

(13) For the purposes of paragraph (12)(b):

- (a) the reference in paragraph 85(2)(a) to a magistrate is taken to be omitted; and
- (b) the reference in subsection 85(4) to a magistrate is a reference to the Supreme Court.

(14) For the purposes of a review under this section, the Supreme Court of a State is not bound by the rules of evidence.

Entitlement to expenses

87.(1) This section applies to a warrant issued for the purpose of having a person attend before a court, authority or person to give evidence or produce a document or thing.

(2) Subject to subsection (3), a person who has incurred reasonable expenses as a result of compliance (by that person or another person) with:

- (a) an order of a magistrate under subsection 83(8) in relation to a person brought before the magistrate under a warrant to which this section applies; or
- (b) an order of that kind made by the Supreme Court of a State under section 86;

is entitled to payment, from the person at whose request the warrant was issued, of an amount equal to those expenses.

(3) Subsection (2) does not apply if:

- (a) the warrant was issued because of a person's failure to comply with a subpoena; and
- (b) that person:
 - (i) is not a person under restraint; or
 - (ii) is a person under restraint who has failed to comply with section 36.

(4) The court or authority that issued the warrant may make orders to ensure that the person who incurred those expenses receives the exact amount of those expenses.

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(5) If the warrant was issued by a court, the orders may be made by an officer of the court if the rules governing the procedure of the court so provide.

Law applicable to grant etc. of bail

88.(1) Despite subsection 68(1) of the *Judiciary Act 1903*, the law of a State with respect to the granting of bail applies in relation to a power under this Division to grant bail to:

- (a) a person apprehended in that State; or
- (b) a person who has applied in that State for an order under section 90;

as if the person had been apprehended under, or by authority of, a law of that State.

(2) The law of a State with respect to bail and matters related to bail (including enforcement of bail) applies in relation to a person who has been remanded on bail in that State under this Division as if the person had been remanded on bail to appear before a court of that State.

(3) Money received in proceedings for the enforcement of bail is to be retained by the State in which the bail condition, the breach of which lead to the proceedings being brought, was imposed.

Custody of persons etc.

89.(1) For the purpose of complying with an order made under paragraph 83(8)(b), or an order confirmed, varied or made under section 86 that is similar to an order mentioned in that paragraph, the person to whom the custody of the apprehended person has been committed may require that the person in charge of a prison in a State:

- (a) receive the apprehended person and keep the apprehended person in custody for such time as the first-mentioned person requires; and
- (b) surrender custody of the apprehended person to the first-mentioned person at the time and in the way that the first-mentioned person requires.

(2) The person so required must comply with such requirements as are reasonable.

(3) An apprehended person who is a person under restraint and who is serving a period of home detention or a term of imprisonment by way of periodic detention is taken to be serving that period of home detention or term of imprisonment:

- (a) during the period commencing when the person is apprehended under section 82 and ending when the person is first taken before a magistrate under section 83; and
- (b) during any period during which the person is in custody under

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an order made under paragraph 83(3)(b), (4)(b), (8)(b) or (12)(b), paragraph 86(6)(b) or subsection 86(9).

(4) The law in force in the place of issue of a warrant, being the law relating to the liability of a person who escapes from lawful custody, applies to a person being taken to the place of issue in compliance with an order mentioned in subsection (1).

(5) Subsection (4) does not apply to lawful custody in respect of an offence against a law of the Commonwealth.

(6) A reference in this section to an order made under paragraph 83(8)(b) includes a reference to an order made under subsection 84(8) that relates to the first-mentioned order.

Release of persons unnecessarily detained

90.(1) This section applies to a person who has been taken in custody, pursuant to an order made, confirmed or varied under this Division, to the place of issue of a warrant for the purpose of giving evidence or producing a document or thing.

(2) The person may apply to the court of issue, or authority of issue, of the warrant for an order that he or she be released from custody.

(3) The respondent is to be the person at whose request the warrant was issued.

(4) Notice of the application must be served on the respondent:

- (a) personally; or
- (b) by sending it by post to his or her address for service in the proceeding in relation to which the warrant was issued; or
- (c) by sending it by fax to that address; or
- (d) by leaving a copy of the application at that address.

(5) The court of issue, or authority of issue, of the warrant may order that the person be released from custody if it is satisfied that it is not necessary for the person to be held in custody in order to secure his or her attendance to give the evidence or produce the document or thing.

(6) Upon such an order being made, the person is to be released.

(7) The court of issue, or authority of issue, of the warrant may further order that the person be remanded on bail on condition that he or she appear, at a specified time or day, before the court, authority, tribunal or person to which the evidence is to be given or the document or thing is to be produced.

Division 2—Execution of warrants issued by tribunals

Application of Division

91. This Division applies in relation to warrants that have been issued by a tribunal in connection with:

- (a) the performance of an adjudicative function by the tribunal; or
- (b) the performance of an investigative function by the tribunal.

Application of Division 1 to certain warrants issued by tribunals

92.(1) Subject to this Division, Division 1 (other than section 81 and subsections 87(4) and (5)) applies to a warrant issued by a tribunal if:

- (a) the warrant was issued because of non-compliance with a subpoena in relation to which leave has been given under section 57 or 76; or
- (b) the Supreme Court of the place of issue of the warrant (not being a warrant mentioned in paragraph (a)) makes an order under section 93.

(2) For the purposes of the application of Division 1 in relation to a warrant referred to in paragraph (1)(a), the requirement under subsection 82(6) or section 83 to produce the warrant or a copy of the warrant (as that section applies to the warrant because of this section) includes a requirement to produce a copy of the instrument by which leave was given under section 57 or 76.

