



Crimes (Search Warrants and Powers of Arrest) Amendment Act 1994

No. 65 of 1994

TABLE OF PROVISIONS

Section

1. Short title etc.
2. Commencement
3. Interpretation
4. Insertion of new Part:

PART 1AA—SEARCH WARRANTS AND POWERS OF ARREST

Division 1—Preliminary

- 3C. Interpretation
3D. Application of Part

Division 2—Search warrants

- 3E. When search warrants can be issued
3F. The things that are authorised by a search warrant
3G. Availability of assistance and use of force in executing a warrant
3H. Details of warrant to be given to occupier etc.
3J. Specific powers available to constables executing warrant
3K. Use of equipment to examine or process things
3L. Use of electronic equipment at premises
3M. Compensation for damage to electronic equipment
3N. Copies of seized things to be provided
3P. Occupier entitled to be present during search
3Q. Receipts for things seized under warrant
3R. Warrants by telephone or other electronic means
3S. Restrictions on personal searches

TABLE OF PROVISIONS—*continued*

Section

Division 3—Stopping and searching conveyances

- 3T. Searches without warrant in emergency situations
- 3U. How a constable exercises a power under section 3T

Division 4—Arrest and related matters

- 3V. Requirement to furnish name etc.
- 3W. Power of arrest without warrant by constables
- 3X. Arrest of prisoner unlawfully at large
- 3Y. Power of arrest without warrant of person on bail
- 3Z. Power of arrest without warrant by other persons
- 3ZA. Warrants for arrest
- 3ZB. Power to enter premises to arrest offender
- 3ZC. Use of force in making arrest
- 3ZD. Persons to be informed of grounds of arrest
- 3ZE. Power to conduct a frisk search of an arrested person
- 3ZF. Power to conduct an ordinary search of an arrested person
- 3ZG. Power to conduct search of arrested person's premises
- 3ZH. Power to conduct an ordinary search or a strip search
- 3ZI. Rules for conduct of strip search
- 3ZJ. Taking fingerprints, recordings, samples of handwriting or photographs
- 3ZK. Destruction of identification material
- 3ZL. Offence of refusing to allow identification material to be taken
- 3ZM. Identification parades
- 3ZN. Identification parades for suspects under 18 etc.
- 3ZO. Identification by means of photographs
- 3ZP. Identification procedures where there is more than one suspect
- 3ZQ. Descriptions

Division 5—General

- 3ZR. Conduct of ordinary searches and frisk searches
 - 3ZS. Announcement before entry
 - 3ZT. Offence for making false statements in warrants
 - 3ZU. Offences relating to telephone warrants
 - 3ZV. Retention of things which are seized
 - 3ZW. Court of summary jurisdiction may permit a thing to be retained
 - 3ZX. Law relating to legal professional privilege not affected
 - 3ZY. Laws relating to taking forensic samples not affected
- 5. Repeals
 - 6. Amendments of other Acts

SCHEDULE
AMENDMENTS OF ACTS



Crimes (Search Warrants and Powers of Arrest) Amendment Act 1994

No. 65 of 1994

An Act to amend the *Crimes Act 1914*, and for related purposes

[Assented to 30 May 1994]

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *Crimes (Search Warrants and Powers of Arrest) Amendment Act 1994*.

(2) In this Act, “**Principal Act**” means the *Crimes Act 1914*¹.

Commencement

2.(1) This Act commences on a day to be fixed by Proclamation.

(2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

Interpretation

3. Section 3 of the Principal Act is amended by inserting in the definition of “constable” in subsection (1) “or police service” after “police force”.

