



New South Wales

Law Enforcement (Powers and Responsibilities) Regulation 2005

under the

Law Enforcement (Powers and Responsibilities) Act 2002

Explanatory note

The object of this Regulation is to make provision for the following matters:

- (a) the form of the following:
 - (i) applications for various kinds of warrants, and for notices requiring the production of documents by authorised deposit-holding institutions (***notices to produce documents***), under the *Law Enforcement (Powers and Responsibilities) Act 2002 (the Act)*,
 - (ii) records to be made by or on behalf of authorised officers in relation to their determination of such applications,
 - (iii) notices required under the Act to be given to occupiers of premises at which certain warrants are executed,
 - (iv) reports to authorised officers on the execution of warrants and the giving of notices to produce documents,
- (b) the issue of receipts for things seized in the execution of warrants,
- (c) the keeping of documents relating to warrants and notices to produce documents, and the inspection of those documents,
- (d) the persons who may act as custody managers for persons detained under Part 9 of the Act,
- (e) the guidelines to be observed by custody managers and other police officers, and the keeping and inspection of custody records, in relation to those detained persons,
- (f) the detention under Part 9 of the Act of vulnerable persons—that is, children, persons with impaired intellectual or physical functioning, Aboriginal persons or Torres Strait Islanders and persons of non-English speaking backgrounds,
- (g) the establishment of a crime scene under the Act,
- (h) the train and bus routes in relation to which dogs may be used to carry out general drug detection without a warrant under the Act,
- (i) the creation of a penalty notice offence for the offence of failing to comply with a direction of a police officer under Part 14 of the Act.

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Explanatory note

This Regulation is made under the *Law Enforcement (Powers and Responsibilities) Act 2002*, including sections 60 (1), 65 (2), 66, 67 (2) (a), 74 (1) (f), 92 (3), 103 (3), 112, 120 (1) (g), 131 (1) and (2), 132, 148 (1) (c), 235 and 238 (the general regulation-making power).

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Clause 1

Preliminary

Part 1

Law Enforcement (Powers and Responsibilities) Regulation 2005

under the

Law Enforcement (Powers and Responsibilities) Act 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Law Enforcement (Powers and Responsibilities) Regulation 2005*.

2 Commencement

This Regulation commences on the commencement of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

3 Definitions

(1) In this Regulation:

child has the meaning given by clause 23.

detained person means a person who is detained under Part 9 of the Act.

impaired intellectual functioning, in relation to a person, has the meaning given by clause 23.

impaired physical functioning, in relation to a person, has the meaning given by clause 23.

Part 5 search warrant means a search warrant issued under Division 2 (Police powers relating to warrants) of Part 5 of the Act.

search warrant means any of the following search warrants:

- (a) a Part 5 search warrant,
- (b) a search warrant issued under section 86 (Police may enter and search for firearms) of the Act,
- (c) a search warrant issued under Division 1 (Drug premises) of Part 11 of the Act,
- (d) a search warrant issued under a provision specified in Schedule 2 (Search warrants under other Acts) to the Act,

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Part 1 Preliminary

- (e) a search warrant issued under a provision of, or a provision made under, an Act, being a provision that provides that Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under that provision.

support person means a person who is a support person for the purposes of Division 3 of Part 3.

vulnerable person has the meaning given by clause 24.

the Act means the *Law Enforcement (Powers and Responsibilities) Act 2002*.

- (2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.
- (3) Notes included in this Regulation do not form part of this Regulation.

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Clause 4

Warrants and notices to produce documents

Part 2

Part 2 Warrants and notices to produce documents

4 Form of application for warrant or notice to produce (cf Search Warrants Regulation 1999, cl 4, Police Powers (Drug Detection Dogs) Regulation 2002, cl 6)

- (1) For the purposes of section 60 (1) of the Act:
 - (a) Part 1 of Form 1 is the form for an application for a Part 5 search warrant, and
 - (b) Part 1 of Form 2 is the form for an application for a search warrant other than a Part 5 search warrant, and
 - (c) Part 1 of Form 3 is the form for an application for a warrant issued under section 83 (Entry by warrant where entry denied) of the Act, and
 - (d) Part 1 of Form 4 is the form for an application for a crime scene warrant issued under Part 7 of the Act, and
 - (e) Part 1 of Form 5 is the form for an application for a warrant issued under Division 2 (Use of drug detection dogs) of Part 11 of the Act, and
 - (f) Part 1 of Form 6 is the form for an application for a notice to produce documents issued under Division 3 of Part 5 of the Act.
- (2) An application for a warrant issued under section 103 (Warrant for arrest of person unlawfully at large) of the Act is to be made in the form of Part 1 of Form 7.
- (3) An application for a detention warrant issued under Part 9 of the Act is to be made in the form of Part 1 of Form 8.

5 Determination of application for warrant or notice to produce—record by authorised officer

A record is to be made by or on behalf of an authorised officer, in relation to each application for a warrant dealt with by the officer, in the following form:

- (a) in the case of an application for a Part 5 search warrant—Part 2 of Form 1,
- (b) in the case of an application for a search warrant other than a Part 5 search warrant—Part 2 of Form 2,
- (c) in the case of an application for a warrant issued under section 83 (Entry by warrant where entry denied) of the Act—Part 2 of Form 3,
- (d) in the case of an application for a crime scene warrant issued under Part 7 of the Act—Part 2 of Form 4,

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Part 2 Warrants and notices to produce documents

- (e) in the case of an application for a warrant issued under Division 2 (Use of drug detection dogs) of Part 11 of the Act—Part 2 of Form 5,
- (f) in the case of an application for a notice to produce documents issued under Division 3 of Part 5 of the Act—Part 2 of Form 6,
- (g) in the case of an application for a warrant issued under section 103 (Warrant for arrest of person unlawfully at large) of the Act—Part 2 of Form 7,
- (h) in the case of an application for a detention warrant issued under Part 9 of the Act—Part 2 of Form 8.

6 Form of warrant or notice to produce (cf Search Warrants Regulation 1999, cl 5, Police Powers (Drug Detection Dogs) Regulation 2002, cl 7, Crimes (Detention after Arrest) Regulation 1998, cl 30 (2))

- (1) For the purposes of section 66 of the Act:
 - (a) Form 9 is the form for a Part 5 search warrant, and
 - (b) Form 10 is the form for a search warrant other than a Part 5 search warrant, and
 - (c) Form 11 is the form for a warrant issued under section 83 (Entry by warrant where entry denied) of the Act, and
 - (d) Form 12 is the form for a crime scene warrant issued under Part 7 of the Act, and
 - (e) Form 13 is the form for a detention warrant issued under Part 9 of the Act, and
 - (f) Form 14 is the form for a warrant issued under Division 2 (Use of drug detection dogs) of Part 11 of the Act, and
 - (g) Form 15 is the form for a notice to produce documents issued under Division 3 of Part 5 of the Act.
- (2) A warrant under section 103 (Warrant for arrest of person unlawfully at large) of the Act is to be issued in the form of Form 16.

7 Form of occupier's notice: section 67 (2) (a) (cf Search Warrants Regulation 1999, cl 6)

For the purposes of section 67 (2) (a) of the Act:

- (a) Form 17 is the form for an occupier's notice in relation to a Part 5 search warrant, and
- (b) Form 18 is the form for an occupier's notice in relation to a search warrant other than a Part 5 search warrant, and

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Warrants and notices to produce documents

Part 2

- (c) Form 19 is the form for an occupier's notice in relation to a crime scene warrant issued under Part 7 of the Act.

Note. An occupier's notice is not required to be issued in connection with a search warrant issued under section 86 (Police may enter and search for firearms) of the Act.

8 Receipts for things seized (cf Search Warrants Regulation 1999, cl 7)

- (1) A person who seizes a thing while executing a search warrant, or a crime scene warrant issued under Part 7 of the Act, in any premises must provide the occupier of the premises with a receipt acknowledging seizure of the thing if the occupier is then present and it is reasonably practicable to do so.
- (2) A person who seizes a dangerous article under section 85 or 87 of the Act while executing a warrant issued under section 83 of the Act in any premises must provide the occupier of the premises with a receipt acknowledging seizure of the thing if the occupier is then present and it is reasonably practicable to do so.
- (3) A copy of a receipt issued under this clause, in relation to a thing seized while executing a warrant, is to be attached to the report about the execution of the warrant that is referred to in clause 9 (1).

9 Form of report to authorised officer on execution of a warrant or giving of notice to produce: section 74 (cf Search Warrants Regulation 1999, cl 8, Police Powers (Drug Detection Dogs) Regulation 2002, cl 10)

A report to an authorised officer under section 74 of the Act about the execution of a warrant must be in or to the effect of Form 20 and must contain the particulars required to complete that Form.

10 Keeping and inspection of records (cf Search Warrants Regulation 1999, cl 9, Crimes (Detention after Arrest) Regulation 1998, cl 31)

- (1) The following documents must be kept in relation to each warrant that is issued:
 - (a) any written application for the warrant,
 - (b) any record relating to the warrant made by or on behalf of an authorised officer,
 - (c) a copy of any occupier's notice,
 - (d) any report on the execution of the warrant (including a copy of any receipt provided to the occupier under clause 8).
- (2) The following documents must be kept in relation to each notice to produce documents issued under Division 3 of Part 5 of the Act:
 - (a) any application for the notice,

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Part 2 Warrants and notices to produce documents

- (b) any record relating to the notice made by or on behalf of the authorised officer,
 - (c) any report on the execution of the notice,
 - (d) any record of an application made for an order to access documents under section 56 of the Act,
 - (e) any order made under section 56 of the Act.
- (3) The documents must be kept for at least 6 years from the date on which the warrant or notice was issued:
- (a) at the Local Court specified in the occupier's notice, or
 - (b) if no occupier's notice is issued, at the Local Court at which the warrant or notice was issued or that is nearest to the place at which it was issued.
- (4) The documents may be destroyed after the period referred to in subclause (3) has expired.
- (5) During the hours that the Local Court is open to the public, the documents may be inspected:
- (a) in the case of any warrant other than a warrant referred to in paragraph (b) or (c)—by the occupier of the premises to which the warrant relates or by any other person on behalf of the occupier, or
 - (b) in the case of a detention warrant issued under Part 9 of the Act—by the detained person to whom the warrant relates or by any other person on behalf of that person, or
 - (c) in the case of a warrant issued under Division 2 (Use of drug detection dogs) of Part 11 of the Act—by any member of the public, or
 - (d) in the case of a notice to produce documents issued under Division 3 of Part 5 of the Act—by a person who is an officer, or other person, acting on behalf of the authorised deposit-taking institution to which the notice to produce relates.