(3) For the purposes of the application of Division 1 in relation to a warrant referred to in subsection (1):

- (a) references in section 87 to a court, authority or person are taken to be references to a tribunal; and
- (b) the reference in paragraph 87(3)(b) to section 36 is taken to be a reference to section 64; and
- (c) references in section 90 to the court of issue, or authority of issue, of the warrant are taken to be references to the Supreme Court of the place of issue of the warrant.

Orders for the execution of warrants

93.(1) The Supreme Court of the place of issue of a warrant (not being a warrant mentioned in paragraph 92(1)(a)) may, on application, make an order authorising the apprehension of the person named in the warrant.

(2) If the warrant was issued:

- (a) for the purpose of bringing the person before the tribunal to give evidence, or to produce a document or thing; and
- (b) in connection with the performance of an adjudicative function by the tribunal;

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the court may make an order only if it is satisfied that the giving of the evidence likely to be given by the person, or the production of a document or thing specified in the warrant, is necessary in the interests of justice.

(3) If the warrant was issued:

- (a) for the purpose of bringing the person before the tribunal to give evidence, or to produce a document or thing; and
- (b) in connection with the performance of an investigative function of the tribunal;

the court may make an order only if it is satisfied that:

- (c) the evidence likely to be given by the person, or a document or thing specified in the warrant, is relevant to the performance by the tribunal of the investigative function; and
- (d) if the evidence, document or thing may constitute or contain evidence that relates to matters of state—it is in the public interest that the evidence be given or the document or thing be produced.

(4) An order may be subject to specified conditions.

(5) The application of Division 1 to the warrant is subject to the conditions (if any) to which the order is subject.

(6) The requirement under section 83 to produce the warrant or a copy of the warrant (as that section applies in relation to the warrant because of this Division) includes a requirement to produce a copy of the order.

Additional provisions relating to warrants issued in the performance of investigative functions

94.(1) If the warrant was issued in connection with the performance by the tribunal of an investigative function, the respondent under subsection 90(3) (as that subsection applies to the warrant because of this Division) is to be:

- (a) if the tribunal that issued the subpoena to which the order mentioned in subsection 90(1) relates is a body corporate or is constituted by an individual—the tribunal; or
- (b) in any other case—the members of the tribunal.

(2) Subsection 90(4) does not apply to such a warrant.

(3) Notice of the application may be served on the tribunal, or the members of the tribunal:

- (a) by sending it by post to the address of the tribunal's principal office; or
- (b) by sending it by fax to that address; or
- (c) by leaving a copy of the application at that address.

Division 3—Suppression orders

Interpretation

95. In this Division, unless the contrary intention appears:

“apprehended person” means a person apprehended under a warrant;

“protected person” means the person mentioned in paragraph 96(3)(a) as the person charged with the offence mentioned in that paragraph;

“publishing organisation” means a person or body that is in the business of:

(a) publishing newspapers, magazines, periodicals, books or pamphlets; or

(b) broadcasting radio or television programs;

whether or not the business is carried on for profit, and includes a person or body that provides news to a person or body that is in such a business;

“suppression order” means an order made under subsection 96(2) and includes an interim suppression order;

“warrant” means a warrant to which proceedings under section 83 or 86 relate.

Suppression orders

96.(1) This section applies to:

(a) a magistrate conducting a proceeding under section 83; or

(b) the Supreme Court of a State conducting a review under section 86.

(2) The magistrate or Court may, on application, order that a report of:

(a) a part of the proceeding or review held in public; or

(b) a finding publicly made by the magistrate or Court;

is not to be published.

(3) The order is not to be made unless the magistrate or Court is satisfied that the publication of the report would give rise to a substantial risk that:

(a) the fair trial of a person charged with an offence against a law of the Commonwealth or of a State triable by a jury might be prejudiced because of the influence that the publication might exert on the members of the jury; or

(b) either:

(i) a witness in a proceeding (including a pending or contemplated proceeding) before a court, authority or tribunal, or before a person who is authorised to take evidence; or

(ii) a member of the witness’s family; would die or suffer personal injury; or

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- (c) property of such a witness, or property of a member of the witness's family, would be damaged; or
- (d) the prosecution of an offence against a law of the Commonwealth or a State, or a proceeding under a law of the Commonwealth or a State for the recovery of a pecuniary penalty, would be prejudiced; or
- (e) an investigation preparatory to such a prosecution or proceeding would be prejudiced; or
- (f) national security would be prejudiced; or
- (g) if the proceeding concerns an offence of a sexual nature—a victim of the alleged offence would be identified; or
- (h) if the proceeding concerns:
 - (i) the welfare of a child; or
 - (ii) an offence of which a child is a victim; or
 - (iii) an offence alleged to have been committed by a child; the child would be identified.

(4) The magistrate or Court must not, by exercising any other power that the magistrate or Court might have, make an order in the nature of a suppression order for the purpose of preventing or lessening a risk mentioned in subsection (3).

Duration etc. of suppression orders

97.(1) A suppression order made on the ground mentioned in paragraph 96(3)(a) remains in force until:

- (a) it is revoked; or
- (b) the verdict of the jury is given at the trial of the protected person; or
- (c) the protected person is discharged in respect of the offence; or
- (d) a plea of guilty made by the protected person at committal proceedings in respect of the offence, or at the trial of the person, is accepted; or
- (e) the prosecution of the protected person for the offence is discontinued.

(2) A suppression order made on any other ground mentioned in subsection 96(3) remains in force until it is revoked.

(3) A suppression order must specify whether it is to be enforceable in:

- (a) the State in which it is made; or
- (b) in specified States or specified parts of Australia; or
- (c) throughout Australia.

