



TERRITORY OF HEARD ISLAND AND MCDONALD ISLANDS

Criminal Procedure Ordinance 1993

Ordinance No. 2 of 1993 as amended

made under the

Heard Island and McDonald Islands Act 1953

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Contents

Part 1	Preliminary	
	1 Short title [see Note 1]	5
	2 Commencement	5
	3 Application of this Ordinance	5
	4 Interpretation	5
	4A Application of the <i>Criminal Code</i>	8
	5 Identity cards	9
	6 Places of detention	9
Part 2	Search	
	7 Searches in emergencies	10
	8 Other searches	11
	9 Things that have been seized	12
Part 3	Arrest and summons	
	10 Arrest without warrant	14
	11 Application for warrant to arrest	14
	12 Procedure at the time of arrest	15
	13 Arrested persons to be placed in custody	16
	14 Release of certain arrested persons	17
	15 Procedure following arrest without warrant	17
	16 Warrants to arrest	19
	17 Summons	19
Part 4	Search warrants and warrants to arrest	
	18 Interpretation	21
	19 Application for warrants	21
	20 Grant of warrants	22
	21 Giving effect to warrants	23
Part 5	Persons being searched and persons in custody	
Division 1	Search of persons	
	22 Searching persons	25

		Page
Division 2	Persons in custody	
23	Warning to be given to persons in custody	26
24	Charging of arrested persons	27
25	Information and directions about persons in custody	28
26	Facilities to be made available to persons in custody	28
27	Provision of information about persons in custody	29
Part 6	Bail and detention	
Division 1	Bail	
28	Applications for bail	31
29	Grant of bail	31
Division 2	Detention	
30	Warrants of detention	33
31	Detainees	34
Part 7	Evidence	
32	Interpretation	35
33	Right to remain silent etc. not affected	35
34	Certain statements to be admissible as evidence	35
35	Records of answers, admissions and confessions	36
36	Records of statements to be made available without charge	37
37	Court may admit non-complying evidence in certain circumstances	38
38	Certain acts or omissions to be proved	38
39	Evidentiary certificates	39
40	Copies of documents	39
Part 8	Removal of detainees from the Territory	
41	Interpretation	40
42	Detainees may be taken from, and detained outside, the Territory	40
43	Imprisonment in a State or another Territory	41
44	Manner of imprisonment	41
45	Conveying of detainees to appear before courts	41

		Page
Part 9	Miscellaneous	
Division 1	General	
	46 Interpretation	42
	47 Warrants for apprehension	42
	48 Effect of warrants, summons and certificates of bail	43
	49 Discontinuance or variation of charge, summons or warrant	43
Division 2	Other offences	
	50 Requirement to give name and address	45
Division 3	Other matters	
	52 Use of force generally	45
	53 Jurisdiction and powers of Supreme Court	46
	54 Arrangements with States and Territories	46
	55 Delegation	46
	56 Liability for wrongful acts of certain persons	46
	57 Regulations	48
Schedule 1	Forms	49
Form 1	Search warrant	49
Form 2	Warrant to arrest	51
Form 3	Summons	53
Form 4	Certificate of bail	55
Form 5	Warrant of detention	57
Schedule 2	Oath and affirmation	59
Schedule 3	Form of warning	61
Schedule 4	Form of explanation	62
Notes		63

An Ordinance relating to law enforcement in the Territory

Part 1 Preliminary

1 Short title [see Note 1]

This Ordinance may be cited as the *Criminal Procedure Ordinance 1993*.

2 Commencement

This Ordinance comes into operation on 1 December 1993.

3 Application of this Ordinance

This Ordinance does not apply to a voyage leader, or a deputy voyage leader, in the capacity of special constable on a ship in relation to a person on the ship who is:

- (a) the master; or
- (b) a seaman; or
- (c) a pilot; or
- (d) a person temporarily employed on the ship in port; or
- (e) a passenger;

within the meaning of the *Navigation Act 1912*, unless the person is a member of the Australian expedition to the Territory of which the special constable is the voyage leader or deputy voyage leader.

4 Interpretation

- (1) In this Ordinance, unless the contrary intention appears:

AFP means Australian Federal Police.

aircraft does not include hovercraft.

arrested person means person arrested under Part 3, but does not include a charged person or a detainee.

Section 4

certificate of bail means certificate referred to in paragraph 29 (6) (a).

charge means charge under section 24.

charged person means person against whom a charge is made, but does not include a detainee.

court means court that has criminal jurisdiction in the Territory.

deputy voyage leader means person appointed by the Commonwealth to be the deputy of a voyage leader.

detainee means person detained under a warrant of detention.

field leader means person appointed by the Commonwealth to be the leader of the members of an Australian expedition in the Territory, except those on a ship.

identity card means identity card issued under subsection 5 (1).

investigating officer means:

- (a) a special constable; or
- (b) another person who holds an office the functions of which include the investigation of an offence.

leader means field leader, voyage leader or deputy voyage leader.

legal representative means barrister or solicitor of the High Court or of the Supreme Court of a State or Territory.

Magistrate and **Magistrates Court** have the same respective meanings as in the *Magistrates Court Act 1930* of the Australian Capital Territory:

- (a) as in force in the Jervis Bay Territory; and
- (b) in its application to the Territory of Heard Island and McDonald Islands.

medical officer means person who is:

- (a) a registered medical practitioner; and
- (b) appointed by the Commonwealth to be the medical officer of an Australian expedition in the Territory or of a ship carrying members of an Australian expedition to or from the Territory.

mental dysfunction means disturbance or defect, to a substantially disabling degree, of perceptual interpretation,

Section 4

comprehension, reasoning, learning, judgment, memory, motivation or emotion.

offence means offence against a law in force in:

- (a) the Territory; or
- (b) a State or another Territory.

person in custody means:

- (a) an arrested person; or
- (b) a charged person; or
- (c) a detainee.

place of detention means place of detention designated under section 6.

police officer means member or special member of the AFP.

premises includes:

- (a) a structure, building, aircraft, vehicle or vessel; and
- (b) land or a place (whether enclosed or built upon or not); and
- (c) part of premises, including premises of a kind referred to in paragraph (a) or (b).

search warrant means search warrant granted under subsection 8 (3).

special constable means:

- (a) leader; or
- (b) police officer.

substance includes mixture of substances.

summons means summons issued under subsection 17 (1) or 30 (6).

telecommunications means communications carried by means of guided or unguided electromagnetic energy, or both.

thing includes substance.

vehicle includes hovercraft and sled.

vessel does not include hovercraft.

voyage leader means person appointed by the Commonwealth to be the leader of the members of an Australian expedition to the Territory who are on a ship that is on a voyage to or from the Territory.

Section 4A

warrant for apprehension means warrant issued under subsection 47 (1).

warrant of detention means warrant issued under subsection 28 (6) or granted under subsection 30 (4).

warrant to arrest means warrant granted under subsection 16 (1).

- (2) In this Ordinance, a thing:
- (a) obtained by the commission of an offence, used for the purpose of committing an offence or in respect of which an offence has been committed; or
 - (b) that may afford evidence of the commission of an offence; or
 - (c) that is intended to be used for the purpose of committing an offence;
- is taken to be a thing connected with the offence.
- (3) In this Ordinance, unless the contrary intention appears, a reference to the entry and search of premises includes a reference to an act referred to in subparagraph 8 (3) (a) (iii), (iv), (v) or (vi) ('other searches').
- (4) In this Ordinance, a reference to oral communication between persons includes a reference to oral communication between those persons by means of telecommunications.
- (5) In this Ordinance, a reference to the giving or issuing of a document, or of a copy of a document, by a person to another person includes a reference to the transmission of the document or copy by telecommunications.
- (6) In this Ordinance, a reference to a form by number is a reference to the form so numbered in Schedule 1.