11 Certified records not available for inspection (cf Search Warrants Regulation 1999, cl 10)

- (1) An authorised officer may at any time issue a certificate to the effect that the officer is satisfied that:

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- (a) a document or part of a document referred to in clause 10 contains matter:
 - (i) that could disclose a person's identity, and
 - (ii) that, if disclosed, is likely to jeopardise that or any other person's safety, or
 - (b) a document or part of a document referred to in clause 10 contains matter that, if disclosed, may seriously compromise the investigation of any matter.
- (2) The document or part of the document to which the certificate relates is not to be made available for inspection under clause 10 (5).
 - (3) The certificate is to be kept with the document to which it relates.
 - (4) An authorised officer (whether or not the one that issued the certificate) may revoke the certificate if satisfied (after consideration of submissions from any interested party) that disclosure of the matter to which it relates is no longer likely to jeopardise any person's safety or seriously compromise the investigation of any matter.

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Part 3 Investigations and questioning

Part 3 Investigations and questioning

Division 1 Custody managers

12 Designation of police stations and other places to be used for detaining persons (cf Crimes (Detention after Arrest) Regulation 1998, cl 7)

- (1) The Commissioner of Police is to designate police stations, and other places in the State, for the purpose of detaining persons under Part 9 of the Act.
- (2) A police station or other place is not to be designated unless it appears to the Commissioner to provide, or have access to, sufficient facilities for that purpose.
- (3) Police stations and other places of detention designated under this clause are referred to in this Division as *designated police stations* and *designated places of detention*, respectively.

Note. Section 31 of the *Police Act 1990* enables the Commissioner of Police to delegate any function conferred on the Commissioner, including the functions set out in this and the next clause.

13 Appointment of custody managers for designated police stations and designated places of detention (cf Crimes (Detention after Arrest) Regulation 1998, cl 8)

The Commissioner of Police is to appoint one or more police officers (*appointed custody managers*) to act as custody managers at each designated police station and each designated place of detention.

14 Order of preference in relation to places of detention (cf Crimes (Detention after Arrest) Regulation 1998, cl 11)

- (1) A police station or place of detention to which a person is taken to be detained under Part 9 of the Act must be a designated police station, or designated place of detention, at which there is an appointed custody manager who is available to act as the custody manager for the person.
- (2) If it is not reasonably practicable to comply with subclause (1), the person may be detained at a designated police station, or designated place of detention, at which there is a police officer who (while not an appointed custody manager) is available to act as the custody manager for the person.
- (3) If it is not reasonably practicable to comply with subclause (1) or (2), the person may be detained at any police station or place of detention at which there is a police officer who is available to act as the custody manager for the person.
- (4) If it is not reasonably practicable to comply with subclause (1), (2) or (3), the person may be detained at any place of detention.

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Part 3

- (5) This clause does not apply if the person is detained by a police officer in the officer's capacity as a member of the staff of the New South Wales Crime Commission or a member of the staff of the Australian Crime Commission, as referred to in clause 16.

15 Order of preference in relation to custody managers (cf Crimes (Detention after Arrest) Regulation 1998, cl 8, 9 and 10)

- (1) Except as provided by subclause (2), if a person is detained under Part 9 of the Act at a designated police station or designated place of detention, only an appointed custody manager may act as the custody manager for the person.
- (2) If an appointed custody manager is not available to act as the custody manager for the person under subclause (1) or the person is taken to a police station that is not a designated police station, the following police officers may act as the custody manager for the person:
- (a) any police officer of or above the rank of Sergeant (or the officer for the time being in charge of the police station or designated place of detention (as the case may be)),
 - (b) if no such police officer is available to act as the custody manager for the person—any other police officer.
- (3) The arresting or investigating officer for the person is not to act as the custody manager for the person under subclause (2) unless:
- (a) no other police officer is available to act as the custody manager for the person, and
 - (b) a police officer holding the position of duty officer at a designated police station has given written permission to the arresting or investigating officer to act as the custody manager for the person.
- (4) Written permission for the purposes of subclause (3) may be obtained by facsimile.
- (5) This clause does not apply if the person is detained by a police officer in the officer's capacity as a member of the staff of the New South Wales Crime Commission or a member of the staff of the Australian Crime Commission, as referred to in clause 16.

16 Custody managers for New South Wales Crime Commission or Australian Crime Commission investigations (cf Crimes (Detention after Arrest) Regulation 1998, cl 12)

- (1) A police officer who is a member of the staff of the Commission or a member of the staff of the ACC may act as the custody manager for a detained person who is the subject of an investigation conducted by the Commission or the ACC respectively.

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- (2) The arresting or investigating officer for the person is not to act as the custody manager for the person unless:
- (a) no other police officer who is a member of the staff of the Commission or a member of the staff of the ACC is available to act as the custody manager for the person, and
 - (b) written permission has been obtained in accordance with subclause (3).
- (3) For the purposes of subclause (2), the written permission must be obtained from:
- (a) in the case of Commission investigations—a person holding the position of Commissioner, Director, or Assistant Director, Investigations, of the Commission, or
 - (b) in the case of ACC investigations—a person holding the position of General Manager, National Operations, of the ACC.
- (4) Written permission for the purposes of subclause (2) may be obtained by facsimile.
- (5) In this clause:
- ACC* means the Australian Crime Commission established under the *Australian Crime Commission Act 2002* of the Commonwealth.
- a member of the staff of the ACC* has the same meaning as it has in the *Australian Crime Commission Act 2002* of the Commonwealth.
- a member of the staff of the Commission* has the same meaning as it has in the *New South Wales Crime Commission Act 1985*.
- Commission* means the New South Wales Crime Commission established under the *New South Wales Crime Commission Act 1985*.

17 Custody managers not prevented from exercising other functions (cf Crimes (Detention after Arrest) Regulation 1998, cl 13)

The provisions of this Division are not to be construed so as to prevent a police officer who is acting as the custody manager for a detained person from also exercising:

- (a) any function in connection with the identification of the person, or
- (b) any function under the provisions of Part 2 of the *Road Transport (Safety and Traffic Management) Act 1999* in relation to the person (such as carrying out a breath analysis of the person).

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18 Guidelines for custody managers and other police officers (cf Crimes (Detention after Arrest) Regulation 1998, cl 14)

Custody managers and all other police officers must have regard to the guidelines set out in Schedule 2 in the exercise of their functions under Part 9 of the Act and this Part.

Division 2 Custody records

19 Meaning of “custody record”

In this Division:

custody record means the record required to be kept under section 131 of the Act.

20 Separate record for each detained person (cf Crimes (Detention after Arrest) Regulation 1998, cl 15)

- (1) A separate custody record must be opened, as soon as practicable, for each person who is detained under Part 9 of the Act.
- (2) A custody record may be in writing or in electronic form.
- (3) All entries in a custody record must include the time at which the entry is made.
- (4) The time of an event to which an entry in the custody record relates must also be included if the entry is not made within a reasonable time of the occurrence of the event.

21 Additional matters to be recorded in custody record (cf Crimes (Detention after Arrest) Regulation 1998, cl 17)

- (1) In addition to the matters specified in section 131 of the Act, the custody manager must record the following particulars in the custody record for a detained person:
 - (a) in the case of a person who has been arrested during the previous 48 hours:
 - (i) the offence or offences for which the person was arrested during that previous 48 hours, and
 - (ii) the investigation period that remains after reduction by so much of any earlier investigation period or periods as occurred within that previous 48 hours,
 - (b) if an application is made for a detention warrant, and the person declines to make representations (either personally, or by his or her legal representative) to the authorised officer, the fact that the person so declined,

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Part 3 Investigations and questioning

- (c) if a detention warrant is issued, a copy of the warrant or form of detention warrant, as the case may be,
 - (d) the time of any request to make a communication, and the time of any communication, under section 123 or 124 of the Act,
 - (e) the time of any request for information, or provision of information, pursuant to section 126 or 127 of the Act, together with the nature of such information,
 - (f) any request by the person, and any arrangement by a police officer (including under section 128 of the Act) for an interpreter, and the time that any such request or arrangement is made,
 - (g) any request by the person, and any arrangement by a police officer (including under section 129 of the Act) for medical treatment or medication, and the time at which the request or arrangement is made,
 - (h) any request by the person for refreshments, toilet facilities, washing, showering or bathing facilities,
 - (i) if the person's clothing or personal effects are withheld, the reasons for withholding those items.
- (2) The custody manager must request the person to sign an acknowledgment as to the correctness of any entry made in the custody record in relation to the matters referred to in section 131 (2) (d) of the Act and subclause (1) (b).

22 Inspection of custody record (cf Crimes (Detention after Arrest) Regulation 1998, cl 16 and 19)

- (1) A detained person must be permitted to inspect the custody record for the person on request unless the request is unreasonable or cannot reasonably be complied with.
- (2) While the detained person is in police custody, a legal representative of the detained person, a support person for the detained person and a consular official must each be permitted to inspect the custody record for the detained person as soon as practicable after the legal representative, support person or consular official arrives at the place of detention.
- (3) After the detained person has been released from police custody, the legal representative, support person and consular official must each be permitted to inspect the custody record if they give reasonable notice of their request to do so.
- (4) Despite subclauses (2) and (3), a support person or consular official may inspect the custody record only with the authorisation of the detained person.

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Clause 23

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Part 3

Division 3 Vulnerable persons

23 Interpretation

(1) In this Division:

child means a person who is under the age of 18 years.

impaired intellectual functioning, in relation to a person, means:

- (a) a total or partial loss of the person's mental functions, or
- (b) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction, or
- (c) a disorder, illness or disease that affects the person's thought processes, perceptions of reality, emotions or judgement, or that results in disturbed behaviour.