4. After Part 1 of the Principal Act the following Part is inserted:

“PART 1AA—SEARCH WARRANTS AND POWERS OF ARREST

“Division 1—Preliminary

Interpretation

“3C.(1) In this Part, unless the contrary intention appears:

‘constable assisting’, in relation to a warrant, means:

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

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

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

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

‘frisk search’ means:

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

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

- (a) a magistrate; or
- (b) a justice of the peace or other person employed in a court of a State or Territory who is authorised to issue search warrants or warrants for arrest, as the case may be;

‘offence’ means:

- (a) an offence against a law of the Commonwealth (other than the *Defence Force Discipline Act 1982*); or

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

- (b) an offence against a law of a Territory other than the Australian Capital Territory;
- ‘ordinary search’** means a search of a person or of articles in the possession of a person that may include:
- (a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes and hat; and
 - (b) an examination of those items;
- ‘police station’** includes:
- (a) a police station of a State or Territory; and
 - (b) a building occupied by the Australian Federal Police;
- ‘premises’** includes a place and a conveyance;
- ‘recently used conveyance’**, in relation to a search of a person, means a conveyance that the person had operated or occupied at any time within 24 hours before the search commenced;
- ‘seizable item’** means anything that would present a danger to a person or that could be used to assist a person to escape from lawful custody;
- ‘strip search’** means a search of a person or of articles in the possession of a person that may include:
- (a) requiring the person to remove all of his or her garments; and
 - (b) an examination of the person’s body (but not of the person’s body cavities) and of those garments;
- ‘warrant’** means a warrant under this Part;
- ‘warrant premises’** means premises in relation to which a warrant is in force.

“(2) A person referred to in paragraph (b) of the definition of ‘constable assisting’ in subsection (1) must not take part in searching or arresting a person.

Application of Part

“3D.(1) This Part is not intended to limit or exclude the operation of another law of the Commonwealth relating to:

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

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

“(3) This Part does not apply to offences against the laws of the Australian Capital Territory.

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

“(4) This Part is not intended to limit or exclude the operation of a law of another Territory relating to:

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

in relation to offences against a law of that Territory.

“(5) This Part does not apply to the exercise by a constable of powers under the *Defence Force Discipline Act 1982*.

“Division 2—Search warrants

When search warrants can be issued

“3E.(1) An issuing officer may issue a warrant to search premises if the officer is satisfied by information on oath that there are reasonable grounds for suspecting that there is, or there will be within the next 72 hours, any evidential material at the premises.

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

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

“(4) If the person applying for the warrant is a member or special member of the Australian Federal Police and has, at any time previously, applied for a warrant relating to the same person or premises the person must state particulars of those applications and their outcome in the information.

“(5) If an issuing officer issues a warrant, the officer is to state in the warrant:

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

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

(f) whether the warrant may be executed at any time or only during particular hours.

“(6) The issuing officer is also to state, in a warrant in relation to premises:

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

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

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

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

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

“(7) The issuing officer is also to state, in a warrant in relation to a person:

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

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

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

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

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

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

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

“(9) If the application for the warrant is made under section 3R, this section applies as if:

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

“(10) An issuing officer in New South Wales or the Australian Capital Territory may issue a warrant in relation to premises or a person in the Jervis Bay Territory.

“(11) An issuing officer in a State or internal Territory may:

- (a) issue a warrant in relation to premises or a person in that State or Territory; or
- (b) issue a warrant in relation to premises or a person in an external Territory; or
- (c) issue a warrant in relation to premises or a person in another State or internal Territory (including the Jervis Bay Territory) if he or she is satisfied that there are special circumstances that make the issue of the warrant appropriate; or
- (d) issue a warrant in relation to a person wherever the person is in Australia or in an external Territory if he or she is satisfied that it is not possible to predict where the person may be.