4A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to offences against this Ordinance.

Note Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Section 6

5 Identity cards

- (1) The Minister is to issue to each leader an identity card that specifies:
 - (a) the name of the person; and
 - (b) his or her capacity for the purposes of this Ordinance; to which is attached a recent photograph of the person.
- (2) A person who ceases to be a leader must not, unless he or she has a reasonable excuse, fail to return his or her identity card to the Minister as soon as practicable after ceasing to be a leader.

Penalty: 1 penalty unit.

- (3) An offence under subsection (2) is an offence of strict liability.

Note 1 For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2 A defendant bears an evidential burden in relation to whether or not he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

6 Places of detention

- (1) A field leader may designate in writing a building, or a part of a building, to be a place of detention in the Territory.
- (2) A voyage leader or deputy voyage leader may designate in writing a ship, or a part of a ship, in respect of which he or she is appointed to be a place of detention.

Section 7

Part 2 Search**7 Searches in emergencies**

- (1) This section has effect subject to section 22 ('searching persons').
- (2) A special constable, with such assistance as is necessary and reasonable may, without a search warrant:
 - (a) search a person, if he or she reasonably suspects that the person is in possession of a thing connected with an offence; or
 - (b) enter and search premises and, if necessary and reasonable, use force to enter and search when he or she reasonably suspects that a thing connected with an offence is on the premises;
if the constable reasonably believes that the search or entry, as the case may be, is:
 - (c) made in circumstances of such seriousness and urgency as to justify immediate search or entry; or
 - (d) necessary to prevent concealment, loss or destruction of evidence or use of the thing in committing an offence.
- (3) If a special constable searches a person or enters premises under subsection (2), he or she must:
 - (a) if he or she is a leader — produce his or her identity card; and
 - (b) if he or she is a police officer — produce written evidence of the fact that he or she is a police officer;
for inspection by the person to be searched or the person apparently in charge of the premises and, if the constable does not do so, he or she is not authorised to search the person or enter and search the premises.
- (4) Subsection (3) does not apply if the actions of the person make it impracticable for the special constable to produce his or her identity card or the written evidence referred to in paragraph (3) (b).

Section 8

- (5) A special constable must not, in searching premises, damage the premises or a thing on the premises to a greater extent than is necessary and reasonable for the purposes of the search.

8 Other searches

- (1) This section has effect subject to section 22 ('searching persons').
- (2) If a special constable reasonably suspects that there is, or will be in the next 7 days:
- (a) on premises; or
 - (b) in the possession of a person;
a particular thing, or a thing of a particular kind, that is connected with a particular offence, the constable may apply to a Magistrate for a warrant to search the person or to enter the premises and search for the thing on the premises.
- (3) A Magistrate may, in accordance with Part 4 ('search warrants and warrants to arrest') grant a search warrant authorising the special constable named in the warrant, with such assistance as is necessary and reasonable and, if necessary and reasonable by force:
- (a) in relation to premises:
 - (i) to enter premises; and
 - (ii) to search the premises; and
 - (iii) to examine or photograph, or make another record of, or secure, the premises or a thing found on the premises; and
 - (iv) to take samples of the thing (including parts of premises); and
 - (v) to seize and remove a thing found in the search that he or she reasonably believes to be connected with an offence; and
 - (vi) to take extracts from, or make copies of, a document found on the premises; and
 - (b) in relation to a person:
 - (i) to search the person; and

Section 9

- (ii) to enter and search premises where the person is or was, within the period of 24 hours before the search commenced, located.
- (4) A special constable may give effect to a search warrant at any time in the period beginning when the warrant takes effect and ending at the end of:
 - (a) 7 days after the day on which the warrant takes effect; or
 - (b) an earlier day stated in the warrant.
- (5) A special constable who gives effect to a search warrant must produce the warrant, or a copy of the warrant, for inspection by:
 - (a) the person to be searched in accordance with the warrant; or
 - (b) the person apparently in charge of the premises to which the warrant relates;and, if the constable does not do so, he or she is not authorised to give effect to the warrant.
- (6) Subsection (3) does not prevent the grant of successive warrants in relation to the same premises or person.
- (7) Subsection (5) does not apply if the actions of the person make it impracticable for the special constable to produce the search warrant or a copy of the warrant.
- (8) A search warrant must be in accordance with Form 1.

9 Things that have been seized

- (1) If:
 - (a) a thing is seized under this Ordinance; and
 - (b) proceedings for an offence for which the thing may be evidence are not begun within the period of 60 days from the day on which the person charged with the offence first arrives in Australia after leaving the Territory;at the end of that period, or such longer period as may be determined by a Magistrate on application, the thing must be returned to the person from whom it was seized or (if that person is not entitled to possess it) to its owner.

Section 9

- (2) If:
- (a) a thing is seized under this Ordinance; and
 - (b) proceedings for an offence for which the thing may be evidence are begun within the period referred to in paragraph (1) (b);
- the thing may be retained until the proceedings (including an appeal to a court in relation to those proceedings) are completed.
- (3) The Minister may authorise the release of a thing referred to in subsection (2) to its owner or to the person from whom it was seized, either:
- (a) unconditionally; or
 - (b) on reasonable conditions, which may include conditions as to giving security for payment of its value if it is forfeited.
- (4) If, in proceedings for an offence before a court:
- (a) the defendant is the owner of a thing seized under this Ordinance; and
 - (b) the offence is proved;
- the court may order the forfeiture of the thing to the Commonwealth.
- (5) In considering whether it is appropriate to make an order referred to in subsection (4) in respect of a thing, the court may have regard to:
- (a) any hardship that may reasonably be expected to be caused to a person by the operation of the order; and
 - (b) the use that is ordinarily made, or was intended to be made, of the thing.

Section 10

Part 3 Arrest and summons**10 Arrest without warrant**

A special constable, with such assistance as is necessary and reasonable and if necessary and reasonable by force, may arrest a person without a warrant to arrest, if there are reasonable grounds to believe:

- (a) that the person is committing, or has committed, an offence; and
- (b) that proceeding against the person by summons in respect of the offence would not achieve 1 or more of the following purposes:
 - (i) to ensure the appearance of the person before a court in respect of the offence;
 - (ii) to prevent the continuation or a repetition of the offence or another offence;
 - (iii) to prevent the concealment, loss or destruction of evidence relating to that offence;
 - (iv) to prevent the harassment or intimidation of, or interference with, a person who may be required to give evidence in proceedings for the offence;
 - (v) to prevent the fabrication of evidence to be given or produced in proceedings for the offence;
 - (vi) to preserve the safety or welfare of a person.

11 Application for warrant to arrest

If there are reasonable grounds to believe that:

- (a) a person is committing or has committed an offence; and
- (b) that proceeding against the person by summons would not achieve 1 or more of the following purposes:
 - (i) to ensure the appearance of the person before a court in respect of the offence;
 - (ii) to prevent the continuation or a repetition of the offence or another offence;

Section 12

- (iii) to prevent the concealment, loss or destruction of evidence relating to that offence;
- (iv) to prevent the harassment or intimidation of, or interference with, a person who may be required to give evidence in proceedings for the offence;
- (v) to prevent the fabrication of evidence to be given or produced in proceedings for the offence;
- (vi) to preserve the safety or welfare of any person;

a special constable may apply to a Magistrate under Part 4 ('search warrants and warrants to arrest') for a warrant to arrest the person.