Note. See clause 3 of Schedule 2 for guidance to custody managers on whether paragraph (a) or (b) applies to a person.

impaired physical functioning, in relation to a person, means:

- (a) a total or partial loss of the person's bodily functions or of part of a person's body, or
- (b) a presence in the person's body of organisms causing or capable of causing disease or illness, or
- (c) a malfunction, malformation or disfigurement of part of the person's body.

(2) For the purposes of this Division, a detained person who has impaired physical functioning is taken not to have impaired physical functioning if the custody manager for the person reasonably believes that the person's impairment is so minor that the person will not be significantly disadvantaged with respect to the person's participation in any investigative procedure (in comparison with members of the community generally).

24 Vulnerable persons (cf Crimes (Detention after Arrest) Regulation 1998, cl 5)

(1) A reference in this Division to a vulnerable person is a reference to a person who falls within one or more of the following categories:

- (a) children,
- (b) persons who have impaired intellectual functioning,
- (c) persons who have impaired physical functioning,
- (d) persons who are Aboriginal persons or Torres Strait Islanders,

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Part 3 Investigations and questioning

(e) persons who are of non-English speaking background, but does not include a person whom the custody manager reasonably believes is not a person falling within any of those categories.

Note. If a person falls within more than one of the above categories, each provision of this Division relating to any category within which the person falls applies in relation to the person.

(2) Pursuant to section 112 (1) of the Act, the application of Part 9 of the Act to vulnerable persons is modified by this Division.

25 Custody manager to assist vulnerable person (cf Crimes (Detention after Arrest) Regulation 1998, cl 20)

The custody manager for a detained person who is a vulnerable person must, as far as practicable, assist the person in exercising the person's rights under Part 9 of the Act, including any right to make a telephone call to a legal practitioner, support person or other person.

26 Support person (cf Crimes (Detention after Arrest) Regulation 1998, cl 4)

A person may be a support person for a detained person who is a vulnerable person for the purposes of this Division only if the first-mentioned person is aged 18 years or over and is:

- (a) in the case of a detained person who is a child:
 - (i) a parent or guardian, or a person who has the lawful custody of the child, but not a parent of the child if the parent has neither guardianship nor custody of the child, or
 - (ii) a person who is responsible for the care of the child, or
 - (iii) an adult (other than a police officer) who has the consent of a person referred to in subparagraph (i) or (ii) to be the support person for the child, or
 - (iv) if the child is aged 16 years or over—an adult (other than a police officer) who has the consent of the child to be the support person for the child, or
 - (v) a legal practitioner of the child's own choosing, or
- (b) in the case of a detained person who is not a child:
 - (i) a guardian or any other person who is responsible for the care of the detained person, or
 - (ii) a relative, friend or any other person (other than a police officer) who has the consent of the detained person to be the support person for the detained person, or
 - (iii) if none of the persons mentioned in subparagraph (i) or (ii) is applicable or readily available—a person (other than a police officer) who has expertise in dealing with

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Investigations and questioning

Part 3

vulnerable persons of the category, or a category, to which the detained person belongs.

27 Support person may be present during investigative procedure (cf Crimes (Detention after Arrest) Regulation 1998, cl 21)

- (1) A detained person who is a vulnerable person is entitled to have a support person present during any investigative procedure in which the detained person is to participate.
- (2) However, a detained person who is a vulnerable person solely as a result of being a person of non-English speaking background is entitled to have a support person present only if an interpreter is not required to be arranged under section 128 (1) of the Act solely because of section 128 (3) (a) of the Act.
- (3) Before any such investigative procedure starts, the custody manager for the detained person must inform the person that the person is entitled to the presence of a support person during the investigative procedure.
- (4) If the detained person wishes to have a support person present, the custody manager must, as soon as practicable:
 - (a) give the detained person reasonable facilities to enable the person to arrange for a support person to be present, and
 - (b) allow the detained person to do so in circumstances in which, so far as practicable, the communication will not be overheard.
- (5) The custody manager must defer for a reasonable period any such investigative procedure until a support person is present unless the detained person has expressly waived his or her right to have a support person present.
- (6) An investigative procedure is not required to be deferred under subclause (5) for more than 2 hours to allow a support person to arrive at the place of detention.
- (7) A custody manager is not required to comply with subclauses (3)–(5) if the custody manager believes on reasonable grounds that:
 - (a) doing so is likely to result in an accomplice of the detained person avoiding arrest, or
 - (b) doing so is likely to result in the concealment, fabrication, destruction or loss of evidence or the intimidation of a witness, or
 - (c) doing so is likely to result in hindering the recovery of any person or property concerned in the offence under investigation, or
 - (d) doing so is likely to result in bodily injury being caused to any other person, or

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Clause 28 Law Enforcement (Powers and Responsibilities) Regulation 2005

Part 3 Investigations and questioning

(e) the safety of other persons requires that the investigative procedure be carried out as a matter of urgency.

28 Relationship between entitlement to support persons and entitlement to consult (cf Crimes (Detention after Arrest) Regulation 1998, cl 22)

- (1) A detained person who is a vulnerable person is entitled to a support person under clause 27 or to consult with a friend, relative, guardian or independent person under section 123 (4) of the Act, but not both.
- (2) However, a friend, relative, guardian or independent person of the detained person who, under section 123 (1) (a) (ii) of the Act, attends the place of detention is not prevented by this clause from acting as a support person if the detained person requests it.

29 Child cannot waive entitlement to support person (cf Crimes (Detention after Arrest) Regulation 1998, cl 23)

A detained person who is a child cannot waive the child's entitlement under this Division to have a support person present during an investigative procedure.

30 Role of support persons during interview (cf Crimes (Detention after Arrest) Regulation 1998, cl 26)

- (1) The custody manager for a detained person who is a vulnerable person is to inform any support person for the detained person that the support person is not restricted to acting merely as an observer during an interview of the detained person and may, among other things:
 - (a) assist and support the detained person, and
 - (b) observe whether or not the interview is being conducted properly and fairly, and
 - (c) identify communication problems with the detained person.
- (2) The custody manager is to give a copy of the summary referred to in section 122 (1) (b) of the Act, to:
 - (a) the support person, and
 - (b) any interpreter for the detained person who attends in person at the place of detention.
- (3) If the support person or the detained person's legal representative is present during an interview of the detained person, the support person or legal representative is to be given an opportunity to read and sign any written interview record.
- (4) Any refusal by the support person or legal practitioner to sign a written interview record when given the opportunity to do so must itself be recorded.

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Law Enforcement (Powers and Responsibilities) Regulation 2005

Clause 31

Investigations and questioning

Part 3

- 31 Exclusion of support person from investigative procedure** (cf Crimes (Detention after Arrest) Regulation 1998, cl 22)
- (1) A support person may be excluded from an investigative procedure if the support person unreasonably interferes with the procedure.
 - (2) If the support person is excluded under subclause (1), the detained person concerned is entitled to have another support person present during the investigative procedure.
- 32 Person responsible for welfare of certain detained persons to be contacted** (cf Crimes (Detention after Arrest) Regulation 1998, cl 27)
- (1) If a detained person is a child or a person with impaired intellectual or physical functioning, the custody manager for the person must, as soon as practicable, attempt:
 - (a) to ascertain the identity of the person responsible for the welfare of the detained person, and
 - (b) to contact the person so responsible and advise the person of the detained person's whereabouts and the grounds for the detention.
 - (2) If a detained person has impaired physical functioning, the custody manager must, as soon as practicable, attempt to determine any specific physical care needs of the person and, if reasonably practicable to do so, arrange for those needs to be provided for.
- 33 Legal assistance for Aboriginal persons or Torres Strait Islanders** (cf Crimes (Detention after Arrest) Regulation 1998, cl 28)
- If a detained person is an Aboriginal person or Torres Strait Islander, then, unless the custody manager for the person is aware that the person has arranged for a legal practitioner to be present during questioning of the person, the custody manager must:
- (a) immediately inform the person that a representative of an organisation that provides legal assistance to Aboriginal persons and Torres Strait Islanders will be notified:
 - (i) that the person is being detained in respect of an offence, and
 - (ii) of the place at which the person is being detained, and
 - (b) notify such a representative accordingly.
- 34 Cautions** (cf Crimes (Detention after Arrest) Regulation 1998, cl 29)
- (1) If a detained person who is a vulnerable person is given a caution, the custody manager or other person giving the caution must take appropriate steps to ensure that the detained person understands the caution.

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Clause 35 Law Enforcement (Powers and Responsibilities) Regulation 2005

Part 3 Investigations and questioning

- (2) If the detained person is given a caution in the absence of a support person, the caution must be given again in the presence of a support person, if one attends during the person's detention.
- (3) A reference in this clause to the giving of a caution is a reference to the giving of a caution that the person does not have to say or do anything but that anything the person does say or do may be used in evidence.

35 Times to be disregarded in calculating investigation period (cf Crimes (Detention after Arrest) Regulation 1998, cl 24)

- (1) In addition to any time referred to in section 117 of the Act, the following times are to be disregarded in determining how much of an investigation period has elapsed if the detained person concerned is a vulnerable person:
 - (a) any time that is required to allow for the person (or someone else on the person's behalf) to arrange for a support person to attend at the place of detention,
 - (b) any time that is required to allow the support person to arrive at the place of detention.
- (2) However, those times are to be disregarded only to the extent that they are times during which the investigative procedure concerned is reasonably suspended or deferred.

36 Additional information to be included in detention warrant application (cf Crimes (Detention after Arrest) Regulation 1998, cl 25)

If an application for a detention warrant is made in respect of a vulnerable person, the application for the warrant must include reference to the fact that the person is believed to be a vulnerable person, the nature of the person's vulnerability, the identity and relationship to the person of any support person who is present during the investigative procedure concerned, and any particular precautions that have been taken in respect of the vulnerable person.

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Clause 37

Miscellaneous

Part 4

Part 4 Miscellaneous

37 When crime scene is established

For the purposes of section 92 (3) of the Act, a crime scene is established on premises when a police officer declares that a crime scene is established on the premises.