The things that are authorised by a search warrant

“3F.(1) A warrant that is in force in relation to premises authorises the executing officer or a constable assisting:

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

*Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994*

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

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

“(2) A warrant that is in force in relation to a person authorises the executing officer or a constable assisting:

- (a) to search the person as specified in the warrant and things found in the possession of the person and any recently used conveyance for things of the kind specified in the warrant; and
- (b) to:
 - (i) seize things of that kind; or
 - (ii) record fingerprints from things; or
 - (iii) to take forensic samples from things;found in the course of the search; and
- (c) to seize other things found on or in the possession of the person or in the conveyance in the course of the search that the executing officer or a constable assisting believes on reasonable grounds to be:
 - (i) evidential material in relation to an offence to which the warrant relates; or
 - (ii) a thing relevant to another offence that is an indictable offence;

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

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

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

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

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

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

Availability of assistance and use of force in executing a warrant

“3G. In executing a warrant:

- (a) the executing officer may obtain such assistance; and
- (b) the executing officer, or a person who is a constable and who is assisting in executing the warrant may use such force against persons and things; and
- (c) a person who is not a constable and who has been authorised to assist in executing the warrant may use such force against things;

as is necessary and reasonable in the circumstances.

Details of warrant to be given to occupier etc.

“3H.(1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the executing officer or a constable assisting must make available to that person a copy of the warrant.

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

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

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

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

Specific powers available to constables executing warrant

“3J.(1) In executing a warrant in relation to premises, the executing officer or a constable assisting may:

- (a) for a purpose incidental to the execution of the warrant; or
- (b) if the occupier of the premises consents in writing;

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

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

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

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

“(3) If:

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

the execution of the warrant may be completed.

Use of equipment to examine or process things

“3K.(1) The executing officer or constable assisting may bring to the warrant premises any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether they are things that may be seized under the warrant.

“(2) If:

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

the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized under the warrant.

“(3) If things are moved to another place for the purpose of examination or processing under subsection (2), the executing officer must, if it is practicable to do so:

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

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

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

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

Use of electronic equipment at premises

“3L.(1) The executing officer or a constable assisting may operate electronic equipment at the premises to see whether evidential material is accessible by doing so if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

“(2) If the executing officer or a constable assisting, after operating the equipment, finds that evidential material is accessible by doing so, he or she may:

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

“(3) A constable may seize equipment under paragraph (2)(a) only if:

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

“(4) If the executing officer or a constable assisting believes on reasonable grounds that:

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

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

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

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

“(6) The equipment may be secured:

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

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

whichever happens first.

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

“(8) The executing officer or a constable assisting must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.

“(9) The provisions of this Division relating to the issue of warrants apply, with such modifications as are necessary, to the issuing of an extension.

Compensation for damage to electronic equipment

“3M.(1) If:

(a) damage is caused to equipment as a result of it being operated as mentioned in section 3K or 3L; and

(b) the damage was caused as a result of:

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

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

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

“(2) Compensation is payable out of money appropriated by the Parliament for the purpose.

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

Copies of seized things to be provided

“3N.(1) Subject to subsection (2), if a constable seizes, under a warrant relating to premises:

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

- (a) a document, film, computer file or other thing that can be readily copied; or
 - (b) a storage device the information in which can be readily copied;
- the constable must, if requested to do so by the occupier of the premises or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the thing or the information to that person as soon as practicable after the seizure.

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

- (a) the thing that has been seized was seized under paragraph 3L(2)(b) or (c); or
- (b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

Occupier entitled to be present during search

“3P.(1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the person is, subject to Part 1C, entitled to observe the search being conducted.

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

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

Receipts for things seized under warrant

“3Q.(1) If a thing is seized under a warrant or moved under subsection 3K(2), the executing officer or a constable assisting must provide a receipt for the thing.

“(2) If 2 or more things are seized or moved, they may be covered in the one receipt.

Warrants by telephone or other electronic means

“3R.(1) A constable may make an application to an issuing officer for a warrant by telephone, telex, facsimile or other electronic means:

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

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

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

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

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

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

the issuing officer may complete and sign the same form of warrant that would be issued under section 3E.

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

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

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

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

“(9) If:

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

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

Restrictions on personal searches

“3S. A warrant can not authorise a strip search or a search of a person’s body cavities.

*Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994*

“Division 3—Stopping and searching conveyances

Searches without warrant in emergency situations

“3T.(1) This section applies if a constable suspects, on reasonable grounds, that:

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

“(2) The constable may:

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

“(3) If, in the course of searching for the thing, the constable finds another thing relevant to an indictable offence or a thing relevant to a summary offence, the constable may seize that thing if he or she suspects, on reasonable grounds, that:

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

“(4) The constable must exercise his or her powers subject to section 3U.

How a constable exercises a power under section 3T

“3U. When a constable exercises a power under section 3T in relation to a conveyance, he or she:

- (a) may use such assistance as is necessary; and
- (b) must search the conveyance in a public place or in some other place to which members of the public have ready access; and
- (c) must not detain the conveyance for longer than is necessary and reasonable to search it and any container found in or on the conveyance; and
- (d) may use such force as is necessary and reasonable in the circumstances, but must not damage the conveyance or any container found in or on the conveyance by forcing open a part of the conveyance or container unless:

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

- (i) the person (if any) apparently in charge of the conveyance has been given a reasonable opportunity to open that part or container; or
- (ii) it is not possible to give that person such an opportunity.

“Division 4—Arrest and related matters

Requirement to furnish name etc.

“3V.(1) If a constable believes on reasonable grounds that a person whose name or address is, or whose name and address are, unknown to the constable may be able to assist the constable in inquiries in relation to an indictable offence that the constable has reason to believe has been or may have been committed, the constable may request the person to provide his or her name or address, or name and address, to the constable.

“(2) If a constable:

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

the person must not, without reasonable excuse:

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

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

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

the constable must not:

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

Penalty: 5 penalty units.

Power of arrest without warrant by constables

“3W.(1) A constable may, without warrant, arrest a person for an offence if the constable believes on reasonable grounds that:

- (a) the person has committed or is committing the offence; and
- (b) proceedings by summons against the person would not achieve one or more of the following purposes:
 - (i) ensuring the appearance of the person before a court in respect of the offence;

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

- (ii) preventing a repetition or continuation of the offence or the commission of another offence;
- (iii) preventing the concealment, loss or destruction of evidence relating to the offence;
- (iv) preventing harassment of, or interference with, a person who may be required to give evidence in proceedings in respect of the offence;
- (v) preventing the fabrication of evidence in respect of the offence;
- (vi) preserving the safety or welfare of the person.

“(2) If:

- (a) a person has been arrested for an offence under subsection (1); and
- (b) before the person is charged with the offence, the constable in charge of the investigation ceases to believe on reasonable grounds:
 - (i) that the person committed the offence; or
 - (ii) that holding the person in custody is necessary to achieve a purpose referred to in paragraph (1)(b);

the person must be released.

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

Arrest of prisoner unlawfully at large

“3X.(1) A constable may, without warrant, arrest a person whom the constable believes on reasonable grounds to be a prisoner unlawfully at large.

“(2) The constable must, as soon as practicable, take the person before a Magistrate.

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

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

“(4) In this section:

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

‘prisoner unlawfully at large’ means a person who is at large (otherwise than because the person has escaped from lawful custody) at a time when the person is required by law to be detained under a provision of a law of the Commonwealth, including Divisions 6 to 9, inclusive, of Part 1B.

Power of arrest without warrant of person on bail

“3Y.(1) A constable may, without warrant, arrest a person who has been released on bail if the constable believes on reasonable grounds that the person has contravened or is about to contravene a condition of a recognisance on which bail was granted to the person in respect of an offence, even though the condition was imposed in a State or Territory other than the one in which the person is.

“(2) Subject to subsection (3), if a constable arrests a person under subsection (1), the constable must cause the person to be brought before a magistrate as soon as is practicable.

“(3) If a constable arrests a person under subsection (1) in the State or Territory in which the condition was imposed, the person is to be dealt with according to relevant laws of that State or Territory applied by section 68 of the *Judiciary Act 1903*.