12 Procedure at the time of arrest

- (1) A special constable must, at the time of the arrest of a person:
 - (a) if the constable has a warrant to arrest the person — produce the warrant, or a copy of the warrant; or
 - (b) if the constable is arresting the person without a warrant or there are reasonable grounds to believe that a warrant to arrest the person has been granted — tell the person of the offence for which the person is being arrested and produce:
 - (i) in the case of a leader — his or her identity card; and
 - (ii) in the case of a police officer — written evidence of the fact that he or she is a police officer;for inspection by the person and if the constable does not do so, he or she is not authorised to arrest that person.
- (2) A special constable is taken to have complied with paragraph (1) (b) if the constable tells the arrested person of the substance of the offence, but it is not necessary for him or her to do so in precise or technical language.
- (3) Subsection (1) does not apply to the arrest of a person if the actions of the person make it impracticable for the special constable:
 - (a) to tell him or her of the offence; or
 - (b) to produce his or her identity card or written evidence referred to in subparagraph (1) (b) (ii).

Section 13

- (4) If there are reasonable grounds to believe at the time of arrest of a person that the person is unable to understand the substance of the offence in relation to which the arrest was made, because of:
- (a) inadequate knowledge of the English language; or
 - (b) mental dysfunction; or
 - (c) physical disability or disease;
- the special constable who arrests the person must take all reasonable steps to ensure that the person is provided with an explanation of the substance of the offence that he or she is able to understand.
- (5) A person who arrests a person, or who assists in the arrest of a person, must not use more force, or subject the person being arrested to greater indignity, than is reasonably necessary.
- (6) A special constable must ensure that an arrested person in the custody of the constable is not subjected to:
- (a) more force, or greater indignity, than is reasonably necessary to detain the arrested person and to prevent his or her escape from custody; or
 - (b) cruel, inhuman or degrading treatment.

13 Arrested persons to be placed in custody

- (1) A special constable who arrests a person must place the person in custody in a place of detention as soon as practicable after the arrest.
- (2) For the purposes of subsection (1):
- (a) the special constable may use the assistance of another person or other persons; and
 - (b) the special constable and the person or persons assisting him or her may use force to the extent that is reasonably necessary.

Section 15

14 Release of certain arrested persons

If:

- (a) a person has been arrested by a special constable without a warrant to arrest; and
- (b) the arrested person is in the custody of the special constable or another special constable; and
- (c) the special constable who has custody of the arrested person does not, or ceases to, have reasonable grounds to believe:
 - (i) that the person committed, or was committing, an offence; or
 - (ii) that holding the person in custody is necessary to achieve a purpose specified in paragraph 10 (b); or
 - (iii) that proceeding against the person by summons would not achieve a purpose of that kind;

the special constable must release the person from custody.

15 Procedure following arrest without warrant

- (1) As soon as practicable after a special constable arrests a person without a warrant, the constable must, unless the person has been released under section 14, tell a Magistrate:
 - (a) the name of the constable; and
 - (b) if he or she is a police officer:
 - (i) his or her rank; and
 - (ii) his or her AFP service number; and
 - (c) the name or other description of the arrested person and a statement of the offence for which the person was arrested; and
 - (d) the facts and other matters in relation to which the person has been arrested, including the reasons why the constable believes that:
 - (i) the person committed the offence; and
 - (ii) proceeding against the person by summons would not achieve a purpose specified in paragraph 10 (b); and

Section 15

- (e) the time and date of the arrest; and
 - (f) the place where the arrest occurred; and
 - (g) the place of detention where the arrested person is in custody.
- (2) The information may be given to a Magistrate:
- (a) in writing; or
 - (b) orally, if it is impracticable to tell the Magistrate in writing.
- (3) A special constable who has informed a Magistrate orally must, as soon as practicable:
- (a) make a statement in writing of the information given to the Magistrate; and
 - (b) if the information is given to the Magistrate:
 - (i) in person — take an oath before the Magistrate; or
 - (ii) orally, but not in person — undertake in writing to take an oath;that each matter in the statement is correct to the best of his or her knowledge; and
 - (c) sign the statement and certify on the statement the time at, and the date on, which it was made and any undertaking was given; and
 - (d) give the statement and undertaking (if any), or a copy of the statement and undertaking, to the Magistrate.
- (4) The special constable must take an oath in accordance with an undertaking given to the Magistrate.
- (5) The oath must be:
- (a) in accordance with the form in Schedule 2; and
 - (b) taken before a Magistrate or a leader or medical officer.
- (6) Unless a special constable takes the oath before the Magistrate, the constable must give an instrument setting out the oath taken by the constable, or a copy of the instrument, to the Magistrate as soon as practicable.

Section 17

- (7) The Magistrate must file in the Magistrates Court the statement and undertaking (if any) and any instrument setting out the oath of the special constable, or a copy of the statement, undertaking or instrument.

16 Warrants to arrest

- (1) A Magistrate may, under Part 4 ('search warrants and warrants to arrest'), grant a warrant authorising a special constable to arrest a person named or otherwise described in the warrant.
- (2) A Magistrate must not grant a warrant to arrest a person in relation to an offence unless there are reasonable grounds to believe that proceeding by summons against the person would not achieve 1 or more of the purposes specified in paragraph 11 (b).
- (3) If a special constable has a warrant to arrest a person and it is reasonable to believe that the person is on premises, the constable may enter the premises, with such assistance as is necessary and reasonable and if necessary and reasonable by force, at any time for the purpose of searching the premises for the person or arresting the person.
- (4) Unless sooner revoked, a warrant to arrest a person authorises the detention of the person until:
- (a) a leader declines to charge the person in accordance with subsection 24 (1); or
 - (b) a Magistrate declines to grant a warrant of detention in respect of the person under subsection 30 (4); or
 - (c) a certificate of bail is granted in relation to the person; or
 - (d) a warrant of detention is granted in respect of the person; whichever happens first.
- (5) A warrant to arrest must be in accordance with Form 2.

17 Summons

- (1) If a Magistrate does not grant an application for a warrant to arrest a person, the Magistrate may issue a summons to the person.

Section 17

- (2) A summons must be in accordance with Form 3.

Part 4 Search warrants and warrants to arrest

18 Interpretation

In this Part, *warrant* means search warrant or warrant to arrest.

19 Application for warrants

- (1) A special constable may apply for a warrant:
 - (a) in writing; or
 - (b) orally, if it is impracticable to apply in writing.
- (2) An applicant for a warrant must tell the Magistrate:
 - (a) his or her name; and
 - (b) if he or she is a police officer:
 - (i) his or her rank; and
 - (ii) his or her AFP service number; and
 - (c) the place where the applicant is located when making the application; and
 - (d) the offence to which the application relates; and
 - (e) in the case of an application for a search warrant in respect of premises:
 - (i) a description of the premises to which the application relates; and
 - (ii) the things or kinds of things to be searched for under the warrant; and
 - (f) in the case of an application for a search warrant in respect of a person or a warrant to arrest — the name or a description of the person to whom the application relates; and
 - (g) in the case of an application for a warrant to arrest — the grounds on which the application is made, including matters referred to in section 11 ('application for warrant to arrest').

Section 20

- (3) If an application for a warrant is made in person, the applicant must take an oath before the Magistrate that each statement in the application is correct to the best of his or her knowledge.
- (4) If an application to a Magistrate by a special constable for a warrant has been made orally but not in person, the constable must, as soon as practicable, give a written statement of the matters referred to in subsection (2) to the Magistrate.
- (5) As soon as practicable after an application, except an application made in person, is made:
 - (a) the applicant must take an oath in accordance with the form in Schedule 2 before:
 - (i) a leader; or
 - (ii) a medical officer;that each statement in the application is correct to the best of his or her knowledge; and
 - (b) the applicant must give the instrument setting out the oath taken by the applicant, or a copy of the instrument, to the Magistrate.