(4) A suppression order may be made subject to specified conditions.

Interim suppression orders

98.(1) The magistrate or Court may make an interim suppression order.

(2) The order may be made without inquiring into the merits of the matter.

(3) The interim suppression order is to have effect until:

- (a) the application for a suppression order is determined; or
- (b) the interim suppression order is revoked.

Variation and revocation of suppression orders

99.(1) A suppression order may be varied or revoked:

- (a) if the suppression order was made by a magistrate conducting a proceeding under section 83—by a magistrate in the State in which the proceeding is or was conducted; and
- (b) if the suppression order was made by the Supreme Court of a State conducting a review under section 86—by the Court.

(2) A suppression order in relation to a protected person may also be varied or revoked by a magistrate or court before which the protected person has appeared or been taken for the purposes of:

- (a) committal proceedings in relation to the offence; or
- (b) the trial of the person for the offence.

(3) Subject to subsection (4), a suppression order must be revoked if the ground or grounds on which the suppression order was made no longer exist.

(4) Even though the ground or grounds on which the suppression order was made no longer exist, the order may be continued if, at the time the order is continued, there are other grounds on which such an order might be made.

(5) A ground on which a suppression order is continued need not have existed when the order was made.

(6) The power to vary or revoke a suppression order may only be exercised on application.

Applications for suppression orders etc.

100.(1) An application for a suppression order on the ground mentioned in paragraph 96(3)(a) may be made by:

- (a) the apprehended person; or
- (b) a person to whom the warrant was directed; or
- (c) a person who satisfies the magistrate or Court that he or she has a special interest in the question whether the suppression order should be made.

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(2) An application for a suppression order on the ground mentioned in paragraph 96(3)(b) or (c) may be made by:

- (a) a party to the proceeding mentioned in paragraph 96(3)(b); or
- (b) a person who is, or is likely to be, a witness in the proceeding; or
- (c) a person or body having responsibility or power under a law of the Commonwealth or a State:
 - (i) to investigate or to bring proceedings in respect of an offence against a law of the Commonwealth or the State; or
 - (ii) to investigate contraventions of a law of the Commonwealth or the State that may give rise to proceedings for the recovery of a pecuniary penalty; or
 - (iii) to bring proceedings under a law of the Commonwealth or the State for the recovery of a pecuniary penalty.

(3) An application for a suppression order on the ground mentioned in paragraph 96(3)(d) or (e) may be made by a person or body having responsibility or power under a law of the Commonwealth or a State:

- (a) to investigate or to bring proceedings in respect of an offence against a law of the Commonwealth or the State; or
- (b) to investigate contraventions of a law of the Commonwealth or the State that may give rise to proceedings for the recovery of a pecuniary penalty; or
- (c) to bring proceedings under a law of the Commonwealth or the State for the recovery of a pecuniary penalty.

(4) An application for a suppression order on the ground mentioned in paragraph 96(3)(f) may be made by the Attorney-General for the Commonwealth.

(5) An application for a suppression order on the ground mentioned in paragraph 96(3)(g) may be made by:

- (a) a victim of the alleged offence mentioned in that paragraph; or
- (b) a parent or guardian of such a victim; or
- (c) a person or body having responsibility or power under a law of the Commonwealth or a State to investigate or bring proceedings in respect of an offence against a law of the Commonwealth or the State; or
- (d) a person to whom the warrant was directed.

(6) An application for a suppression order on the ground mentioned in paragraph 96(3)(h) may be made by:

- (a) the child mentioned in that paragraph; or
- (b) a parent or guardian of the child; or
- (c) a person or body having responsibility or power under a law of a State to bring proceedings concerning the welfare of a child.

(7) An application for the variation or revocation of a suppression order may be made by:

- (a) a person entitled to apply for the suppression order; or
- (b) a publishing organisation; or
- (c) a person who satisfies the magistrate or court that he or she has a special interest in the question whether the order should be varied or revoked.

(8) A person who may apply for a suppression order, or for the variation or revocation of a suppression order, may make a submission to the magistrate or court on the question whether a suppression order should be made, varied or revoked.

(9) The person may make the submission without being joined as a party to the proceeding or review.

(10) The person may call or give evidence in support of the submission.

(11) The magistrate or court may delay a proceeding or review to allow the submission to be made or evidence to be called or given.

Appeals against suppression orders

101.(1) Except as provided by the *Judiciary Act 1903*, an appeal may be made as of right against the decision of a magistrate or court:

- (a) to make a suppression order; or
- (b) not to make a suppression order; or
- (c) to confirm, vary, revoke or continue a suppression order; or
- (d) not to vary or revoke a suppression order.

(2) If the decision is made by a magistrate in a State, the appeal is to be made to the Supreme Court of the State.

(3) Except as provided in this section, no appeal is to be made against a decision or order made under this Division.

(4) The appellate court:

- (a) may confirm or vary the decision, or revoke the decision, whether or not it substitutes another decision; and
- (b) may make orders for costs and deal with any other incidental or ancillary matters.

Institution of appeals

102. The appeal against the decision may be made by:

- (a) if the decision was made on application—the applicant; or
- (b) the apprehended person; or
- (c) a person to whom the warrant was directed; or
- (d) a person who:

- (i) could have applied, but did not apply, for the suppression order; and
 - (ii) satisfies the appellate court that his or her failure to do so was not attributable to a lack of diligence on his or her part; or
- (e) a publishing organisation that:
- (i) made a submission under subsection 100(8); or
 - (ii) did not exercise its right to make such a submission but that satisfies the appellate court that its failure to make such a submission was not attributable to a lack of diligence on its part; or
- (f) a person who made a submission under subsection 100(8); or
- (g) a person who did not exercise his or her right to make a submission under subsection 100(8) but who satisfies the appellate court that:
- (i) he or she has a special interest in the question whether the suppression order should be made, varied or revoked; and
 - (ii) the failure to make such a submission was not attributable to a lack of diligence on his or her part.