“(4) When a person arrested under subsection (1) in a State or Territory other than the one in which the condition was imposed is brought before a magistrate in the State or Territory in which the arrest took place, the court may:

- (a) release the person unconditionally; or
- (b) admit the person to bail on such recognisances as the court thinks fit to appear again before the same court at such time as the court orders; or
- (c) remand the person in custody for a reasonable time pending the obtaining of a warrant for the apprehension of the person from the State or Territory in which the condition was imposed.

“(5) A release referred to in paragraph (4)(a) does not affect the operation of the bail order or the conditions of the bail imposed in the other State or Territory.

Power of arrest without warrant by other persons

“3Z.(1) A person who is not a constable may, without warrant, arrest another person if he or she believes on reasonable grounds that:

- (a) the other person is committing or has just committed an indictable offence; and
- (b) proceedings by summons against the other person would not achieve one or more of the purposes referred to in paragraph 3W(1)(b).

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

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

Warrants for arrest

“3ZA.(1) An issuing officer must not, under a law of a State or Territory applied by section 68 of the *Judiciary Act 1903*, issue a warrant for the arrest of a person for an offence as a result of an information laid before the officer unless:

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

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

Power to enter premises to arrest offender

“3ZB.(1) Subject to subsection (3), if:

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

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

“(2) Subject to subsection (3), if:

- (a) a constable may, under section 3W, arrest a person without warrant for an offence; and

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

- (b) the offence is an indictable offence; and
- (c) the constable believes on reasonable grounds that the person is on any premises;

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

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

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

“(4) In subsection (3):

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

Use of force in making arrest

“3ZC.(1) A person must not, in the course of arresting another person for an offence, use more force, or subject the other person to greater indignity, than is necessary and reasonable to make the arrest or to prevent the escape of the other person after the arrest.

“(2) Without limiting the operation of subsection (1), a constable must not, in the course of arresting a person for an offence:

- (a) do anything that is likely to cause the death of, or grievous bodily harm to, the person unless the constable believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the constable); or
- (b) if the person is attempting to escape arrest by fleeing—do such a thing unless:
 - (i) the constable believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the constable); and
 - (ii) the person has, if practicable, been called on to surrender and the constable believes on reasonable grounds that the person cannot be apprehended in any other manner.

Persons to be informed of grounds of arrest

“3ZD.(1) A person who arrests another person for an offence must inform the other person, at the time of the arrest, of the offence for which the other person is being arrested.

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

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

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

Power to conduct a frisk search of an arrested person

“3ZE. A constable who arrests a person for an offence, or who is present at such an arrest, may, if the constable suspects on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying any seizable items:

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

Power to conduct an ordinary search of an arrested person

“3ZF. A constable who arrests a person for an offence, or who is present at such an arrest, may, if the constable suspects on reasonable grounds that the person is carrying:

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

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

Power to conduct search of arrested person’s premises

“3ZG. A constable who arrests a person at premises for an offence, or who is present at such an arrest, may seize things in plain view at those premises that the constable believes on reasonable grounds to be:

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

Power to conduct an ordinary search or a strip search

“3ZH.(1) If a person who has been arrested for an offence is brought to a police station, a constable may:

- (a) if an ordinary search of the person has not been conducted—conduct an ordinary search of the person; or
- (b) subject to this section, conduct a strip search of the person.

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

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

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

and:

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

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

“(4) Subject to section 3ZI, a strip search may be conducted in the presence of a medical practitioner who may assist in the search.