20 Grant of warrants

- (1) A Magistrate must not grant a warrant unless:
 - (a) the special constable making the application (or another person) has provided the Magistrate with any further information that the Magistrate requires concerning the application; and
 - (b) the Magistrate is reasonably satisfied that there are grounds to issue the warrant.
- (2) If a Magistrate grants a warrant, the Magistrate must:
 - (a) state in writing:
 - (i) the facts and other matters specified in the application; and
 - (ii) details of any other matters; on which he or she has relied to grant the warrant; and
 - (b) attach the statement to the warrant, or the copy of the warrant, filed under paragraph (4) (b).

Section 21

- (3) A Magistrate who grants a warrant must, if practicable, tell the applicant orally of its terms and the time at, and date on, which it was granted.
- (4) As soon as practicable after the grant of a warrant, the Magistrate who granted the warrant:
 - (a) must give the warrant, or a copy of the warrant, to the applicant; and
 - (b) must file in the Magistrates Court:
 - (i) if the applicant applied for the warrant in writing — the application; and
 - (ii) the warrant or a copy of the warrant; and
 - (iii) the written statement (if any), or a copy of the statement, referred to in subsection 19 (4) ('application for warrants'); and
 - (iv) the instrument (if any), or a copy of the instrument, referred to in subsection 19 (5).

21 Giving effect to warrants

- (1) A special constable must not, in searching premises, damage the premises or a thing in or on the premises to a greater extent than is reasonably necessary to give effect to the warrant.
- (2) In order to give effect to a warrant, a special constable may:
 - (a) require an aircraft, vehicle or vessel to be taken to a place where a search of the aircraft, vehicle or vessel may be conveniently carried out; or
 - (b) detain an aircraft or a vehicle or vessel for the period necessary to give effect to the warrant.
- (3) The special constable must produce:
 - (a) the warrant or a copy of the warrant; and
 - (b) if he or she is a leader — his or her identity card; and
 - (c) if he or she is a police officer — written evidence of the fact that he or she is a police officer;for inspection by the person apparently in charge of the aircraft, vehicle or vessel to which the warrant relates and, if the constable does not do so, he or she is not authorised to give effect to the warrant.

Section 21

- (4) Subsection (3) does not apply if the actions of the person make it impracticable for the special constable to produce the documents.
- (5) A person must not fail to give effect to a requirement of a special constable under subsection (2), unless he or she has a reasonable excuse.

Penalty: 10 penalty units.

- (6) An offence under subsection (5) is an offence of strict liability.

Note 1 For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2 A defendant bears an evidential burden in relation to whether or not he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

Part 5 Persons being searched and persons in custody

Division 1 Search of persons

22 Searching persons

- (1) In this section, a reference to the search of a person is a reference to a search conducted by quickly running the hands of the searcher over the clothing of the person who is being searched after the removal of his or her headwear, handwear, footwear or other outer clothing.
- (2) This section does not authorise:
 - (a) the removal of the clothing, other than headwear, handwear, footwear or other outer clothing of one person by another person; or
 - (b) requiring a person to remove his or her clothing that is not headwear, handwear, footwear or other outer clothing.
- (3) Before a person searches another person, the searcher must:
 - (a) advise that other person of his or her right to request that the search be conducted in a place that would reasonably provide privacy to the person during the search; and
 - (b) if the person so requests, take him or her to a place of that kind for the purposes of the search.
- (4) A person who searches another person, or who assists in the search of another person, must not subject that person to greater indignity than is reasonably necessary.
- (5) A special constable may search, with such assistance as is necessary and reasonable:
 - (a) a person; and
 - (b) the headwear, handwear, footwear and other outer clothing of a person; and

Section 23

- (c) other personal property apparently in the immediate control of a person;
if the constable reasonably suspects that it is necessary to do so to find out whether there is in the possession of the person:
 - (d) a thing that is capable of causing death, injury or damage or assisting the person to escape from arrest or detention;
or
 - (e) a thing that is connected with an offence.
- (6) A special constable must not seize and remove a thing found in the course of a search unless the constable reasonably believes that it is a thing to which paragraph (5) (d) or (e) applies.
- (7) If a person is searched under this section, the search must, if practicable, be carried out by a person of the same sex.

Division 2 Persons in custody

23 Warning to be given to persons in custody

- (1) As soon as practicable after the arrest of a person, a special constable must warn the person in accordance with the form in Schedule 3.
- (2) An investigating officer must warn a person in custody in accordance with the form in Schedule 3 before questioning the person for the purpose of investigating his or her involvement (if any) in an offence.
- (3) If a person in custody is unable to understand a warning because of:
 - (a) inadequate knowledge of the English language; or
 - (b) mental dysfunction; or
 - (c) physical disability or disease;the investigating officer must take all reasonable steps to ensure that the person is provided with an explanation of the warning that he or she is able to understand.

24 Charging of arrested persons

- (1) A leader must charge an arrested person in relation to the offence for which the person was arrested as soon as practicable after the arrest, unless:
 - (a) if a warrant to arrest the person has been given effect — the warrant is revoked; or
 - (b) if the person has been arrested without a warrant — the leader has reasonable grounds to believe that the person did not commit the offence.
- (2) If a leader, in the capacity of special constable, arrests a person who is to be charged, the charge must be made, if practicable, by another leader.
- (3) As soon as practicable after charging a person, the leader who charged the person must:
 - (a) write down the charge, but it is not necessary for him or her to do so in precise or technical language; and
 - (b) in the case of a person arrested under a warrant — give the charge, or a copy of the charge, to the Magistrate who issued the warrant; and
 - (c) in the case of a person arrested without a warrant — give the charge, or a copy of the charge, to the Magistrate referred to in section 15 ('procedure following arrest without warrant').
- (4) If a leader declines to charge an arrested person, as soon as practicable the leader must inform:
 - (a) in the case of a person arrested under a warrant — the Magistrate who issued the warrant; and
 - (b) in the case of a person arrested without a warrant — the Magistrate referred to in section 15;of the reasons why the arrested person was not charged.
- (5) A Magistrate may be informed of the reasons:
 - (a) in writing; or
 - (b) orally, if it is impracticable to give them in writing.

Section 25

- (6) If a Magistrate is informed orally, the Magistrate must write down, or otherwise record, the reasons as soon as practicable after being so informed.
- (7) The Magistrate must file the charge or information, or a copy of the charge or information, in the Magistrates Court.

25 Information and directions about persons in custody

- (1) A Magistrate may request information orally or in writing from a leader about a person in the custody of the leader and the leader must provide the Magistrate with the information to the best of his or her knowledge.
- (2) A Magistrate may give directions to a leader orally or in writing about the conditions under which a person in the custody of the leader is to be detained and the person must be detained in accordance with the directions.
- (3) If information is requested by a Magistrate orally from a leader, the Magistrate must write down, or otherwise record, the request as soon as practicable after the request is made.
- (4) If information is given by a leader to a Magistrate orally, the Magistrate must write down, or otherwise record, the information as soon as practicable after it is received.
- (5) If a direction is given to a leader orally, the Magistrate must write down the direction and give the direction, or a copy of the direction, to the leader as soon as practicable after the direction is given.
- (6) A Magistrate must file the request, information or direction, or a copy of the request, information or direction, in the Magistrates Court.

26 Facilities to be made available to persons in custody

- (1) As soon as practicable after the arrest and charging of a person, a special constable must tell the person of the requirement referred to in subsection (2).