Disobedience of suppression orders

103.(1) A person must not fail or refuse to comply with a suppression order.

Penalty: Imprisonment for 12 months.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that:

- (a) he or she did not know of the existence of the suppression order; and
- (b) he or she had made all reasonable inquiries in the circumstances regarding the existence of a suppression order.

(3) A publishing organisation, or an employee or agent of a publishing organisation, is taken not to have made all reasonable inquiries regarding the existence of a suppression order if the organisation, or the employee or agent, as the case requires, has not made inquiries of the magistrate or Court in which the relevant proceedings are being, or were, heard as to whether a suppression order has been made in relation to the proceedings.

PART 6—JUDGMENTS

Interpretation

104. In this Part:

“court of rendition” means:

- (a) in relation to a judgment of a court, the court in which the judgment was given, entered or made; or

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- (b) in relation to a judgment that is an order of a tribunal:
 - (i) if the law of the State in which the tribunal is established provides that the order is enforceable without registration or filing of the order in a court—the tribunal; or
 - (ii) in any other case—the court of that State in which the order is registered or filed;

“enforcement”, in relation to a judgment, includes execution of the judgment;

“place of rendition”, in relation to a judgment, means the State in which is established the court of rendition of the judgment;

“sealed copy”, in relation to a judgment, includes a copy of the judgment that is certified as a true copy by:

- (a) if the court of rendition is a tribunal—a member of the tribunal;
or
- (b) in any other case—a judge, magistrate or registrar of the court of rendition.

Enforcement of judgments

105.(1) Upon lodgment of a sealed copy of a judgment, or a fax of such a sealed copy, the prothonotary, registrar or other proper officer of the appropriate court in a State other than the place of rendition must register the judgment in the court.

(2) Subject to subsection (4), a registered judgment:

- (a) has the same force and effect; and
- (b) subject to sections 106 and 108, may give rise to the same proceedings by way of enforcement;

as if the judgment had been given, entered or made by the court in which it is registered.

(3) If the copy lodged is a fax, a sealed copy of the judgment is to be lodged with the prothonotary, registrar or other proper officer of the court within 7 days (not including any day that is a Saturday, a Sunday or a public holiday or bank holiday in the place at which the fax was lodged) after the fax was lodged.

(4) If the sealed copy of the judgment is not so lodged within the 7 day period, until the sealed copy is lodged with the prothonotary, registrar or other proper officer of the court, a proceeding to enforce the judgment is not to be commenced or continued without the leave of the court.

(5) A judgment is capable of being enforced in or by a court of a State in which it is registered only if, and to the extent that, at the time when the proceeding for enforcement is or is to be taken, the judgment is capable of being enforced in or by:

- (a) the court of rendition; or
- (b) a court in the place of rendition.

(6) In this section:

“**appropriate court**”, in relation to a State other than the place of rendition of a judgment, means:

- (a) if the court of rendition is the Supreme Court of the place of rendition—the Supreme Court of the first-mentioned State; or
- (b) in any other case:
 - (i) the court of the first-mentioned State (including, if applicable, the Supreme Court of that State) in or by which relief as given by the judgment could have been given; or
 - (ii) if there is more than one such court—the court of more limited jurisdiction; or
 - (iii) if there is no such court—the Supreme Court of the first-mentioned State.

Stay may be granted

106.(1) A court of a State in which a judgment has been registered under subsection 105(1) may, on application by a person against whom the judgment has been given, entered or made, order that proceedings in that court by way of enforcement of the judgment:

- (a) not be commenced until a specified time; or
- (b) be stayed for a specified period.

(2) The order:

- (a) must be made subject to conditions that:
 - (i) within the period specified in the order, the person make and prosecute an appropriate application for relief in respect of the judgment; and
 - (ii) the application be prosecuted in an expeditious manner; and
- (b) may be made subject to such other conditions, including conditions as to the giving of security, as the court thinks fit.

(3) For the purposes of paragraph (2)(a), an appropriate application for relief is an application to set aside, vary or appeal against the judgment, being an application made to a court or tribunal that has jurisdiction under the law in force in the place of rendition to grant the application.

Costs

107.(1) The following are recoverable in proceedings by way of enforcement of a judgment that is registered under subsection 105(1):

- (a) the reasonable costs and expenses of, and incidental to, obtaining and lodging the copy of the judgment; and
- (b) the costs and expenses reasonably incurred in attempting to

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execute the judgment in the court of rendition or in another State.

(2) The entitlement of a person to, and the liability of a person for, the costs or expenses of and incidental to such proceedings are the same as they are in proceedings by way of enforcement of:

- (a) a similar judgment given, entered or made by the court in which the judgment is registered under subsection 105(1); or
- (b) if there is no such similar judgment—the most closely analogous judgment given, entered or made by that court.

Interest

108. Interest on the amount of a judgment that is registered under subsection 105(1):

- (a) is payable at the same rate or rates and in respect of the same period or periods as would be applicable in the court of rendition; and
- (b) is recoverable to the extent that the judgment creditor satisfies the court in which proceedings by way of enforcement of the judgment are taken as to the amount of the interest.

Rules of private international law not to apply

109. If a judgment is registered in a court of a State under subsection 105(1), the courts of the State must not, merely because of the operation of a rule of private international law, refuse to permit proceedings by way of enforcement of the judgment to be taken or continued.