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

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

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

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

Rules for conduct of strip search

“3ZI.(1) A strip search:

- (a) must be conducted in a private area; and
- (b) must be conducted by a constable who is of the same sex as the person being searched; and
- (c) subject to subsections (3) and (4), must not be conducted in the presence or view of a person who is of the opposite sex to the person being searched; and
- (d) must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search; and
- (e) must not be conducted on a person who is under 10; and

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

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

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

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

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

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

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

Taking fingerprints, recordings, samples of handwriting or photographs

“3ZJ.(1) In this section and in sections 3ZK and 3ZL:

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

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

“(2) A constable must not:

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

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

- (a) the person consents in writing; or
- (b) the constable believes on reasonable grounds that it is necessary to do so to:
 - (i) establish who the person is; or
 - (ii) identify the person as the person who committed the offence;
or
 - (iii) provide evidence of, or relating to, the offence; or
- (c) the constable suspects on reasonable grounds that the person has committed another offence and the identification material is to be taken for the purpose of identifying the person as the person who committed the other offence or of providing evidence of, or relating to, the other offence.

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

“(5) Subject to subsection (9), a constable must not take identification material from a person who is under 10.

“(6) Subject to this section, a constable must not take identification material from a suspect who:

- (a) is at least 10 but under 18, or is incapable of managing his or her affairs; and
- (b) has not been arrested and charged;

unless a court orders that the material be taken.

“(7) In deciding whether to make such an order, the court must have regard to:

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

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

“(8) The taking of identification material from a person who:

- (a) is under 18; or
- (b) is incapable of managing his or her affairs;

must be done in the presence of:

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

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

- (a) is not a suspect; and
- (b) is under 10 or is incapable of managing his or her affairs;

if a court orders that the material be taken.

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

- (a) is not a suspect; and
- (b) is at least 10 but under 18; and
- (c) is capable of managing his or her affairs;

if one of the following paragraphs applies:

- (d) the person agrees in writing to the taking of the material and a parent or guardian of the person also agrees in writing or, if a parent or guardian is not acceptable to the person, another person (other than a constable) who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person also agrees in writing;

(e) if:

- (i) one of those persons agrees in writing to the taking of the material but the other does not; and
- (ii) a court orders that the material be taken.

“(11) In deciding whether to make such an order, the court must have regard to the matters set out in subsection (7).

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

- (a) is at least 18; and

*Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994*

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

if the person consents in writing.

Destruction of identification material

“3ZK.(1) If:

- (a) identification material has been taken from a person under section 3ZJ; and
- (b) a period of 12 months has elapsed since the identification material was taken; and
- (c) proceedings in respect of an offence to which the investigation material relates have not been instituted or have been discontinued;

the identification material must be destroyed as soon as practicable.

“(2) If identification material has been taken from a person under section 3ZJ and:

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

the identification material must be destroyed as soon as practicable unless an investigation into, or a proceeding against the person for, another offence to which the identification material relates is pending.

“(3) A magistrate may, on application by a constable, extend the period of 12 months referred to in subsection (1) or that period as previously extended under this subsection in relation to particular identification material if the magistrate is satisfied that there are special reasons for doing so.

“(4) In this section:

‘**magistrate**’ does not include a person only because of his or her being a justice.

Offence of refusing to allow identification material to be taken

“3ZL.(1) If a person is convicted of an offence, the judge or magistrate presiding at the proceedings at which the person was convicted may order:

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

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

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

“(2) A person must not, without reasonable excuse, refuse or fail to allow those impressions or a photograph of the person to be taken.

Penalty: Imprisonment for 12 months.

Identification parades

“3ZM.(1) This section applies to identification parades held in relation to offences.

“(2) Subject to subsection (3) and to section 3ZN, an identification parade:

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

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

- (a) he or she is entitled to refuse to take part in the parade; and
- (b) if he or she refuses to take part in the parade without reasonable excuse evidence of that refusal and of any identification of the suspect by a witness as a result of having seen a photograph or of having seen the suspect otherwise than during an identification parade may be given in any subsequent proceedings in relation to an offence; and
- (c) in addition to any requirement under section 3ZN, a legal representative or other person of the suspect's choice may be present while the person is deciding whether to take part in the parade, and during the holding of the parade, if arrangements for that person to be present can be made within a reasonable time.