38 Use of drug detection dogs in authorised places—prescribed train routes (cf Police Powers (Drug Detection Dogs) Regulation 2002, cl 3)

- (1) For the purposes of section 148 (1) (c) of the Act, the following public passenger vehicle routes are prescribed:
- (a) the Bankstown route, being the train line that is:
 - (i) between Liverpool station and Sydney Central station, and
 - (ii) via Bankstown station,
 - (b) the Inner West route, being the train line that is:
 - (i) between Liverpool station and Sydney Central station, and
 - (ii) via Regents Park station,
 - (c) the Eastern Suburbs route, being the train line that is between Bondi Junction station and Sydney Central station,
 - (d) the Illawarra route, being the train line that is between Bomaderry station and Sydney Central station, and including the train line between Sutherland station and Cronulla station via Kirrawee station, but not including the train line between Lysaghts station and Port Kembla station,
 - (e) the Northern route, being the train line that is:
 - (i) between Newcastle station and Sydney Central station, and
 - (ii) via Strathfield station,
 - (f) the South route, being the train line that is:
 - (i) between Campbelltown station and Sydney Central station, and
 - (ii) via Circular Quay station, and
 - (iii) via Granville station,
 - (g) the Western route, being the train line that is:
 - (i) between Penrith station and Sydney Central station, and
 - (ii) via Strathfield station, and including the Olympic Park loop,

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Clause 39 Law Enforcement (Powers and Responsibilities) Regulation 2005

Part 4 Miscellaneous

- (h) the North Shore route, being the train line that is:
 - (i) between Berowra station and Sydney Central station, and
 - (ii) via Chatswood station.
- (2) A route prescribed by this clause includes a train travelling on any part of the train line described in respect of the route, irrespective of whether:
 - (a) the train stops at a station on the train line, or
 - (b) the train has travelled or will travel on any other train line.
- (3) A route prescribed by this clause includes the route of any bus being used to convey persons between train stations on the prescribed route because trains are not running between those stations, and any stopping place of such a bus.

39 Use of drug detection dogs in authorised places—prescribed bus routes (cf Police Powers (Drug Detection Dogs) Regulation 2002, cl 4)

For the purposes of section 148 (1) (c) of the Act, the following public passenger vehicle routes are prescribed:

- (a) the Albury route, being the bus route that is:
 - (i) between Albury and Sydney, and
 - (ii) via Goulburn and the Hume Highway,
- (b) the Grafton route, being the bus route that is:
 - (i) between Grafton and Sydney, and
 - (ii) via Kempsey and the Pacific Highway.

40 Failure to comply with direction—penalty notice offence and penalty

For the purposes of section 235 of the Act, the offence created by section 199 (1) of the Act:

- (a) is an offence for which a penalty notice may be served, and
- (b) the penalty prescribed for the offence is \$220.

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Law Enforcement (Powers and Responsibilities) Regulation 2005

Forms

Schedule 1

Schedule 1 Forms

(Clause 3 (2))

Form 1 Application for Part 5 search warrant/record of application

(Clauses 4 (1) (a) and 5 (a))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Note. This Form is to be used for search warrants in relation to indictable, firearms, prohibited weapons, narcotics, child pornography or child prostitution offences or stolen goods. Form 2 should be used for other search warrants.

Part 1 Application

On [Date], I, [Name and rank] of [Place of work], apply for a search warrant to enter and search the premises known as [Address] in the State of New South Wales, being a [Description of premises (eg dwelling house)].

I swear/solemnly, sincerely and truly declare and affirm* that:

- 1 I have reasonable grounds for believing that:
 - (a)* there is, or within 72 hours will be, in or on the premises, the following things: [List items to be searched for. If exact location of items is known, include that information.]
 - (b)* the things are connected with the following indictable offence/firearms offence/prohibited weapons offence/narcotics offence/child pornography offence, within the meaning of section 47 of the *Law Enforcement (Powers and Responsibilities) Act 2002*: [Insert description of offence(s).]
 - (c)* the things were stolen or otherwise unlawfully obtained
 - (d)* a child prostitution offence, within the meaning of section 47 of the *Law Enforcement (Powers and Responsibilities) Act 2002* has recently been committed, is being committed or, within 72 hours will be committed, on or with respect to the premises.

- 2 I rely on the following grounds in support of this application: [Insert the reasonable grounds on which the application for the search warrant is based. If space is insufficient, continue overleaf or attach a separate sheet.]

[3 and 4 are to be completed if a previous application for the warrant has been made and refused. Attach a copy of the previous application to this Form.]

- 3 The following are details of the refusal of a previous application:

- 4 [Need not be completed if the previous application was made to an authorised officer who was not a Magistrate and this application is made to a Magistrate.]
The additional information that I consider justifies the making of this further application is:

Sworn/declared and affirmed* before me on [Date] at [Place] in the State of New South Wales.

Applicant [Print name and insert signature.]

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Schedule 1 Forms

Justice of the Peace [*Print name and insert signature.*]

[*This application may be sworn before the authorised officer to whom the application is made for the issue of the warrant. Any alterations, deletions or annexures should be initialled or signed by the applicant and witnessed by the justice of the peace.*]

[* *Delete if inapplicable.*]

Warning

It is an offence under section 63 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to give information in this application knowing it is false or misleading in a material particular. The maximum penalty is a fine of \$11,000 or 2 years imprisonment (or both).

Note. In the case of an application by telephone (but not by facsimile), this Form of application should be completed by the authorised officer for record purposes as if it were made in person by the applicant but not verified on oath or affirmation or by affidavit.

Part 2 Authorised officer's record of application for a search warrant

On [Date] at [Time], I, the undersigned authorised officer, received this application for a search warrant.

- 1* [*To be completed if the application was not made in person.*]
The application was made by [*Specify how the application was made (eg facsimile, telephone)*] and I was/was not* satisfied that the warrant was required urgently and it was/was not* practicable for the application to be made in person.
- 2* [*To be completed if the authorised officer required the applicant to provide further information concerning the grounds on which the warrant was sought.*]
*Further information provided by the applicant, as required by me, is attached.
*Particulars of further information orally provided by the applicant, as required by me, are as follows: [*Specify particulars.*]
- 3 On considering the application I found/did not find* that there were reasonable grounds for issuing the warrant.

[*If the warrant is issued—continue.*]

- 4 The relevant particulars of the grounds on which I relied to justify the issue of the warrant are as follows: [*Either identify or specify the relevant particulars of the grounds in the application that are relied on. If space is insufficient, continue overleaf or attach a separate sheet.*]
- 5 [*To be completed if the warrant may be executed by night.*]
The grounds on which I relied to justify the execution of the warrant by night are as follows:
 - (a)* execution of the warrant by day is unlikely to be successful,
 - (b)* there is likely to be less risk to the safety of any person if it is executed by night,
 - (c)* an occupier is likely to be on the premises only at night to allow entry without the use of force,
 - (d)* [*Other grounds*].

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Schedule 1

6 The search warrant was issued at [Time] on [Date].

Authorised officer *[Print name and insert signature.]*

[Delete if inapplicable.]*

Note. Return this Form, together with a copy of the warrant and a copy of the occupier's notice, to the Local Court named in the occupier's notice.

Form 2 Application for search warrant (other than Part 5 search warrant)/record of application

(Clauses 4 (1) (b) and 5 (b))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Note. Form 1, rather than this Form, is to be used for search warrants in relation to indictable, firearms, prohibited weapons, narcotics, child pornography or child prostitution offences or stolen goods.

Part 1 Application

On [Date], I, [Name], apply for a search warrant to enter the premises known as [Address] in the State of New South Wales, being a [Description of premises (eg dwelling house)].

I swear/solemnly, sincerely and truly declare and affirm* that:

- 1* I am a police officer of the rank of [Rank] stationed at [Place of work].
- 2 I am authorised to apply for a search warrant under [Insert section and name of the Act under which search warrant is sought].
- 3 I have reasonable grounds for believing the following matters that justify this application for the issue of a search warrant: *[Include all those matters that justify the issue of a search warrant to enter the named premises. If an offence or breach of an Act or regulation is alleged, specify the particular offence. If the experience of the applicant or source of the information is relevant, then include this in the grounds. If space is insufficient, continue overleaf or attach a separate sheet.]*
- 4 I seek to be able to perform the following specific functions on entry: *[Include the powers that the applicant seeks to exercise on entry. If any items are to be seized, they should be specified. If the exact location of these items is known, include that information. General powers that are given under the Act authorising the issue of the search warrant should be included if relevant.]*

[5 and 6 are to be completed if a previous application for the warrant has been made and refused. Attach a copy of the previous application to this Form.]

5 The following are details of the refusal of a previous application:

- 6 *[Need not be completed if the previous application was made to an authorised officer who was not a Magistrate and this application is made to a Magistrate.]*
The additional information that I consider justifies the making of this further application is:

Sworn/declared and affirmed* before me on [Date] at [Place] in the State of New South Wales.

Applicant *[Print name and insert signature.]*

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Justice of the Peace [*Print name and insert signature.*]

[*This application may be sworn before the authorised officer to whom the application is made for the issue of the warrant. Any alterations, deletions or annexures should be initialled or signed by the applicant and witnessed by the justice of the peace.*]

[* *Delete if inapplicable.*]

Warning

It is an offence under section 63 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to give information in this application knowing it is false or misleading in a material particular. The maximum penalty is a fine of \$11,000 or 2 years imprisonment (or both).

Note. In the case of an application by telephone (but not by facsimile), this Form of application should be completed by the authorised officer for record purposes as if it were made in person by the applicant but not verified on oath or affirmation or by affidavit.

Part 2 Authorised officer's record of application for a search warrant

On [*Date*] at [*Time*], I, the undersigned authorised officer, received this application for a search warrant.

1 [*To be completed if the application was not made in person.*]
The application was made by [*Specify how application was made (eg facsimile, telephone).*] and I was/was not* satisfied that the warrant was required urgently and it was/was not* practicable for the application to be made in person.