PART 7—ENFORCEMENT OF FINES IMPOSED BY COURTS OF SUMMARY JURISDICTION

Interpretation

110.(1) In this Part, unless the contrary intention appears:

“**clerk**”, in relation to a court, means the clerk or other proper officer of the court;

“**court**” means a court of a State having jurisdiction in relation to the summary trial of all or any offences under the law of the State;

“**discharged**”, in relation to a fine or part of a fine, means discharged because of a payment, remission or pardon, or otherwise;

“**fine**” means a pecuniary penalty imposed by a court for an offence against a law of the Commonwealth (other than a revenue law) or of a State, together with any amount (including an amount of costs, compensation or revenue charges) that the person on whom the fine was imposed was ordered to pay by the court in the proceedings in which the fine was imposed;

“**police officer**” means a member or special member of the Australian Federal Police or a member of the police force of a State;

“revenue law” means a law of the Commonwealth relating to taxation (including duties) that contains special provisions with respect to imprisonment for non-payment of penalties;

“warrant of apprehension” means a warrant issued under section 112 for the apprehension of a person;

“warrant of commitment” means a warrant issued under section 117 for the commitment of a person to prison.

(2) A reference in this Part to a fine, in relation to a fine in respect of part only of which a warrant of apprehension has been issued, is a reference to that part only of the fine.

Constitution of courts

111. The jurisdiction of a court for the purposes of this Part may be exercised by the court constituted by any person (other than a single justice of the peace sitting as such) or persons competent to exercise the jurisdiction of the court in any other matter.

Issue of warrants of apprehension

112.(1) This section applies if:

- (a) a court of a State has, whether before or after the commencement of this Act, imposed a fine on a person; and
- (b) the liability of the person to pay the fine has not been fully discharged; and
- (c) the amount owing in respect of the fine is or includes an amount because of the non-payment of which a warrant for the commitment to prison of the person on whom the fine was imposed:
 - (i) has been issued and is subsisting; or
 - (ii) could be issued without further order of a court.

(2) If:

- (a) the clerk of the court by which the fine was imposed; or
- (b) a justice of the peace for that State who has power to issue warrants under the law of the State;

has reason to believe that the person on whom the fine was imposed may be in a State other than that State, the clerk or justice may issue a warrant for the apprehension of the person because of the non-payment of the amount referred to in paragraph (1)(c).

(3) The warrant of apprehension must be substantially in accordance with the prescribed form.

(4) If the person’s liability to pay the fine is fully discharged after the warrant of apprehension has been issued and before it is executed, the clerk of the court by which the fine was imposed may take such steps as he or she considers necessary to withdraw the warrant.

Execution of warrant of apprehension

113.(1) The person in respect of whom a warrant of apprehension has been issued may be apprehended by an officer of the police force of the State in which the person is found (not being the State in which the warrant was issued).

(2) The police officer must give the person an opportunity of paying to the police officer without delay the whole of the unpaid amount of the fine as specified in the warrant.

(3) If the person pays the whole amount without delay, the police officer is not to apprehend the person.

(4) Within 7 days after being paid the whole amount, the police officer must cause to be sent to the clerk of the court by which the fine was imposed that amount together with:

- (a) if the police officer is in possession of the warrant—the warrant;
or
- (b) if the police officer is in possession of a copy of the warrant—that copy.

(5) The Commissioner of the police force of which the police officer is a member must ensure that the warrant of apprehension, and any copies of the warrant that are in the possession of the police force, are returned to the clerk of the court within 7 days after the police officer paid the whole of the unpaid amount of the fine to the clerk of the court.

(6) If the person does not pay the whole amount without delay, the police officer may apprehend the person.

(7) Upon apprehending the person, the police officer must, as soon as practicable:

- (a) bring the person before a court of the State in which the person was apprehended; and
- (b) produce to the court the warrant, or copy of the warrant, in the police officer's possession.

(8) If the warrant, or a copy of the warrant, is not produced, the court may:

- (a) order that the person be released; or
- (b) adjourn the proceeding for such reasonable time as the court specifies and remand the person on bail or in such custody as the court specifies.

(9) If the warrant, or a copy of the warrant, is not produced when the proceeding resumes, the court may:

- (a) order that the person be released; or
- (b) if reasonable cause is shown, adjourn the proceeding for such

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further reasonable time as the court specifies and remand the person on bail or in such custody as the court specifies.

(10) The total time of the adjournments must not exceed 5 days.

(11) The court may resume the proceeding at any time before the end of a period of adjournment if the warrant, or a copy of the warrant, becomes available.

(12) If the warrant or a copy of the warrant is not produced when the proceeding resumes after the further adjournment, the court must order that the person be released.

(13) The release of a person under subsection (8), (9) or (12) does not prevent his or her re-apprehension under subsection (6) if the warrant, or a copy of the warrant, is produced when the person is re-apprehended.

Law applicable to grant of bail etc.

114.(1) The law of a State with respect to the granting of bail applies in relation to a power under this Part to grant bail to a person who has been apprehended under section 113 in that State as if the person had been apprehended for a summary offence against the laws of that State.

(2) The law of a State with respect to bail and matters related to bail (including enforcement of bail) applies in relation to a person who has been apprehended under section 113 in that State.

(3) Money received in proceedings for the enforcement of bail is to be retained by the State in which the bail condition, the breach of which led to the proceedings being brought, was imposed.

Proceedings before court

115.(1) This section applies if a person is brought, or appears, before a court under section 113 and the warrant, or copy of the warrant, is produced to the court under that section.