Section 27

- (2) As far as practicable, a leader must make facilities available to a person in the custody of the leader that will enable the person to communicate, or attempt to communicate, with his or her legal representative or another person.
- (3) If the person in custody wishes to communicate orally with a legal practitioner, the leader must allow the legal practitioner to communicate with the person in circumstances in which, as far as practicable, the communication will not be overheard.
- (4) A leader is not required to comply with subsection (1), (2) or (3) if he or she reasonably believes that compliance with that requirement might result in:
 - (a) action by an accomplice of the person in custody to avoid arrest; or
 - (b) concealment, fabrication or destruction of evidence in proceedings in respect of an offence; or
 - (c) harassment or intimidation of, or interference with, a person who may be required to give evidence in proceedings in respect of an offence.
- (5) If a person in custody is unable to understand what is told to him or her under subsection (1) because of:
 - (a) inadequate knowledge of the English language; or
 - (b) mental dysfunction; or
 - (c) physical disability or disease;a leader must take all reasonable steps to ensure that the person is given an explanation of the requirement under subsection (2) that he or she is able to understand.

27 Provision of information about persons in custody

If a friend, legal representative or relative of a person in the custody of a leader asks the leader for information about the whereabouts of the person, the leader must give that information to the person who made the request unless:

- (a) the person in custody does not agree to the giving of that information; or

Section 27

- (b) the leader reasonably believes that the person requesting the information is not a friend, legal representative or relative of the person in custody; or
- (c) the leader reasonably believes that giving the information might result in:
 - (i) action by an accomplice of the person in custody to avoid arrest; or
 - (ii) concealment, fabrication or destruction of evidence in proceedings in respect of an offence; or
 - (iii) harassment or intimidation of, or interference with, a person who may be required to give evidence in proceedings in respect of an offence.

Part 6 Bail and detention

Division 1 Bail

28 Applications for bail

- (1) As soon as practicable after a person has been charged, a special constable must tell the person in writing or, if that is impracticable, orally, that he or she may apply for bail.
- (2) A charged person or a detainee may apply to a Magistrate for bail.
- (3) Application for bail may be made orally or in writing.
- (4) A leader must make facilities available to the charged person or detainee that will enable him or her to apply for bail.
- (5) Subsection (2) does not prevent the making of further applications.
- (6) If a Magistrate does not grant an application for bail by a charged person or detainee, the Magistrate must immediately issue to the leader with custody of that person a warrant of detention in respect of the person in accordance with Form 5 unless a warrant of detention in respect of the person is already in force.

29 Grant of bail

- (1) The Magistrate must grant bail if:
 - (a) an applicant for bail gives in the application an undertaking required by a Magistrate concerning his or her good behaviour while on bail; and
 - (b) an amount of money (if any) specified by a Magistrate as security for the good behaviour of the applicant while on bail is deposited with the Magistrate or a leader; and
 - (c) the Magistrate reasonably believes that the applicant would comply with the terms of bail and that grant of bail would not result in an unacceptable risk of:

Section 29

- (i) the applicant not appearing before a court;
 - (ii) continuation or repetition of the offence with which the applicant has been charged or of another offence; or
 - (iii) concealment, loss or destruction of evidence relating to that offence; or
 - (iv) harassment or intimidation of, or interference with, a person who may be required to give evidence in proceedings for the offence; or
 - (v) fabrication of evidence to be given or produced in proceedings for the offence; or
 - (vi) the injury or death of a person.
- (2) A Magistrate may grant bail unconditionally or subject to conditions or restrictions specified by the Magistrate in the certificate of bail.
- (3) A Magistrate must not impose a condition or restriction on the grant of bail unless there are reasonable grounds to believe that imposition of the condition is necessary to prevent an unacceptable risk of a result mentioned in paragraph (1) (c).
- (4) A person to whom bail has been granted must be released from detention, subject to any condition or restriction specified in the certificate of bail.
- (5) The Magistrate or leader must record a deposit under paragraph (1) (b) and, in the case of the Magistrate, file the record in the Magistrates Court.
- (6) If a Magistrate grants an application by a person for bail, the Magistrate must, as soon as practicable:
- (a) give a certificate of bail, or a copy of the certificate, to which is attached a copy of the undertakings (if any) referred to in paragraph (1) (a), to:
 - (i) the applicant; and
 - (ii) the leader who charged the person; and
 - (iii) the special constable who arrested the person; and
 - (b) file the application and the certificate, or a copy of the application or certificate, in the Magistrates Court.

- (7) If a person on bail contravenes an undertaking given by the person in the application for, or a condition or restriction specified in the certificate of, bail:
- (a) the person may be arrested without a warrant as if he or she had committed an offence; and
 - (b) any amount of money deposited as security for the good behaviour of the person while on bail is forfeited to the Commonwealth.
- (8) A certificate of bail must be in accordance with Form 4.

Division 2 Detention

30 Warrants of detention

- (1) As soon as practicable after a person is charged in relation to an offence, a leader must apply to a Magistrate for a warrant to detain the person.
- (2) Application under this section may be made:
- (a) in writing; or
 - (b) orally, if it is impracticable to apply in writing.
- (3) In the case of an oral application, the Magistrate must write down the statements of fact and other matters made by the leader in the application.
- (4) The Magistrate may grant the warrant of detention.
- (5) A warrant of detention:
- (a) unless sooner revoked, authorises detention of the person named or otherwise described in the warrant until:
 - (i) bail is granted to the person; or
 - (ii) the charge against the person is dismissed; or
 - (iii) the person is convicted of an offence;whichever happens first; and
 - (b) may specify conditions or restrictions to which detention of the person is subject.

Section 31

- (6) If:
- (a) a Magistrate declines to grant a warrant of detention; or
 - (b) the warrant of detention in respect of a charged person is revoked;
- the Magistrate must issue a summons to the charged person in accordance with Form 3.
- (7) As soon as practicable after the issue or grant of a warrant of detention, the Magistrate:
- (a) if practicable, must inform the leader orally of its terms and the time at, and the date on, which it was issued or granted; and
 - (b) give the warrant, or a copy of the warrant, to the leader.
- (8) A leader must ensure that a person in the custody of the leader is not subjected to:
- (a) more force, or greater indignity, than is reasonably necessary to prevent the escape of the charged person from detention; or
 - (b) cruel, inhuman or degrading treatment.
- (9) The Magistrate must file any written application, or writing referred to in subsection (3), and the warrant, or a copy of any application or writing or of the warrant, in the Magistrates Court.
- (10) A warrant of detention must be in accordance with Form 5.

31 Detainees

- (1) A detainee must be brought before a court as soon as practicable.
- (2) As soon as practicable after the end of each period of 28 days during which a detainee is in the custody of a leader, the leader must report to a Magistrate the fact that the detainee remains in custody.

Part 7 Evidence

32 Interpretation

- (1) In this Part:
tape recording means audio recording or video recording.
- (2) In this Part, a reference to questioning a person is a reference to questioning the person, or carrying out an investigation in which the person participates, to investigate his or her involvement (if any) in an offence.

33 Right to remain silent etc. not affected

Nothing in this Ordinance affects:

- (a) the right of a person in custody to refuse to answer questions or to participate in an investigation of an offence except where the person is required to do so by or under a law in force in the Territory; or
- (b) the burden on the prosecution to prove the voluntariness of an admission or confession made by a person in custody; or
- (c) the discretion of a court to exclude illegally, improperly or unfairly obtained evidence.

34 Certain statements to be admissible as evidence

- (1) This section applies subject to section 37.
- (2) If, in an interview with an investigating officer, a person in custody answers a question of the officer or makes an admission or a confession to the officer, that answer, admission or confession is not admissible as evidence against the person in proceedings for an offence, unless sections 35 and 36 have been complied with.