2* [*To be completed if the authorised officer required the applicant to provide further information concerning the grounds on which the warrant was sought.*]
*Further information provided by the applicant, as required by me, is attached.
*Particulars of further information orally provided by the applicant, as required by me, are as follows: [*Specify particulars.*]

3 On considering the application I found/did not find* that there were reasonable grounds for issuing the warrant.

[*If the warrant is issued—continue.*]

4 The relevant particulars of the grounds on which I relied to justify the issue of the warrant are as follows: [*Either identify or specify the relevant particulars of the grounds in the application that are relied on. If space is insufficient, continue overleaf or attach a separate sheet.*]

5 [*To be completed if the warrant may be executed by night.*]
The grounds on which I relied to justify the execution of the warrant by night are as follows:
(a)* execution of the warrant by day is unlikely to be successful,
(b)* there is likely to be less risk to the safety of any person if it is executed by night,
(c)* an occupier is likely to be on the premises only at night to allow entry without the use of force,
(d)* [*Other grounds*].

6 The search warrant was issued at [*Time*] on [*Date*].

Authorised officer [*Print name and insert signature.*]

Date

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[* Delete if inapplicable.]

Notes. Return this Form, together with a copy of the warrant and a copy of the occupier's notice, to the Local Court named in the occupier's notice. If no occupier's notice was issued, return this Form and a copy of the warrant to the Local Court at which the warrant was issued or nearest to the place at which it was issued.

Form 3 Application/record of application for warrant relating to suspected domestic violence offence—entry by warrant where entry denied

(Clauses 4 (1) (c) and 5 (c))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Part 1 Application

On [Date], I, [Name and rank] of [Place of work], apply for a warrant to enter the dwelling at [Address] in the State of New South Wales and to investigate whether a domestic violence offence has taken place/to take action to prevent the commission/further commission* of a domestic violence offence.

I swear/solemnly, sincerely and truly declare and affirm* that:

- 1 I have been denied entry to the dwelling.
- 2 I suspect that:
 - (a) a domestic violence offence is being committed/may have been recently committed/is imminent/is likely to be committed in the dwelling*, and
 - (b) it is necessary for a police officer to enter the dwelling immediately in order to:
 - (i) *investigate whether a domestic violence offence has been committed, or
 - (ii) *to take action to prevent the commission/further commission* of a domestic violence offence.
- 3 I rely on the following grounds in support of this application: *[Include all those matters that justify the issue of a warrant, such as the particular domestic violence offence concerned (if known), observations of police attending the premises, any information from the suspected offender or suspected victim, any information from third parties (eg neighbours) and details of the denial of entry to the dwelling (including anything said or done). If space is insufficient, continue overleaf or attach a separate sheet.]*

[4 and 5 are to be completed if a previous application for the warrant has been made and refused. Attach a copy of the previous application to this Form.]

- 4 The following are details of the refusal of a previous application:
- 5 *[Need not be completed if the previous application was made to an authorised officer who was not a Magistrate and this application is made to a Magistrate.]*
The additional information that I consider justifies the making of this further application is:

Sworn/declared and affirmed* before me on [Date] at [Place] in the State of New South Wales.

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Applicant [*Print name and insert signature.*]

Justice of the Peace [*Print name and insert signature.*]

[*This application may be sworn before the authorised officer to whom the application is made for the issue of the warrant. Any alterations, deletions or annexures should be initialled or signed by the applicant and witnessed by the justice of the peace.*]

[* *Delete if inapplicable.*]

Warning

It is an offence under section 63 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to give information in this application knowing it is false or misleading in a material particular. The maximum penalty is a fine of \$11,000 or 2 years imprisonment (or both).

Note. In the case of an application by telephone (but not by facsimile), this Form of application should be completed by the authorised officer for record purposes as if it were made in person by the applicant but not verified on oath or affirmation or by affidavit.

Part 2 Authorised officer's record of application for a warrant

On [Date] at [Time], I, the undersigned authorised officer, received this application for a warrant issued under section 83 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

1 [*To be completed if the application was not made in person.*]
The application was made by [*Specify how the application was made (eg facsimile, telephone).*] and I was/was not* satisfied that the warrant was required urgently and it was/was not* practicable for the application to be made in person.

2* [*To be completed if the authorised officer required the applicant to provide further information concerning the grounds on which the warrant was sought.*]
*Further information provided by the applicant, as required by me, is attached.
*Particulars of further information orally provided by the applicant, as required by me, are as follows: [*Specify particulars.*]

3 On considering the application I found/did not find* that there were reasonable grounds for the applicant's suspicion.

[*If the warrant is issued—continue.*]

4 The relevant particulars of the grounds on which I relied to justify the issue of the warrant are as follows: [*Either identify or specify the relevant particulars of the grounds in the application that are relied on. If space is insufficient, continue overleaf or attach a separate sheet.*]

5 [*To be completed if the warrant may be executed by night.*]
The grounds on which I relied to justify the execution of the warrant by night are as follows:

- (a)* execution of the warrant by day is unlikely to be successful,
- (b)* there is likely to be less risk to the safety of any person if it is executed by night,
- (c)* an occupier is likely to be on the premises only at night to allow entry without the use of force,
- (d)* [*Other grounds.*]

6 The warrant was issued at [Time] on [Date].

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Authorised officer [*Print name and insert signature.*]

Date

[* *Delete if inapplicable.*]

Notes. Return this Form, together with a copy of the warrant, to the Local Court at which the warrant was issued or nearest to the place at which it was issued.

Form 4 Application for crime scene warrant/record of application

(Clauses 4 (1) (d) and 5 (d))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Part 1 Application

On [*Date*], I, [*Name and rank*] of [*Place of work*], apply for a crime scene warrant to enter the premises known as [*Address*] in the State of New South Wales, being a [*Description of premises (eg dwelling house)*], and to exercise all reasonably necessary crime scene powers at, or in relation to, [*Specify crime scene*].

I swear/solemnly, sincerely and truly declare and affirm* that:

- 1 I have reasonable grounds for suspecting that it is necessary to exercise crime scene powers at the crime scene for the purpose of preserving, or searching for and gathering, evidence of the commission of:
 - (a)* the offence of [*Specify offence.*], which is a serious indictable offence.
 - (b)* the offence of [*Specify offence.*] that is being/was/may have been* committed in connection with a traffic accident that has resulted in the death of/serious injury* to a person.
- 2 I rely on the following grounds in support of this application: [*Insert the reasonable grounds on which the application for the crime scene warrant is based. If space is insufficient, continue overleaf or attach a separate sheet.*]

[*3 and 4 are to be completed if a previous application for the warrant has been made and refused. Attach a copy of the previous application to this Form.*]

- 3 The following are details of the refusal of a previous application:

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- 4 [Need not be completed if the previous application was made to an authorised officer who was not a Magistrate and this application is made to a Magistrate.]
The additional information that I consider justifies the making of this further application is:

Sworn/declared and affirmed* before me on [Date] at [Place] in the State of New South Wales.

Applicant [Print name and insert signature.]

Justice of the Peace [Print name and insert signature.]

[This application may be sworn before the authorised officer to whom the application is made for the issue of the warrant. Any alterations, deletions or annexures should be initialled or signed by the applicant and witnessed by the justice of the peace.]

[* Delete if inapplicable.]

Warning

It is an offence under section 63 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to give information in this application knowing it is false or misleading in a material particular. The maximum penalty is a fine of \$11,000 or 2 years imprisonment (or both).

Note. In the case of an application by telephone (but not by facsimile), this Form of application should be completed by the authorised officer for record purposes as if it were made in person by the applicant but not verified on oath or affirmation or by affidavit.

Part 2 Authorised officer's record of application for a crime scene warrant

On [Date] at [Time], I, the undersigned authorised officer, received this application for a crime scene warrant.

- 1 [To be completed if the application was not made in person.]
The application was made by [Specify how the application was made (eg facsimile, telephone).] and I was/was not* satisfied that the warrant was required urgently and it was/was not* practicable for the application to be made in person.

- 2* [To be completed if the authorised officer required the applicant to provide further information concerning the grounds on which the warrant was sought.]

*Further information provided by the applicant, as required by me, is attached.

*Particulars of further information orally provided by the applicant, as required by me, are as follows: [Specify particulars.]

- 3 On considering the application I found/did not find* that there were reasonable grounds for issuing the warrant.

[If the warrant is issued—continue.]

- 4 The relevant particulars of the grounds on which I relied to justify the issue of the warrant are as follows: [Either identify or specify the relevant particulars of the grounds in the application that are relied on. If space is insufficient, continue overleaf or attach a separate sheet.]

- 5 [To be completed if the warrant may be executed by night.]

The grounds on which I relied to justify the execution of the warrant by night are as follows:

(a)* execution of the warrant by day is unlikely to be successful,

(b)* there is likely to be less risk to the safety of any person if it is executed by night,

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(c)* an occupier is likely to be on the premises only at night to allow entry without the use of force,

(d)* [*Other grounds*].

6 The crime scene warrant was issued at [*Time*] on [*Date*].

Authorised officer [*Print name and insert signature.*]

Date

[* *Delete if inapplicable.*]

Notes. Return this Form, together with a copy of the warrant and a copy of the occupier's notice, to the Local Court named in the occupier's notice.

Form 5 Application for warrant to use dog to carry out general drug detection/record of application

(Clauses 4 (1) (e) and 5 (e))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Part 1 Application

On [*Date*], I, [*Name and rank*] of [*Place of work*], apply for a warrant to use a dog to carry out general drug detection in a public place in New South Wales, being [*Address/description of public place*] during the period/periods* of [*Describe period/periods.*]

I swear/solemnly, sincerely and truly declare and affirm* that:

1 I have reasonable grounds for believing that the persons at the public place may include persons committing drug offences.

2 I rely on the following grounds in support of this application: [*Insert the reasonable grounds on which the application for the search warrant is based. If an offence or breach of an Act or regulation is alleged, specify the particular offence. If the experience of the applicant or source of the information is relevant, then include this in the grounds. If space is insufficient, continue overleaf or attach a separate sheet.*]

3 Any general drug detection to be carried out under the warrant will/will not* be part of a covert police operation. The reason the warrant is to be part of a covert police operation is:

[*4 and 5 are to be completed if a previous application for the warrant has been made and refused. Attach a copy of the previous application to this Form.*]

4 The following are details of the refusal of a previous application:

5 [*Need not be completed if the previous application was made to an authorised officer who was not a Magistrate and this application is made to a Magistrate.*]

The additional information that I consider justifies the making of this further application is:

Sworn/declared and affirmed* before me on [*Date*] at [*Place*] in the State of New South Wales.