(2) Subject to subsections (5) and (6), if the court:

(a) is satisfied that the person is the person on whom the fine was imposed; and

(b) is not satisfied that the person's liability to pay the fine has been fully discharged;

the court must order that the person be committed to prison to serve such period of imprisonment as is specified in the order unless he or she is sooner released under law.

(3) If the court:

(a) is not satisfied that the person is the person on whom the fine was imposed; or

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(b) is satisfied that the person's liability to pay the fine has been fully discharged;

the court must, subject to subsection 114(2), order the discharge of the person.

(4) For the purposes of this section, the court may presume that the person before the court is the person on whom the fine was imposed if the person does not adduce evidence that he or she is not the person on whom the fine was imposed.

(5) Subject to subsection (6), the period of imprisonment to be specified in an order under this section is the period of imprisonment specified in the warrant of apprehension or the period of 6 months, whichever is the shorter.

(6) If an amount has been paid or remitted in respect of the fine after the issue of the warrant of apprehension and before the making of the order of committal under this section, the period of imprisonment to be specified in the order is the period worked out using the formula:

$$\text{Maximum imprisonment period} \times \frac{\text{Unpaid amount}}{\text{Total amount}}$$

where:

“**Maximum imprisonment period**” means the period that would have been specified but for the payment or remission;

“**Unpaid amount**” means the amount that is payable in respect of the fine at the time the order for committal is made;

“**Total amount**” means the amount specified as unpaid in the warrant of apprehension.

(7) In calculating a period of imprisonment under subsection (6), any fraction of a day is to be disregarded.

(8) A court of a State having powers in relation to a person under this section may:

(a) suspend the execution of an order for committal for the purpose of:

(i) allowing the person time for payment of the amount payable in respect of the fine; or

(ii) allowing the person to pay the amount by specified instalments;

or for any other reason; and

(b) exercise in relation to the person such other powers as the court has in the case of a person charged with an offence against a law of that State.

(9) In proceedings under this section, the court is not to make any order as to the costs of the proceedings.

(10) In proceedings under this section:

- (a) a warrant of apprehension is taken to have been duly issued unless the contrary is proved; and
- (b) a warrant of apprehension, or a copy of such a warrant, is evidence of the facts stated in the warrant or copy; and
- (c) a document purporting to be a warrant of apprehension, or a copy of such a warrant, is taken to be such a warrant or copy unless the contrary is proved.

Review of orders of committal

116.(1) A person who is aggrieved by an order, or by the exercise of a power, under section 115 may apply to a Judge of the Supreme Court of the State in which the person was apprehended for a review of the order.

(2) If such an application is made, the Judge, sitting in chambers, may review the order.

(3) The Judge may:

- (a) order the release on bail of the apprehended person on such terms and conditions as the Judge thinks fit; or
- (b) direct that the apprehended person be kept in such custody as the Judge directs in the State in which the person was apprehended until the order has been reviewed.

(4) The review is to be by way of rehearing.

(5) Evidence in addition to, or in substitution for, the evidence given on the making of the order may be given in connection with the review.

(6) For the purposes of a review under this section, a copy of:

- (a) a public document; or
- (b) a document filed in a Department or office of the Commonwealth or a State;

that is certified, by the person purporting by the certificate to have charge of the document, to be a true copy of the document is admissible as evidence of the facts stated in the copy.

(7) Upon the review of the order, the Judge may:

- (a) confirm or vary the order; or
- (b) quash the order and order the discharge of the person;

and may make such other order (including an order as to the costs of the review) as the Judge thinks fit.

(8) An order as confirmed or varied has effect according to its tenor as an order of the court before which the person was brought or appeared under section 113.

(9) A warrant of commitment issued under an order as confirmed or varied under this section must make appropriate reference to the review under this section and to the confirmation or variation.

Issue of warrant of commitment

117.(1) If, under this Part, a court of a State orders the committal of a person to prison:

- (a) the clerk of the court; or
- (b) a justice of the peace who has power to issue warrants under the law of the State;

may issue a warrant accordingly for the commitment of the person to a prison in which offenders against the law of that State may be confined.

(2) The warrant of commitment must be substantially in accordance with the prescribed form.

Payment of fine etc. before issue of warrant of commitment

118.(1) This section applies if:

- (a) after an order of committal is made under this Part because of non-payment of an amount of a fine; and
- (b) before a warrant of commitment is issued pursuant to the order; a pardon is granted in respect of the relevant offence or a payment is made, or a remission is granted, in respect of the fine.

(2) The order is taken to be discharged if a pardon is granted or the whole of the amount in respect of which the order was made is paid or remitted.

(3) If part only of that amount is paid or remitted:

- (a) the order operates as if it directed imprisonment for a period equal to the period that would, under section 115, have been the period of imprisonment ordered had the payment been made, or the remission granted, before the making of the order of committal; and
- (b) the warrant of commitment issued under the order is to be expressed accordingly.

Payment of fine after issue of warrant of apprehension

119.(1) Subject to subsection (4), payment of an amount in respect of a fine may be made to, and received by:

- (a) the police officer executing a warrant of apprehension issued in relation to the fine; or
- (b) a person having the custody of the person liable to pay the fine; or
- (c) the clerk of the court before which the person liable to pay the

fine has been taken pursuant to the warrant or has appeared under this Part; or

- (d) the person in charge of the prison in which the person liable to pay the fine is imprisoned under this Part.

(2) Subject to subsection (4), payment of an amount in respect of a fine in relation to which a warrant of commitment has been issued under section 117 may be made to, and received by, the police officer executing the warrant before the police officer takes the person liable to pay the fine into custody.