Section 35

35 Records of answers, admissions and confessions

- (1) If an answer to a question was given, or an admission or confession was made, in circumstances where it was reasonably practicable to tape record the answer, admission or confession, anything said by or to the person in the interview must be tape recorded.
- (2) If an answer to a question was given, or an admission or confession was made, in circumstances where it was not reasonably practicable to tape record the answer, admission or confession, then:
 - (a) at the time of, or as soon as practicable after, the interview, anything said by or to the person in the interview must be recorded in writing:
 - (i) in English; or
 - (ii) if another language was used by the person in the interview — if practicable, in the other language; and
 - (b) as soon as practicable after the record was made, it must be read, and a copy of the record must be given to, the person:
 - (i) in English; or
 - (ii) if another language was used by the person in the interview — if practicable, in the other language; and
 - (c) the person must be given the opportunity to interrupt the reading at any time for the purpose of drawing attention to any error or omission that he or she claims has been made in or from the record; and
 - (d) at the end of the reading, the person must be given the opportunity to state whether the person claims that there are any errors in or omissions from the record in addition to any to which he or she had drawn attention during the reading; and
 - (e) if it is reasonably practicable, a tape recording must be made of the reading referred to in paragraph (b) and of anything said by or to the person as a result of compliance with paragraphs (c) and (d); and

Section 36

- (f) before the reading referred to in paragraph (b):
 - (i) if the reading is in English — an explanation, in accordance with the form in Schedule 4, must be given to the person of the procedure that would be followed for the purposes of compliance with paragraphs (b), (c) and (d) and (if applicable) paragraph (e); and
 - (ii) if the reading is in another language — if practicable, that explanation in the other language.

36 Records of statements to be made available without charge

If the answer, admission or confession of a person in custody is recorded in accordance with this section, the investigating officer must, without charge:

- (a) if the recording is an audio recording only or a video recording only — make the recording, or a copy of the recording, available to the person or to his or her legal representative as soon as practicable after the making of the recording; and
- (b) if both an audio recording and a video recording were made:
 - (i) make the audio recording, or a copy of the audio recording, available to the person or to his or her legal representative as soon as practicable after the making of the recording; and
 - (ii) notify the person or his or her legal representative that an opportunity will be provided, on request, for viewing the video recording; and
- (c) if a transcript of the tape recording is prepared — make a copy of the transcript available to the person or to his or her legal representative as soon as practicable after the preparation of the transcript.

Section 37

37 Court may admit non-complying evidence in certain circumstances

- (1) A court may admit evidence to which section 34 applies even if:
 - (a) the requirements of sections 35 and 36 have not been complied with; or
 - (b) there is insufficient evidence of compliance with those requirements;
where, having regard to the nature of and the reasons for the non-compliance or insufficiency of evidence and any other relevant matters, the court is satisfied that admission of the evidence would not be contrary to the interests of justice.
- (2) A court may admit evidence to which section 34 applies even if a provision of section 35 has not been complied with if, having regard to the reasons for the non-compliance and any other relevant matters, the court is satisfied that it was not practicable to comply with that provision.
- (3) If a court permits evidence to be given before a jury under this section, the judge must inform the jury of:
 - (a) the non-compliance with the requirements of section 35 or 36, as the case may be; or
 - (b) the absence of sufficient evidence of compliance with those requirements;and give the jury such warning about the evidence as he or she thinks appropriate.

38 Certain acts or omissions to be proved

- (1) In this section, *warrant* means search warrant, warrant for apprehension, warrant of detention or warrant to arrest.
- (2) If it is relevant in proceedings for an offence for a court to be satisfied that an act or omission was authorised or required by:
 - (a) a certificate of bail; or

Section 40

- (b) a summons or warrant;
that is not produced in evidence, the court is to presume, unless the contrary is proved, that the act or omission was not authorised or required by the certificate, summons or warrant.

39 Evidentiary certificates

In proceedings for an offence, a certificate signed by:

- (a) the Minister, stating that a person specified in the certificate was a leader; or
(b) a field leader stating that a building, or part of a building, specified in the certificate was a place of detention; or
(c) a voyage leader or a deputy voyage leader, stating that a ship, or a part of a ship, specified in the certificate was a place of detention;

at a time, or during a period, specified in the certificate is evidence of the matter stated in the certificate.

40 Copies of documents

- (1) For the purposes of this Ordinance, a document (in this section called *the copy*) is only taken to be a copy of another document (in this section called *the original document*):
- (a) if the copy is identical in all relevant respects with the original document; and
(b) if the original document is signed by a Magistrate and the copy does not include the signature of the Magistrate — if the copy includes a statement, endorsed by the Magistrates Court, that it is a copy of the original document.

Section 41

Part 8 Removal of detainees from the Territory**41 Interpretation**

In this Part:

custodian means:

- (a) a special constable; or
- (b) a member of the police force of a State or another Territory; or
- (c) a prison officer of a State or another Territory.

prison means a prison, or other place where a person may be held in lawful custody, in a State or another Territory.

42 Detainees may be taken from, and detained outside, the Territory

- (1) A detainee may be:
 - (a) conveyed by a custodian to and from a prison; and
 - (b) delivered by a custodian into the custody of the officer for the time being in charge of the prison;
as if the detainee were being so conveyed and delivered under a law of the State or Territory where the prison is located that has a similar effect to:
 - (c) this Ordinance; and
 - (d) the warrant of detention under which he or she is detained.
- (2) The detainee may be conveyed to the prison by whatever route is reasonable, including a route that requires transit:
 - (a) through a State or Territory; and
 - (b) between the Territory and a place in a State or another Territory.

Section 45

43 Imprisonment in a State or another Territory

A detainee:

- (a) may be detained in a prison for a period that is necessary to give effect to the warrant of detention under which the detainee is detained; and
- (b) is taken to be imprisoned under the warrant.

44 Manner of imprisonment

Subject to this Ordinance, a detainee in a prison:

- (a) must be dealt with in the same manner; and
- (b) is subject to the same laws;
as if the detainee were detained under a law of the State or Territory where the prison is located that has a similar effect to:
- (c) this Ordinance; and
- (d) the warrant of detention under which he or she is detained.

45 Conveying of detainees to appear before courts

- (1) When a detainee is required to be brought to a place in a State or another Territory so that the detainee can appear before a court, a person in whose custody the detainee is placed must, as soon as practicable, arrange for the detainee to be conveyed in custody to that place.
- (2) The detainee may be conveyed to the place by whatever route is reasonable, including a route that requires transit:
 - (a) through a State or Territory; and
 - (b) between the Territory and a place in a State or another Territory.

Part 9 Miscellaneous

Division 1 General

46 Interpretation

In this Division, unless the contrary intention appears:

warrant means search warrant, warrant for apprehension, warrant of detention or warrant to arrest.

47 Warrants for apprehension

- (1) If a person to whom a summons has been issued or bail has been granted does not attend a court as required by the summons or certificate of bail, the court or a Magistrate may issue a warrant for the apprehension of the person if the court or Magistrate is satisfied that the person received the summons or certificate.
- (2) A warrant for apprehension:
 - (a) applies in a State or another Territory where it is given effect; and
 - (b) authorises the apprehension of the person named or otherwise described in that warrant; and
 - (c) unless sooner revoked, authorises the holding of the person in custody until:
 - (i) the charge against the person is dismissed; or
 - (ii) the person is convicted of an offence; and
 - (d) authorises the bringing of the person before a court as soon as practicable after his or her arrest; and
 - (e) may specify conditions or restrictions to which the custody of the person is subject; and
 - (f) must be filed in the court.
- (3) A person named or otherwise described in a warrant for apprehension is subject to the same laws:

Section 49

- (a) in the case of a person giving effect to the warrant — as if the person were exercising a function or performing a duty; and
 - (b) in the case of a person who is, or has been, apprehended under the warrant — as if the person were being dealt with;
- under a law of the State or Territory concerned that has a similar effect to this Ordinance and the warrant.