Applicant [*Print name and insert signature.*]

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Justice of the Peace [*Print name and insert signature.*]

[*This application may be sworn before the authorised officer to whom the application is made for the issue of the warrant. Any alterations, deletions or annexures should be initialled or signed by the applicant and witnessed by the justice of the peace.*]

[* *Delete if inapplicable.*]

Warning

It is an offence under section 63 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to give information in this application knowing it is false or misleading in a material particular. The maximum penalty is a fine of \$11,000 or 2 years imprisonment (or both).

Note. In the case of an application by telephone (but not by facsimile), this Form of application should be completed by the authorised officer for record purposes as if it were made in person by the applicant but not verified on oath or affirmation or by affidavit.

Part 2 Authorised officer's record of application for a warrant

On [*Date*] at [*Time*], I, the undersigned authorised officer, received this application for a warrant under Division 2 of Part 11 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

1 [*To be completed if the application was not made in person.*]
The application was made by [*Specify how the application was made (eg facsimile, telephone).*] and I was/was not* satisfied that the warrant was required urgently and it was/was not* practicable for the application to be made in person.

2* [*To be completed if the authorised officer required the applicant to provide further information concerning the grounds on which the warrant was sought.*]
*Further information provided by the applicant, as required by me, is attached.
*Particulars of further information orally provided by the applicant, as required by me, are as follows: [*Specify particulars.*]

3 On considering the application I found/did not find* that there were reasonable grounds for issuing the warrant.

[*If the warrant is issued—continue.*]

4 The relevant particulars of the grounds on which I relied to justify the issue of the warrant are as follows: [*Either identify or specify the relevant particulars of the grounds in the application that are relied on. If space is insufficient, continue overleaf or attach a separate sheet.*]

5 [*To be completed if the warrant may be executed by night.*]
The grounds on which I relied to justify the execution of the warrant by night are as follows:

- (a) *execution of the warrant by day is unlikely to be successful,
- (b) *there is likely to be less risk to the safety of any person if it is executed by night,
- (c) *[*Other grounds*].

6 The warrant was issued at [*Time*] on [*Date*].

Authorised officer [*Print name and insert signature.*]

Notes. Return this Form, together with a copy of the warrant, to the Local Court at which the warrant was issued or nearest to the place at which it was issued.

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Form 6 Application for notice to produce documents/record of application

(Clauses 4 (1) (f) and 5 (f))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Part 1 Application

On [Date], I, [Name and rank] of [Place of work], apply for a notice to require documents believed to be held by [Specify name of authorised deposit-taking institution.], an authorised deposit-taking institution, to be produced to me.

I swear/solemnly, sincerely and truly declare and affirm* that:

- 1 I have reasonable grounds for believing that [Specify name of authorised deposit-taking institution.] holds documents that may be connected with the offence of [Specify offence.] committed by someone other than that institution.
- 2 The documents in relation to which this application is made are: [Describe documents and (if desired) form (eg hardcopy, mail, CD in RTF format, facsimile), together with details of where applicant wishes documents to be produced (eg premises where to be produced, email address, fax number (including person to whom fax to be addressed). The applicant may wish to specify a combination of types of forms in which documents may be produced.]
- 3 I rely on the following grounds in support of this application: [Insert the reasonable grounds on which the application for the notice to produce documents is based. If space is insufficient, continue overleaf or attach a separate sheet.]

[4 and 5 are to be completed if a previous application for the notice has been made and refused. Attach a copy of the previous application to this Form.]

4 The following are details of the refusal of a previous application:

- 5 [Need not be completed if the previous application was made to an authorised officer who was not a Magistrate and this application is made to a Magistrate.]
The additional information that I consider justifies the making of this further application is:

Sworn/declared and affirmed* before me on [Date] at [Place] in the State of New South Wales.

Applicant [Print name and insert signature.]

Justice of the Peace [Print name and insert signature.]

[This application may be sworn before the authorised officer to whom the application is made for the issue of the notice. Any alterations, deletions or annexures should be initialled or signed by the applicant and witnessed by the justice of the peace.]

[* Delete if inapplicable.]

Warning

It is an offence under section 63 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to give information in this application knowing it is false or misleading in a material particular. The maximum penalty is a fine of \$11,000 or 2 years imprisonment (or both).

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Note. In the case of an application by telephone (but not by facsimile), this Form of application should be completed by the authorised officer for record purposes as if it were made in person by the applicant but not verified on oath or affirmation or by affidavit.

Part 2 Authorised officer's record of application for a notice to produce documents

On [Date] at [Time], I, the undersigned authorised officer, received this application for a notice to produce documents.

- 1 *[To be completed if the application was not made in person.]*
The application was made by *[Specify how the application was made (eg facsimile, telephone).]* and I was/was not* satisfied that the notice was required urgently and it was/was not* practicable for the application to be made in person.
- 2* *[To be completed if the authorised officer required the applicant to provide further information concerning the grounds on which the notice was sought.]*
*Further information provided by the applicant, as required by me, is attached.
*Particulars of further information orally provided by the applicant, as required by me, are as follows: *[Specify particulars.]*
- 3 On considering the application I found/did not find* that there were reasonable grounds for issuing the notice.
[If the notice is issued—continue.]
- 4 The relevant particulars of the grounds on which I relied to justify the issue of the notice are as follows: *[Either identify or specify the relevant particulars of the grounds in the application that are relied on. If space is insufficient, continue overleaf or attach a separate sheet.]*
- 5 The notice was issued at [Time] on [Date].

Authorised officer *[Print name and insert signature.]*

[Delete if inapplicable.]*

Notes. Return this Form, together with a copy of the notice to the Local Court at which the notice was issued or nearest to the place at which it was issued.

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Form 7 Application for warrant for arrest of person unlawfully at large/record of application

(Clauses 4 (2) and 5 (g))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Part 1 Application

On [Date], I, [Name and rank] of [Place of work], apply for a warrant for the arrest of [Specify name of person.]

I swear/solemnly, sincerely and truly declare and affirm* that:

- 1 I have reasonable grounds for believing that [Specify name of person.] is unlawfully at large.
- 2 Other known identifying particulars of [Name of person who is unlawfully at large] are as follows: [Insert particulars, if known, such as date of birth, last known address, management index number (MIN) allocated by the Department of Corrective Services.]
- 3 I rely on the following grounds in support of this application: [Insert the reasonable grounds on which the application for the warrant is based. If space is insufficient, continue overleaf or attach a separate sheet.]

Sworn/declared and affirmed* before me on [Date] at [Place] in the State of New South Wales.

Applicant [Print name and insert signature.]

Justice of the Peace [Print name and insert signature.]

[This application may be sworn before the authorised officer to whom the application is made for the issue of the warrant. Any alterations, deletions or annexures should be initialled or signed by the applicant and witnessed by the justice of the peace.]

[* Delete if inapplicable.]

Part 2 Authorised officer's record of application for a search warrant

On [Date] at [Time], I, the undersigned authorised officer, received this application for a search warrant.

- 1 On considering the application I found/did not find* that there were reasonable grounds for issuing the warrant.
[If the warrant is issued—continue.]
- 2 The relevant particulars of the grounds on which I relied to justify the issue of the warrant are as follows: [Either identify or specify the relevant particulars of the grounds in the application that are relied on. If space is insufficient, continue overleaf or attach a separate sheet.]
- 3 The warrant was issued at [Time] on [Date].

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Authorised officer [*Print name and insert signature.*]

[* *Delete if inapplicable.*]

Note. Return this Form, together with a copy of the warrant, to the Local Court at which the warrant was issued or that is nearest to the place at which it was issued.

Form 8 Application for detention warrant/record of application

(Clauses 4 (3) and 5 (h))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Part 1 Application

On [*Date*], I, [*Name and rank*] of [*Place of work*], apply for a warrant to extend the maximum investigation period beyond 4 hours in relation to [*Name of detained person*] of [*Address*] by [*Specify hours and minutes.*] (excluding times that are to be taken into account under section 117 of the *Law Enforcement (Powers and Responsibilities) Act 2002*) from [*Time*] on [*Date*].

I swear/solemnly, sincerely and truly declare and affirm* that:

- 1 The detained person was arrested (within the meaning of Part 9 of the *Law Enforcement (Powers and Responsibilities) Act 2002*) at [*Time*] on [*Date*].
- 2 The nature of the offence under investigation is as follows: [*Specify nature of offence.*]
- 3 The general nature of the evidence on which the detained person was arrested is as follows: [*Specify nature of evidence.*]
- 4 The following investigation has taken place to date: [*Specify details.*]
- 5 Further investigation of the offence is proposed as follows: [*Specify details.*]
- 6 Details of the times that under section 117 of the *Law Enforcement (Powers and Responsibilities) Act 2002* are not to be taken into account are as follows: [*Specify the nature and duration of the times and the reasons why they are not to be taken into account.*]
- 7 The detained person has co-operated in the investigation to date as follows: [*Specify details and extent to which the person has co-operated.*]
- 8 The detained person has/does not have* a legal representative.
- 9 The detained person has/has not* been informed of the right of the detained person, or the detained person's legal representative, to make representations to the authorised officer.
- 10 The detained person, or the detained person's legal representative, has/has not* requested to make representations to the authorised officer.
- 11 I believe that the continued detention of the detained person is reasonably necessary to complete the investigation for the following reasons: [*Specify reasons.*]
- 12 I believe that there is no reasonable alternative means of completing the investigation otherwise than by the continued detention of the person for the following reasons: [*Specify reasons.*]
- 13 I believe that the following circumstances make it impracticable for the investigation to be completed within the 4-hour period that would apply if this application is refused: [*Specify circumstances.*]

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14* The detained person is a vulnerable person as the detained person is a child/Aboriginal person/Torres Strait Islander/is of non-English speaking background/has impaired intellectual functioning/has impaired physical functioning*.

15* [Name] of [Address] is present at the place of detention as a support person for the detained person. The support person is [Specify relationship to detained person.]