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

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

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

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

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

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

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

- (l) the parade must be recorded by a video recording if it is practicable to do so and, if that is done, a copy of the video recording must be made available to the suspect or his or her legal representative as soon as it is practicable to do so;
- (m) if the parade is not recorded by a video recording:
 - (i) the parade must be photographed in colour; and
 - (ii) a print of a photograph of the parade that is at least 250mm × 200mm in size must be made available to the suspect or his or her legal representative; and
 - (iii) the constable in charge of the parade must take all reasonable steps to record everything said and done at the parade and must make a copy of the record available to the suspect or his or her legal representative;
- (n) the suspect may have present during the holding of the parade a legal representative or other person of his or her choice if arrangements for that person to be present can be made within a reasonable time.

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

- (a) whether or not evidence of a suspect having refused to take part in an identification parade is admissible;
- (b) if evidence of such a refusal is admissible, what inferences (if any) may be drawn by a court or jury from the refusal;
- (c) whether, after such a refusal, evidence of alternative methods of identification is admissible.

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

Identification parades for suspects under 18 etc.

“3ZN.(1) An identification parade must not be held for a suspect who is under 10.

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

- “(3) An identification parade must not be held for a suspect who:
- (a) is at least 10 but under 18; and
 - (b) is capable of managing his or her affairs;

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

unless one of the following paragraphs applies:

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

(d) if:

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

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

“(4) In deciding whether to make such an order, the court must have regard to:

(a) the seriousness of the offence; and

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

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

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

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

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

Identification by means of photographs

“3ZO.(1) If a suspect is in custody in respect of an offence or is otherwise available to take part in an identification parade, a constable investigating the offence must not show photographs, or composite pictures or pictures of a similar kind, to a witness for the purpose of establishing, or obtaining evidence of, the identity of the suspect unless:

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

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

(i) unfair to the suspect; or

(ii) unreasonable in the circumstances.

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

(a) the constable must show to the witness photographs or pictures of at least 9 different persons;

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

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

“(3) If:

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

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

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

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

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

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

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

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

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

Identification procedures where there is more than one suspect

“3ZP. If:

- (a) a constable is attempting to ascertain:
 - (i) which of 2 or more suspects committed an offence; or
 - (ii) the identities of 2 or more suspects who may have been jointly involved in an offence; and
- (b) for that purpose, the constable intends to conduct an identification parade or to identify a person by showing a photograph or a picture of a suspect to a person;

the constable must undertake a separate identification process for each of the suspects.

Descriptions

“3ZQ.(1) If a description of a suspect is given to a constable in relation to an offence, the constable must ensure that a record of the description is made and that the record is retained until any proceedings in respect of the offence are completed.

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

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

“(3) If:

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

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

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

- (a) place the person in danger; or
 - (b) expose the person to harassment or unreasonable interference;
- the constable is not required to provide the name of the person.

“Division 5—General

Conduct of ordinary searches and frisk searches

“3ZR. An ordinary search or a frisk search of a person under this Part must, if practicable, be conducted by a person of the same sex as the person being searched.

Announcement before entry

“3ZS.(1) A constable must, before any person enters premises under a warrant or to arrest a person:

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

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

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

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

Offence for making false statements in warrants

“3ZT. A person must not make, in an application for a warrant, a statement that the person knows to be false or misleading in a material particular.

Penalty: Imprisonment for 2 years.

Offences relating to telephone warrants

“3ZU. A person must not:

- (a) state in a document that purports to be a form of warrant under section 3R the name of an issuing officer unless that officer issued the warrant; or
- (b) state on a form of warrant under that section a matter that, to the person’s knowledge, departs in a material particular from the form authorised by the issuing officer; or
- (c) purport to execute, or present to a person, a document that purports to be a form of warrant under that section that the person knows:
 - (i) has not been approved by an issuing officer under that section; or
 - (ii) to depart in a material particular from the terms authorised by an issuing officer under that section; or
- (d) give to an issuing officer a form of warrant under that section that is not the form of warrant that the person purported to execute.