(3) If the police officer receives such a payment, he or she:

- (a) must not execute the warrant of commitment; and
(b) must return it to the clerk of the court that made the order of committal at the same time as the police officer forwards the amount of the payment to the clerk under subsection (6).

(4) Payment of part only of the unpaid amount referred to in a warrant of apprehension or a warrant of commitment is not to be received by the police officer executing that warrant.

(5) If, at the time when a payment is received under this section, an order of committal has not been made under this Part in respect of the fine, the amount of the payment must be forwarded to the clerk of the court that imposed the fine.

(6) If a payment is made under this section after an order of committal is made under this Part:

- (a) where the person receiving the payment is a person other than the clerk of the court that made the order of committal—the person must forward the amount of the payment to that clerk; and
(b) the clerk must forward the amount of the payment, whether it is received by him or her directly or because of paragraph (a), to the clerk of the court by which the fine was imposed.

(7) If:

- (a) after a warrant of apprehension has been issued in respect of a person; and
(b) before:
(i) the person's liability to pay the fine to which the warrant relates has been discharged; or
(ii) the warrant has been withdrawn;

the whole or any part of the fine is paid to a person in the State in which the fine was imposed, other than the clerk of the court by which the fine was imposed, the person to whom the payment is made must inform without delay the clerk of that court of the payment.

(8) If:

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- (a) after a person is brought, or appears, before a court because of a warrant of apprehension issued in respect of the person; and
- (b) before:
 - (i) the person's liability to pay the fine to which the warrant relates has been discharged; or
 - (ii) the warrant has been withdrawn;

any of the following occurs:

- (c) a pardon is granted to the person in respect of the relevant offence;
- (d) the whole or any part of the fine is remitted;
- (e) the whole or any part of the fine is paid to the clerk of the court by which the fine was imposed;
- (f) the clerk of the court by which the fine was imposed is informed under subsection (7) that the whole or a part of the fine has been paid to another person;

the clerk of the court by which the fine was imposed must inform without delay the clerk of the first-mentioned court of the pardon, remission or payment.

(9) If:

- (a) because of the issue of a warrant of apprehension, a person has been brought, or has appeared, before a court under section 113; and
- (b) after the issue of the warrant of apprehension and before the issue of a warrant of commitment in respect of the person:
 - (i) a pardon has been granted to the person in respect of the relevant offence; or
 - (ii) any remission has been granted, or any payment has been made, in respect of the fine to the clerk of the court by which the fine was imposed or to any other person in the State in which the fine was imposed;

then, for the purposes of this Part, the pardon or remission is taken to have been granted, or the payment is taken to have been made, at the time when the clerk of the court before which the person was brought or appeared is informed of the pardon, remission or payment by the clerk of the court by which the fine was imposed.

Person liable to pay 2 or more fines etc.

120. If the person in charge of a prison:

- (a) is in possession of a warrant of commitment authorising the imprisonment by him or her of a person under this Part; and
- (b) is also in possession of another warrant or other warrants (whether under this Part, under any other law of the Commonwealth or under the law of a State) authorising the imprisonment by him or her of the same person;

any imprisonment of that person by the person in charge of the prison is taken to be imprisonment under the warrant under this Part, or under each of the warrants under this Part, as the case requires, until that warrant or those warrants have been fully executed, whether or not the imprisonment is also taken into account as imprisonment under any other warrant.

Release of person from prison on payment of fine etc.

121.(1) If a person is in prison under the authority of a warrant of commitment and:

- (a) the clerk of the court by which the order of committal was made informs the person in charge of the prison that:
 - (i) a pardon has been granted to the person in respect of the relevant offence; or
 - (ii) the whole of the unpaid amount specified in the warrant has been remitted; or
- (b) the whole of that unpaid amount is paid;

the person in charge of the prison must release the person unless he or she is in custody for some other cause.

(2) If a person is in prison under the authority of a warrant of commitment and:

- (a) the clerk of the court by which the order of committal was made informs the person in charge of the prison that a part of the unpaid amount specified in the warrant has been remitted; or
- (b) a part of that unpaid amount is paid;

the period of imprisonment specified in the warrant is taken to be reduced so that it equals the period of imprisonment that would have been specified in the warrant if the payment or remission had been taken into account at the time of the issue of the warrant as a payment or remission made before the issue of the warrant.

(3) The person in charge of the prison must release the person:

- (a) at the end of the period as so reduced; or
- (b) if the period as so reduced has expired—forthwith, unless he or she is in custody for some other cause.

(4) An amount paid to a person other than the person in charge of the prison must not be taken into account for the purposes of this section until the clerk of the court by which the order of committal was made informs the person in charge of the prison of the payment.

(5) If:

- (a) a person is in prison under the authority of a warrant of commitment; and
- (b) the whole or a part of the fine to which the warrant relates is

paid to the clerk of the court by which the order of committal was made, or the clerk of that court is satisfied that:

- (i) the whole or a part of the fine has been paid to another person (other than the person in charge of the prison) or has been remitted; or
- (ii) a pardon has been granted in respect of the relevant offence;

the clerk of the court must inform without delay the person in charge of the prison of the payment, remission or pardon.

Effect of imprisonment

122. If a person has been imprisoned under this Part because of failure to pay an amount in respect of a fine, the person is, upon the termination of that imprisonment, discharged, by force of this section, from:

- (a) any liability to pay that amount or any part of that amount remaining unpaid; and
- (b) any liability to be imprisoned (whether under the law of a State, under this Part or under any other law of the Commonwealth) because of non-payment of that amount or of any part of that amount remaining unpaid.