16* The following precautions have been taken in respect of the detained person because of the detained person's vulnerability: [Specify precautions.]

[17 and 18 are to be completed if a previous application for the warrant has been made and refused. Attach a copy of the previous application to this Form.]

17 The following are details of the refusal of a previous application: [Specify details.]

18 The additional information that I consider justifies the making of this further application is: [Specify details.]

Sworn/declared and affirmed* before me on [Date] at [Place] in the State of New South Wales.

Applicant [Print name and insert signature.]

Justice of the Peace [Print name and insert signature.]

[This application may be sworn before the authorised officer to whom the application is made for the issue of the warrant. Any alterations, deletions or annexures should be initialled or signed by the applicant and witnessed by the justice of the peace.]

[* Delete if inapplicable.]

Warning

It is an offence under section 63 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to give information in this application knowing it is false or misleading in a material particular. The maximum penalty is a fine of \$11,000 or 2 years imprisonment (or both).

Note. In the case of an application by telephone (but not by facsimile), this Form of application should be completed by the authorised officer for record purposes as if it were made in person by the applicant but not verified on oath or affirmation or by affidavit.

Part 2 Authorised officer's record of application for a warrant

On [Date] at [Time], I, the undersigned authorised officer, received this application for a detention warrant issued under Part 9 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

1 [To be completed if the application was not made in person.]
The application was made by [Specify how the application was made (eg facsimile, telephone).] and I was/was not* satisfied that the warrant was required urgently and it was/was not* practicable for the application to be made in person.

2* [To be completed if the authorised officer required the applicant to provide further information concerning the grounds on which the warrant was sought.]

*Further information provided by the applicant, as required by me, is attached.

*Particulars of further information orally provided by the applicant, as required by me, are as follows: [Specify particulars.]

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- 3* *[To be completed if the detained person, or the detained person's legal representative, made representations to the authorised officer.]*
Particulars of representations made to me by the detained person, or the detained person's legal representative are as follows: *[If space is insufficient, continue overleaf or attach a separate sheet.]*
- 4 On considering the application I was/was not* satisfied that each of the following criteria were met:
- (a) the investigation is being conducted diligently and without delay,
 - (b) a further period of detention of the detained person is reasonably necessary to complete the investigation,
 - (c) there is no reasonable alternative means of completing the investigation otherwise than by the continued detention of the person,
 - (d) circumstances exist in the matter that make it impracticable for the investigation to be completed within the 4-hour period.
- [If the warrant is issued—continue.]*
- 5 The relevant particulars of the grounds on which I relied to justify the issue of the warrant are as follows: *[Either identify or specify the relevant particulars of the grounds in the application that are relied on. If space is insufficient, continue overleaf or attach a separate sheet.]*
- 6 The maximum investigation period for the detained person is extended by *[Specify hours and minutes.]* (excluding times that are not to be taken into account under section 117 of the *Law Enforcement (Powers and Responsibilities) Act 2002*) from *[Time]* on *[Date]*.
- 7 The warrant was issued at *[Time]* on *[Date]*.

Authorised officer *[Print name and insert signature.]*

[Delete if inapplicable.]*

Note. Return this Form, together with a copy of the warrant, to the Local Court at which the warrant was issued or nearest to the place at which it was issued.

Form 9 Part 5 search warrant

(Clause 6 (1) (a))

(Law Enforcement (Powers and Responsibilities) Act 2002)

This search warrant expires at *[Time]* on *[Date]* and must not be used after that time.

On *[Date]*, *[Name of authorised officer]*, an authorised officer empowered to grant search warrants under Division 2 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, granted this search warrant authorising *[Name and rank]* of *[Place of work]* (the applicant), a police officer, and all other police officers, as follows:

- 1 To enter the premises known as *[Address]* being a *[Description of premises (eg dwelling house).]*
- 2* To search those premises for any of the following things: *[List and describe the things to be searched for with particularity. If space is insufficient, continue overleaf or attach a separate sheet.]*

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The police officer has reasonable grounds for believing that those things:

- (a)* are connected with the offence(s) of: [*Specify relevant offences.*]
- (b)* are stolen or unlawfully obtained.

3* To search those premises in connection with the following child prostitution offence(s): [*Specify the offences under the Crimes Act 1900 in relation to which the search is to be made.*]

[* *Delete if inapplicable.*]

This search warrant may be executed only between the hours of 6.00 am and 9.00 pm. [*If there is a need for execution by night, specify the other times.*]

In executing this search warrant the applicant may exercise the powers provided by the *Law Enforcement (Powers and Responsibilities) Act 2002*. These include the following powers:

- (a) to enter the named premises,
- (b) to search for the things (if any) mentioned in this warrant,
- (c) to use any persons necessary to assist in the execution of the warrant,
- (d) to use such force as is reasonably necessary to enter the premises,
- (e) to break open any receptacle in or on the premises for the purposes of the search of the premises if it is reasonably necessary to do so,
- (f) to search any persons found in or on the premises who are reasonably suspected of having a thing mentioned in this warrant,
- (g) to arrest any persons found in or on the premises whom a police officer suspects on reasonable grounds of having committed an offence,
- (h) to seize, detain, remove from the premises or guard anything mentioned in this warrant and any other thing found by a police officer in the course of executing this warrant that the police officer believes on reasonable grounds is connected with any offence,
- (i) if the warrant is issued in relation to a child prostitution offence—to make in the premises inquiries relating to any such offence.

Signed [*Print name and insert signature.*]

Date

[*The authorised officer should sign and date the warrant and initial any corrections. In the case of a telephone search warrant, in circumstances where the warrant is issued but not furnished to the applicant (for example, because facsimile facilities are not available), the applicant is to complete this Form of warrant in the terms dictated by the authorised officer and write on it the name of that authorised officer and the date and time when the warrant was signed.*]

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Form 10 Search warrant—other than Part 5 search warrant

(Clause 6 (1) (b))

(Law Enforcement (Powers and Responsibilities) Act 2002)

This search warrant expires at [Time] on [Date] and must not be used after that time.

On [Date], [Name of authorised officer], an authorised officer empowered to issue search warrants under [Insert section and name of the Act under which the warrant is issued.], granted this search warrant authorising [Name, designation, etc] of [Name of employer or place of work] (the applicant), and [Add any additional person (eg a police officer) who is required to accompany applicant.]:

- 1 to enter the premises known as [Address], being a [Description of premises (eg dwelling house)] [Note any restriction under the enabling Act on the category of places that can be entered.], and
- 2 to [Specify the type of search or inquiry and the purpose of the search or inquiry to be performed on entry. Functions on entry must be within those authorised by the enabling Act. Specify with particularity anything to be seized. Specify the offence(s), if any, with respect to which search or inquiry is to be made.]

This search warrant may be executed only between the hours of 6.00 am and 9.00 pm. [If there is a need for execution by night, specify the other times.]

In executing this search warrant the applicant may exercise the powers provided by the *Law Enforcement (Powers and Responsibilities) Act 2002* and any other Act named above. These include the following powers:

- (a) to enter the named premises,
- (b) to use any persons necessary to assist in the execution of this warrant,
- (c) to use such force as is reasonably necessary to enter the premises,
- (d) to break open any receptacle on the premises for the purposes of the search of the premises if it is reasonably necessary to do so,
- (e) [Specify (if relevant) any special additional powers of personal search, seizure, arrest, inspection, etc, provided under the enabling Act.]

Signed [Print name and insert signature.]

Date

[The authorised officer should sign and date the warrant and initial any corrections. In the case of a telephone search warrant, in circumstances where the warrant is issued but not furnished to the applicant (for example, because facsimile facilities are not available), the applicant is to complete this Form of warrant in the terms dictated by the authorised officer and write on it the name of that authorised officer and the date and time when the warrant was signed.]

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Form 11 Warrant relating to suspected domestic violence offence—entry by warrant where entry denied

(Clause 6 (1) (c))

(Law Enforcement (Powers and Responsibilities) Act 2002)

This warrant expires at [Time] on [Date] and must not be used after that time.

On [Date], [Name of authorised officer], an authorised officer empowered to issue warrants under section 83 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, granted this warrant authorising [Name and rank] of [Place of work] (the applicant) as follows:

- 1 to enter the dwelling at [Address],
- 2 *to investigate whether a domestic violence offence has taken place,
- 3 *to take action to prevent the commission/further commission* of a domestic violence offence.

[* Delete if inapplicable.]

This warrant may be executed only between the hours of 6.00 am and 9.00 pm. [If there is a need for execution by night, specify the other times.]

In executing this warrant the applicant may exercise the powers provided by the *Law Enforcement (Powers and Responsibilities) Act 2002*. These include the following powers:

- (a) to enter the named premises,
- (b) to use any persons necessary to assist in the execution of this warrant,
- (c) to use such force as is reasonably necessary to enter the premises.

However, in executing this warrant the applicant and any other police officers who enter the dwelling are to take only the action in the dwelling that is reasonably necessary:

- (a) to investigate whether a domestic violence offence has been committed, and
- (b) to render aid to any person who appears to be injured, and
- (c) to exercise any lawful power to arrest a person, and
- (d) to prevent the commission or further commission of a domestic violence offence.

A police officer who enters the dwelling under this warrant must inquire as to the presence of any firearms in the dwelling and, if informed that there is a firearm, must take all such action as is reasonably practicable to search for and to seize and detain the firearm.

A police officer who enters the dwelling under this warrant may search the dwelling for a dangerous article and seize and detain the dangerous article if the police officer believes, on reasonable grounds, that:

- (a) the dangerous article is in the dwelling, and
- (b) the dangerous article is being, or was, or may have been or may be used to commit a domestic violence offence.

A police officer entering the dwelling under this warrant is to remain in the dwelling only as long as it is necessary to take the actions required or permitted under Part 6 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

Signed [Print name and insert signature.]

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[The authorised officer should sign and date the warrant and initial any corrections. In the case of a telephone search warrant, in circumstances where the warrant is issued but not furnished to the applicant (for example, because facsimile facilities are not available), the applicant is to complete this Form of warrant in the terms dictated by the authorised officer and write on it the name of that authorised officer and the date and time when the warrant was signed.]