Penalty: Imprisonment for 2 years.

Retention of things which are seized

“3ZV.(1) Subject to any contrary order of a court, if a constable seizes a thing under this Part, the constable must return it if:

- (a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
- (b) if the thing was seized under section 3T:
 - (i) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
 - (ii) the period of 60 days after its seizure ends;whichever first occurs;

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

“(2) If a thing is seized under section 3T, at the end of the 60 days specified in subsection (1) the constable must take reasonable steps to return the thing to the person from whom it was seized or to the owner if that person is not entitled to possess it unless:

Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994

- (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
- (b) the constable may retain the thing because of an order under section 3ZW; or
- (c) the constable is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy or dispose of the thing.

Court of summary jurisdiction may permit a thing to be retained

“3ZW.(1) If a thing is seized under section 3T, and:

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

proceedings in respect of which the thing may afford evidence have not commenced, the constable may apply to a court of summary jurisdiction for an order that he or she may retain the thing for a further period.

“(2) If the court is satisfied that it is necessary for the constable to continue to retain the thing:

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

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

“(3) Before making the application, the constable must:

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

Law relating to legal professional privilege not affected

“3ZX. This Part does not affect the law relating to legal professional privilege.

Laws relating to taking forensic samples not affected

“3ZY. Nothing in this Part is intended to limit or exclude the operation of:

- (a) another law of the Commonwealth or a law of a Territory; or
- (b) a law of a State or Territory applied by section 68 of the *Judiciary Act 1903*;

*Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994*

relating to the taking of forensic samples (excluding identification material as defined in section 3ZJ).”.

Repeals

5. Sections 8, 8A, 10, 10A, 10B, 10C, 10D, 10E, 48B and 82 of the Principal Act are repealed.

Amendments of other Acts

6. The Acts specified in the Schedule are amended as set out in the Schedule.

*Crimes (Search Warrants and Powers of Arrest)
Amendment No. 65, 1994*

SCHEDULE

Section 6

AMENDMENTS OF ACTS

Commonwealth Places (Application of Laws) Act 1970

Schedule:

- (a) Omit from clause 1 “Sections 8A, 9, 10,”, substitute “Part 1AA (other than section 3Z), and sections 9,”.
- (b) Omit from clause 1 “, 15D and 16BA”, substitute “and 15D”.

Crimes at Sea Act 1979

Paragraph 5(4)(a):

- (a) Omit “sections 8A, 9, 10,”, substitute “Part 1AA (other than section 3Z), and sections 9,”.
- (b) Omit “, 15D and 16BA”, substitute “and 15D”.

Customs Act 1901

Section 4 (definition of “external search”):

Insert “or in the possession of” after “worn by”.

NOTE

1. No. 12, 1914, as amended. For previous amendments, see No. 6, 1915 (as amended by No. 54, 1920); No. 54, 1920; No. 9, 1926; No. 13, 1928; No. 30, 1932; No. 5, 1937; No. 6, 1941; No. 77, 1946; No. 80, 1950; No. 10, 1955; No. 11, 1959; No. 84, 1960; No. 93, 1966; Nos. 33 and 216, 1973; No. 56, 1975; Nos. 19 and 155, 1979; No. 70, 1980; No. 122, 1981 (as amended by No. 193, 1985); No. 67, 1982 (as amended by No. 193, 1985); Nos. 80 and 153, 1982; Nos. 91, 114 and 136, 1983; Nos. 10, 63, 165 and 193, 1985; Nos. 76, 102 and 168, 1986; Nos. 73, 120 and 141, 1987; Nos. 63 and 108, 1989; Nos. 4, 11 and 75, 1990; Nos. 28 and 59, 1991; No. 99, 1991 (as amended by No. 145, 1991); Nos. 120, 123, 140 and 145, 1991; and No. 164, 1992.

[*Minister’s second reading speech made in—*

*House of Representatives on 17 November 1993
Senate on 8 February 1994*]