48 Effect of warrants, summons and certificates of bail

- (1) Subject to subsections (2), (3) and (4), a warrant, summons or certificate of bail has effect according to its terms.
- (2) A warrant or summons takes effect when the person to whom the Magistrate is required to grant or issue the warrant or summons, as the case may be, receives the warrant or summons, or a copy of the warrant or summons.
- (3) A certificate of bail takes effect when the person who has custody of the applicant for bail receives the certificate or a copy of the certificate.
- (4) A special constable or leader, in addition to the special constable or leader to whom a warrant is granted or issued, may give effect to the warrant.

49 Discontinuance or variation of charge, summons or warrant

- (1) As soon as practicable after a court or Magistrate is satisfied that the facts or other grounds on which:
 - (a) a warrant or summons was granted or issued, as the case may be; or
 - (b) a charge was made;did not, or have ceased to, exist the court or Magistrate must, in writing:
 - (c) revoke the warrant or summons; or
 - (d) dismiss the charge.

Section 49

- (2) As soon as practicable, the court or Magistrate must:
- (a) take reasonable steps to advise:
 - (i) the person to whom the warrant is granted or issued of the revocation of the warrant; or
 - (ii) the person to whom the summons is issued of the withdrawal of the summons; or
 - (iii) the person who made the charge of the dismissal of the charge; and
 - (b) take any other steps necessary to ensure that action authorised or required by the warrant, summons or charge is discontinued; and
 - (c) give the instrument, or a copy of the instrument, by which:
 - (i) the warrant or summons is revoked; or
 - (ii) the charge is dismissed;to the relevant person mentioned in paragraph (a); and
 - (d) file the instrument, or a copy of the instrument, in the court.
- (3) The court or Magistrate may act under subsection (1):
- (a) on its or his or her own initiative; and
 - (b) on the application of a person:
 - (i) in respect of whom the warrant is granted or issued; or
 - (ii) to whom the summons is issued; or
 - (iii) against whom the charge is made.
- (4) A person:
- (a) to whom a summons is issued; or
 - (b) in custody under a warrant for apprehension or a warrant of detention; or
 - (c) against whom the charge is made;
- may apply to a court or Magistrate to have the summons, warrant or charge varied.
- (5) Subsection (4) does not prevent the making of further applications.

Division 2 Other offences

50 Requirement to give name and address

- (1) If:
- (a) an investigating officer reasonably believes that a person whose name or address is not known to the officer may be able to assist the officer in relation to an offence that the officer reasonably believes has been, may have been or is likely to have been committed; and
 - (b) the investigating officer tells the person of the reason for the request; and
 - (c) the investigating officer produces:
 - (i) in the case of a leader — his or her identity card; and
 - (ii) in any other case — written evidence of the capacity in which the officer is making the request;
- the investigating officer may request the person to provide his or her name or address to the officer.
- (2) If an investigating officer requests a person to provide his or her name or address the person must not:
- (a) fail to comply with the request; or
 - (b) give a name or address that is false in a relevant detail.

Penalty: 5 penalty units.

- (3) An offence under subsection (2) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

Division 3 Other matters

52 Use of force generally

The powers and functions conferred on an investigating officer must not be exercised or performed in relation to another person in a manner that is likely to cause injury to, or the death of, the other person to a greater extent than is reasonably necessary to prevent injury to, or protect the life of, any person.

Section 53

53 Jurisdiction and powers of Supreme Court

This Ordinance does not affect any jurisdiction or powers that the Supreme Court has apart from this Ordinance.

54 Arrangements with States and Territories

The Minister may arrange with a State or another Territory for the performance of functions and the exercise of powers under Part 8 by:

- (a) officers or employees of the State or Territory; and
- (b) officers or employees of an authority of the State or Territory.

55 Delegation

The Minister may delegate in writing to the Director of the Antarctic Division of the Department any of his or her powers under this Ordinance, other than the power to make regulations.

56 Liability for wrongful acts of certain persons

- (1) In this section:

auxiliary means:

- (a) a leader; or
- (b) a person other than:
 - (i) a police officer; or
 - (ii) a member of the police force, or a prison officer, of a State or another Territory;

who, at the request of a special constable, assists the special constable under a provision of this Ordinance.

plaintiff includes a defendant counter-claiming.

- (2) The Commonwealth is:

- (a) liable for a tort committed by an auxiliary in the exercise or performance, or purported exercise or performance, of his or her powers or functions in the same way as a person is liable for a tort committed by his or her employee in the course of his or her employment; and

Section 56

- (b) to be treated for all purposes as a joint tortfeasor with the auxiliary in respect of the tort.
- (3) In a claim by the Commonwealth for damages in respect of a tort, an act or omission of an auxiliary in the exercise or performance, or purported exercise or performance, of his or her powers or functions may be relied on as constituting contributory negligence by the Commonwealth if the act or omission could have been so relied on if it had been done by an employee of the Commonwealth in the course of his or her employment.
- (4) The liability of the Commonwealth under subsection (2) does not extend to a liability to pay punitive damages.
- (5) Without limiting the application of subsection (2), the Commonwealth may:
 - (a) if proceedings have been begun against an auxiliary with respect to a tort committed by the auxiliary in the exercise or performance, or purported exercise or performance, of his or her powers or functions — as joint tortfeasor with the auxiliary (whether or not the Commonwealth is a party to the proceedings):
 - (i) pay to the plaintiff, on behalf of the auxiliary, the whole or a part of any damages or costs (except punitive damages) that the auxiliary has been ordered by the court in the proceedings to pay to the plaintiff; and
 - (ii) pay to the auxiliary any costs that are incurred by him or her in the proceedings and not recovered from the plaintiff; or
 - (b) if an auxiliary has entered into a settlement of a claim by another person that has, or might have, given rise to proceedings of a kind referred to in paragraph (a) — as joint tortfeasor with the auxiliary (whether or not the Commonwealth is a party to the settlement), pay to that other person the whole or a part of the amount that, under the terms of the settlement, the auxiliary is liable to pay to the other person.

Section 57

57 Regulations

The Minister may make regulations prescribing matters:

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

Schedule 1 Forms

(subsection 4 (6))

Form 1 Search warrant

(subsection 8 (8))

TERRITORY OF HEARD AND McDONALD ISLANDS

CRIMINAL PROCEDURE ORDINANCE 1993

SEARCH WARRANT

To Special Constable ¹
[at]² [on]² ³

On the basis of information given to me by [Special
Constable ¹]² [you]²
concerning an offence ⁴,
committed [at or near]² [on]² ⁵ [in the Territory of
Heard and McDonald Islands]² on or about ⁶, I authorise you, at
any time before the warrant ceases to have effect, to act in accordance with
section 8 of the *Criminal Procedure Ordinance 1993* in relation to the
following person, premises, aircraft, vehicle or vessel:

This warrant ceases to have effect at the end of ⁷
⁸.

Signed at ⁹ hours on ⁶.