Juveniles not to be imprisoned

123.(1) A clerk or justice of the peace must not issue a warrant of apprehension under this Part in respect of a person whom he or she has reason to believe may be under 18 years of age.

(2) A police officer must not, under a warrant of apprehension under this Part, apprehend a person whom he or she has reason to believe may be under 18 years of age.

(3) A court must not, under this Part, order the committal to prison of a person whom the court is satisfied is under 18 years of age.

Conditions of imprisonment

124. The laws of a State with respect to:

- (a) the conditions of imprisonment of persons imprisoned in that State because of default in the payment of fines imposed under the laws of that State; and
- (b) the treatment of such persons during imprisonment; and
- (c) the transfer of such persons from prison to prison;

apply, so far as they are applicable, in relation to persons imprisoned in that State under this Part.

Application of the Removal of Prisoners (Territories) Act

125. The *Removal of Prisoners (Territories) Act 1923* applies, with such modifications and adaptations as are prescribed, in relation to a person for whose imprisonment an order has been made under this Part by a court in a Territory in the same way as it applies in relation to a person who has been sentenced to imprisonment in that Territory.

Saving

126. Nothing in this Part affects the operation of any other Part of this Act.

PART 8—MISCELLANEOUS

Matters of state

127.(1) This section applies to a proceeding if:

- (a) it is a proceeding to determine an application to a court for:
 - (i) leave under section 76 for service of a subpoena; or
 - (ii) an order under section 79 in relation to a subpoena; or
 - (iii) an order under section 93 in relation to a warrant issued in connection with the performance of an investigative function by a tribunal; and
- (b) the court is satisfied that:
 - (i) the evidence likely to be given by the person to whom the subpoena is addressed; or
 - (ii) a document or thing specified in the subpoena;may constitute or contain evidence relating to matters of state.

(2) In a proceeding to which this section applies, the court may give leave under section 76 or make an order under section 79 or 93 only if the applicant for leave or for the making of the order has given at least 14 days notice of the proceeding, and the issue of the subpoena, to all of the following persons:

- (a) the Attorney-General for the Commonwealth;
- (b) the Attorney-General for the State in which the tribunal is established;
- (c) the Attorney-General for the State in which is located the person to whom the subpoena is addressed.

(3) In a proceeding to which this section applies:

- (a) the Commonwealth; and
- (b) the State in which the tribunal is established; and
- (c) the State in which is located the person to whom the subpoena is addressed;

are entitled to intervene.

(4) A court may direct that a proceeding to which this section applies is to be held in camera.

Claim of public interest immunity not precluded

128. A claim by a person in proceedings before a tribunal performing an investigative function that certain evidence is subject to public interest immunity is not precluded or affected by:

- (a) the fact that a court has given leave or made an order under Division 4 of Part 4 or Division 2 of Part 5; or
- (b) the disclosure of any evidence or matter in the course of proceedings for the giving of such leave or the making of such an order.

Custodians to assist prisoners served with subpoenas

129. The custodian of a person who is in prison in a State and who is served with a subpoena that was issued in another State must provide the person with such assistance as the person reasonably requires in order to enable him or her to do one or more of the following:

- (a) if the person need not, for the purposes of complying with the subpoena, attend before the court, an authority or tribunal that issued the subpoena—comply with the subpoena;
- (b) apply, under section 33, 43, 61 or 71, to set aside, or obtain other relief from, the subpoena;
- (c) apply, under section 44 or 72, to set aside or vary an order for production relating to the subpoena;
- (d) obtain legal advice in connection with the subpoena or any such order.

Jurisdiction not limited by locality

130. The jurisdiction that a court or tribunal has because of service of process under this Act is not affected by any limitation arising under a law of a State concerning the locality in which the process may be served.

Constitution of courts

131. The jurisdiction of the Supreme Court of a State in a matter arising under section 76, 77, 79, 80, 86, 92, 93 or 99 or subsection 101(2) is to be exercised by the court constituted by a single judge.

Regulations etc.

132.(1) The Governor-General may make regulations prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The power of a body or person to make rules regulating the practice and procedure of a court extends to making any rules, not inconsistent with the regulations, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(3) In particular, the regulations and rules may make provision with respect to:

- (a) the practice or procedure in connection with the service and execution of process and judgments; and
- (b) the fees to be paid in connection with the service and execution of process and judgments; and
- (c) the costs or expenses of any proceedings under this Act; and
- (d) the recovery of any such fees, costs or expenses; and
- (e) the recovery of costs or expenses recoverable under this Act.

(4) The regulations may make different provisions with respect to:

- (a) different States; and
- (b) different process and judgments; and
- (c) different courts and tribunals.

(5) So far as the regulations and rules do not make provision with respect to a matter of practice or procedure, the practice or procedure is:

- (a) in connection with the service of process—the practice or procedure that would be applicable in the place of issue; and
- (b) in connection with the execution of process or judgments—the practice or procedure applicable in the State in which execution is effected.

(6) So far as the regulations and rules do not make provision with respect to fees, costs or expenses, the fees, costs or expenses are:

- (a) in connection with the service of process—the fees, costs or expenses that would be applicable to service in the place of issue; and
- (b) in connection with the execution of process or judgments—the fees, costs or expenses applicable in the State in which execution is effected; and
- (c) in connection with obtaining a sealed copy of a judgment—the fees, costs or expenses applicable in the State in which the judgment is obtained; and
- (d) in connection with any other proceeding under this Act—the fees, costs or expenses applicable in the State in which the proceeding is brought.

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*[Minister's second reading speech made in—
Senate on 10 September 1992
House of Representatives on 9 November 1992]*