¹⁰

Magistrate

-
- 1 *insert name of special constable*
 - 2 *omit if inapplicable*
 - 3 *insert place or name of ship where special constable is located*
 - 4 *insert description of alleged offence*
 - 5 *insert place or name of ship where the offence is alleged to have been committed*
 - 6 *insert date*
 - 7 *insert name or description of person, place, premises, aircraft, vehicle or vessel*
 - 8 *insert date, being a date no later than 7 days after the day on which the warrant takes effect*
 - 9 *insert time of day at place where Magistrate signs warrant*
 - 10 *signature of Magistrate*

Form 2 Warrant to arrest

(subsection 16 (5))

TERRITORY OF HEARD AND McDONALD ISLANDS

CRIMINAL PROCEDURE ORDINANCE 1993

WARRANT TO ARREST

To Special Constable ¹
[at]² [on]² ³

On the basis of information given to me by [Special
Constable ¹]² [you]²
concerning an offence ⁴,
committed [at or near]² [on]² ⁵ [in the Territory of Heard
Island and McDonald Islands]² on or about ⁶.
I authorise you to arrest ⁷
in relation to the offence in accordance with the *Criminal Procedure Ordinance*
1993.

Signed at ⁸ hours on ⁶.

⁹

Magistrate

-
- 1 *insert name of special constable*
 - 2 *omit if inapplicable*
 - 3 *insert place or name of ship where special constable is located*
 - 4 *insert description of alleged offence*
 - 5 *insert place or name of ship where the offence is alleged to have been committed*

- 6 *insert date*
- 7 *insert name or other description of alleged offender*
- 8 *insert time of day at place where Magistrate signs warrant*
- 9 *signature of Magistrate*

Form 3 Summons

(subsections 17 (2) and 30 (6))

TERRITORY OF HEARD ISLAND AND McDONALD ISLANDS

CRIMINAL PROCEDURE ORDINANCE 1993

SUMMONS

To ¹
[at]² [on]² ³

On the basis of an allegation made in an application to me by Special
Constable ⁴

that you, on or about ⁵,
committed an offence ⁶
[at or near]² [on]² ⁷ [in the
Australian Antarctic Territory]², you are required, in

accordance with the *Criminal Procedure Ordinance 1993*:

(a) to appear at ⁸
at ⁹ hours
on ⁵ to answer the
allegation made in the application [; and]²

(b) to produce the following documents or other
things: ^{10,2}] .

Signed at ⁹ hours on ⁵ .

¹¹

Magistrate

-
- 1 *insert name of alleged offender*
 - 2 *omit if inapplicable*
 - 3 *insert place or name of ship where alleged offender is located*
 - 4 *insert name of special constable*
 - 5 *insert date*
 - 6 *insert description of alleged offence*
 - 7 *insert place or name of ship where offence is alleged to have been committed*
 - 8 *insert name and address of court where allegation is to be answered*
 - 9 *insert time of day at the place concerned*
 - 10 *specify documents or other things*
 - 11 *signature of Magistrate*

Form 4 Certificate of bail

(subsection 29 (8))

TERRITORY OF HEARD ISLAND AND McDONALD ISLANDS

CRIMINAL PROCEDURE ORDINANCE 1993

CERTIFICATE OF BAIL

To ¹
[at]² [on]² ³

[On the basis of [an]² undertaking[s]² given by you concerning your good behaviour on bail, a copy of which is attached to this certificate,]² [and]² deposit of

\$ ^{4, 2}],

bail is granted to you in accordance with the *Criminal Procedure Ordinance 1993* to appear at ⁵ at ⁶ hours on

⁷ to answer the allegation made against you, and, if necessary, to be further dealt with under the law [, subject to the following [conditions]² [or]² restrictions:]²

^{8, 2}] .

Signed at ⁶ hours on ⁷ .

⁹

Magistrate

-
- 1 *insert name of arrested person*
 - 2 *omit if inapplicable*
 - 3 *insert name of applicant*

- 4 *if applicable, insert amount on deposit with leader or Magistrate for bail*
- 5 *insert name and address of court where allegation to be answered*
- 6 *insert time of day at place where Magistrate signs certificate*
- 7 *insert date*
- 8 *if applicable, insert conditions or restrictions applying to bail*
- 9 *signature of Magistrate*

Form 5 Warrant of detention

(subsections 28 (6) and 30 (10))

TERRITORY OF HEARD ISLAND AND McDONALD ISLANDS

CRIMINAL PROCEDURE ORDINANCE 1993

WARRANT OF DETENTION

To ¹
Leader
[at]² [on]² ³

On the basis of information given to me by you concerning an
offence ⁴ committed
[at or near]² [on]² ⁵ [in the Territory of
Heard Island and McDonald Islands]² on or about ⁶,
I authorise you, in accordance with the *Criminal Procedure Ordinance 1993*, to
detain ⁷ until ⁸ [, subject
to the following [conditions]² [or]² restrictions:]² ^{9,10}]

Signed at ¹⁰ hours on ⁶.

11

Magistrate

-
- 1 *insert name of leader*
2 *omit if inapplicable*
3 *insert place or name of ship where leader is located*
4 *insert description of alleged offence*
insert place or name of ship where the offence is alleged to have been committed

- 6 *insert date*
- 7 *insert name or other description of charged person*
- 8 *insert day at the end of which, or event by reference to which, warrant expires*
- 9 *if applicable, insert conditions or restrictions applying to detention*
- 10 *insert time of day at place where Magistrate signs warrant*
- 11 *signature of Magistrate*

Schedule 2 Oath and affirmation

(paragraphs 15 (5) (a) and 19 (5) (a))

OATH

I swear by Almighty God that every statement I have made in this document is true and that the signature to this document is my signature.

1

Special constable

Taken before me at ² hours on ³.

4

[Magistrate]⁵ [Leader]⁵ [Medical Officer]⁵

AFFIRMATION

I solemnly declare and affirm that every statement I have made in this document is true and that the signature to this document is my signature.

1

Special constable

Made before me at ² hours on ³.

4

[Magistrate]⁵ [Leader]⁵ [Medical Officer]⁵

-
- 1 *insert name of special constable*
 - 2 *insert time at place where oath taken or affirmation made*
 - 3 *insert date*
 - 4 *insert name of Magistrate, leader or medical officer*
 - 5 *omit if inapplicable*

Schedule 3 **Form of warning**
(section 23)

FORM OF WARNING

You are not obliged to say anything unless you wish to do so, but whatever you say may be given in evidence.

Schedule 4 Form of explanation

(paragraph 35 (2) (f))

FORM OF EXPLANATION

When you were interviewed by ¹,
[I/we²] made a record in writing of what you said, and what [I/we²] said
to you in the interview. [I/we²] made the record [at the time of the
interview/as soon as practicable after the interview²]. The record is in
[English/the language that you used in the interview²]. [I/we²] will give
you a copy.

I am now going to read the record to you.

You can interrupt the reading at any time if you think that there is
something wrong with the record. At the end of the reading you can tell
[me/us²] about anything else that you think is wrong with the record, as
well as the things that you mentioned during the reading.

(Omit the following paragraph if it is inapplicable)

[I/we²] will make a tape recording of my reading of the record and of
everything that you say, or [I/we²] say to you, during the reading and at
the end. [I/we²] will give you a copy of that tape recording and, if a
transcript is made, a copy of that transcript.

1 insert name of leader or special constable

2 omit whichever is inapplicable

Table of Ordinances

Notes to the *Criminal Procedure Ordinance 1993***Note 1**

The *Criminal Procedure Ordinance 1993* (in force under the *Heard Island and McDonald Islands Act 1953*) as shown in this compilation comprise Ordinance 1993 No. 2 amended as indicated in the Tables below.

Table of Ordinances

Year and number	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
No. 2, 1993	25 Nov 1993	1 Dec 1993	
No. 1, 2002	21 Feb 2002	21 Feb 2002	—

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
S. 4A	ad. No. 1, 2002
S. 5	am. No. 1, 2002
Part 2	
S. 21	am. No. 1, 2002
Part 9	
Division 2	
S. 50	am. No. 1, 2002
S. 51	rep. No. 1, 2002