Form 12 Crime scene warrant

(Clause 6 (1) (d))

(Law Enforcement (Powers and Responsibilities) Act 2002)

This warrant expires at [Time] on [Date] and must not be used after that time.

On [Date], [Name of authorised officer], an authorised officer empowered to issue crime scene warrants under Part 7 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, granted this warrant authorising [Name and rank] of [Place of work] (the applicant):

- 1 to enter the premises known as [Address], being a [Description of premises (eg dwelling house)], and
- 2 to exercise all reasonably necessary crime scene powers, as listed in paragraphs (d)–(s) below, at, or in relation to, [Specify crime scene].

This warrant may be executed only between the hours of 6.00 am and 9.00 pm. *[If there is a need for execution by night, specify the other times.]*

In executing this warrant the applicant may exercise the powers provided by the *Law Enforcement (Powers and Responsibilities) Act 2002*. These include the following powers:

- (a) to enter the named premises, using such force as is reasonably necessary for that purpose,
- (b) to use any persons necessary to assist in the execution of this warrant,
- (c) to exercise any lawful power to arrest a person,
- (d) to direct a person to leave the crime scene or remove a vehicle, vessel or aircraft from the crime scene,
- (e) to remove from the crime scene a person who fails to comply with a direction to leave the crime scene or a vehicle, vessel or aircraft a person fails to remove from the crime scene,
- (f) to direct a person not to enter the crime scene,
- (g) to prevent a person from entering the crime scene,
- (h) to prevent a person from removing evidence from or otherwise interfering with the crime scene or anything in it and, for that purpose, detain and search the person,
- (i) to remove or cause to be removed an obstruction from the crime scene,
- (j) to perform any necessary investigation, including, for example, search the crime scene and inspect anything in it to obtain evidence of the commission of an offence,

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- (k) to conduct any examination, or process, for the purpose of performing any necessary investigation,
- (l) to open anything at the crime scene that is locked,
- (m) to take electricity, gas or any other utility, for use at the crime scene,
- (n) to direct the occupier of the premises or a person apparently involved in the management or control of the premises to maintain a continuous supply of electricity at the premises,
- (o) to photograph or otherwise record the crime scene and anything in it,
- (p) to seize, detain, remove from the crime scene or guard all or part of a thing that might provide evidence of the commission of an offence,
- (q) to dig up anything at the crime scene,
- (r) to remove wall or ceiling linings or floors of a building, or panels of a vehicle,
- (s) to exercise any other power reasonably necessary or incidental to a power conferred by paragraphs (d)–(r),
- (t) to stay on the premises for the purpose of exercising the powers set out in paragraphs (d)–(s).

Signed [*Print name and insert signature.*]

Date

[The authorised officer should sign and date the warrant and initial any corrections. In the case of a telephone search warrant, in circumstances where the warrant is issued but not furnished to the applicant (for example, because facsimile facilities are not available), the applicant is to complete this Form of warrant in the terms dictated by the authorised officer and write on it the name of that authorised officer and the date and time when the warrant was signed.]

Form 13 Detention warrant

(Clause 6 (1) (e))

(Law Enforcement (Powers and Responsibilities) Act 2002)

On [*Date*], [*Name of authorised officer*], an authorised officer empowered to issue detention warrants under Part 9 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, granted this warrant to extend the maximum investigation period in relation to [*Name of detained person*] of [*Address*] beyond 4 hours by [*Specify hours and minutes.*] (excluding times that are not to be taken into account under section 117 of the *Law Enforcement (Powers and Responsibilities) Act 2002*) from [*Time*] on [*Date*].

Signed [*Print name and insert signature.*]

Date

[The authorised officer should sign and date the warrant and initial any corrections. In the case of a telephone search warrant, in circumstances where the warrant is issued but not furnished to the applicant (for example, because facsimile facilities are not available), the applicant is to complete this Form of warrant in the terms dictated by the authorised officer

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and write on it the name of that authorised officer and the date and time when the warrant was signed.]

Note. If the application for the detention warrant was made by telephone, the applicant must, within one day after the day on which the warrant is issued, give or transmit to the authorised officer an affidavit setting out the information on which the application was based that was given to the authorised officer when the application was made.

Form 14 Warrant authorising use of dog to carry out general drug detection

(Clause 6 (1) (f))

(Law Enforcement (Powers and Responsibilities) Act 2002)

This warrant expires at [*Time*] on [*Date*] and must not be used after that time.

On [*Date*], [*Name of authorised officer*], an authorised officer empowered to issue warrants under Division 2 of Part 11 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, granted this warrant authorising [*Name and rank*] of [*Place of work*] (the applicant), a police officer, and all other police officers, to use a dog to carry out general drug detection in [*Describe public place.*], a public place, during the period/periods* of [*Describe period/periods.*] being between the hours of 6.00 am and 9.00 pm [*If there is a need for execution by night, specify the other times.*]

In executing this warrant the applicant may exercise the powers provided by the *Law Enforcement (Powers and Responsibilities) Act 2002*. These include the following powers:

- (a) to use any persons necessary to assist in the execution of this warrant,
- (b) to use a dog to carry out the detection of prohibited drugs or plants in the possession or control of a person.

Signed [*Print name and insert signature.*]

Date

[* *Delete if inapplicable.*]

[The authorised officer should sign and date the warrant and initial any corrections. In the case of a telephone warrant, in circumstances where the warrant is issued but not furnished to the applicant (for example, because facsimile facilities are not available), the applicant is to complete this Form of warrant in the terms dictated by the authorised officer and write on it the name of that authorised officer and the date and time when the warrant was signed.]

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Form 15 Notice to produce documents

(Clause 6 (1) (g))

(Law Enforcement (Powers and Responsibilities) Act 2002)

This notice expires at [Time] on [Date] and must not be given after that time.

On [Date], [Name of authorised officer], an authorised officer empowered to grant notices to produce documents under Division 3 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, granted this notice requiring [Name of authorised deposit-taking institution] or an officer of [Name of authorised deposit-taking institution] to produce the documents described below to [Name and rank] of [Place of work] (the applicant), a police officer by/within* [Time and date or period].

The documents are [Description of documents].

The documents are to be produced [Specify whether documents are to be produced in hardcopy or electronic form (including kind of electronic form, eg email, CD in RTF format, facsimile transmission). If to be produced in hardcopy form, specify address. If to be produced electronically, specify relevant details such as email address, fax number (including person to whom fax to be addressed). The Notice may specify a combination of types of forms in which documents may be produced.]

[* Delete if inapplicable.]

Signed [Print name and insert signature.]

Date

[The authorised officer should sign and date the notice and initial any corrections. In the case of a telephone notice, in circumstances where the notice is issued but not furnished to the applicant (for example, because facsimile facilities are not available), the applicant is to complete this Form of notice in the terms dictated by the authorised officer and write on it the name of that authorised officer and the date and time when the notice was signed.]

Form 16 Warrant for arrest of person unlawfully at large

(Clause 6 (2))

(Law Enforcement (Powers and Responsibilities) Act 2002)

On [Date], [Name of authorised officer], an authorised officer who is empowered to grant warrants under section 103 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, granted this warrant authorising the arrest of [Name of person who is unlawfully at large], who is unlawfully at large.

Other known identifying particulars of [Name of person who is unlawfully at large] are as follows: [Insert particulars, if known, such as date of birth, last known address, management index number (MIN) allocated by the Department of Corrective Services.]

Signed [Print name and insert signature.]

Date

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Form 17 Occupier's notice for Part 5 search warrant

(Clause 7 (a))

(Law Enforcement (Powers and Responsibilities) Act 2002)

A search warrant has been issued by an authorised officer. It gives the authority and power to the police to enter and search the premises at [Address], being a [Description of premises (eg dwelling house)].

Expiry

The search warrant will expire at [Time] on [Date].

Warning

You have the right to inspect the search warrant but you must not hinder or obstruct the search, as to do so may be a criminal offence. Under section 52 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, the maximum penalty for obstructing or hindering a search without reasonable excuse is a fine of \$11,000 or 2 years imprisonment (or both).

Powers given by the search warrant

The police may use such force as is reasonably necessary to enter the premises and to carry out the purposes of the warrant.

The things the police are empowered to search for are: [If space is insufficient, continue overleaf or attach a separate sheet.]

The police can seize, detain, remove from the premises or guard any of the things mentioned in the warrant and anything that they find, while executing the search warrant, that is believed on reasonable grounds to be connected with any offence.

The police also have the power to:

- (a) break open any receptacle in or on the premises for the purposes of the search of the premises if it is reasonably necessary to do so, and
- (b) search any persons on the premises who are reasonably suspected of having a thing that is mentioned in the warrant, and
- (c) arrest any person who is reasonably suspected of committing an offence, and
- (d) if the warrant is issued in relation to a child prostitution offence—make inquiries relating to any such offence.

Issue details

The search warrant was granted by [Name], an authorised officer, under the *Law Enforcement (Powers and Responsibilities) Act 2002* on [Date] at [Time].

The warrant was issued on the application of [Name and rank] of [Place of work].

Basis for the issue of the warrant

The warrant was granted on the basis that the authorised officer found that there were reasonable grounds for the issue of the warrant and, in particular, that the applicant had reasonable grounds to believe that:

- (a)* there were on the premises the things listed above, which were:
 - (i)* things connected with the offence of [Specify offence.], or
 - (ii)* things stolen or otherwise unlawfully obtained, or

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(b)* a child prostitution offence has been, is being, or will be, committed on or with respect to the premises.

[* *Delete if inapplicable.*]

Challenging the issue of the warrant or the conduct of the search

If you are dissatisfied with the issue of the warrant or the conduct of the search, you should seek legal advice. This advice may assist you to decide whether your rights have been infringed and what action you can take. If your rights have been infringed you may be entitled to a legal remedy.

You should keep this notice as it will assist you if you seek advice.

Limitations on the powers conferred

The following limitations apply to the warrant:

- (a) the warrant must be executed before the date and time of the expiry given above,
- (b) any force used to enter the premises must be reasonably necessary,
- (c) the warrant must be executed between the hours of 6.00 am and 9.00 pm unless other times are specified on the warrant,
- (d) the warrant must be shown to you if you ask to see it,
- (e) nothing other than the things mentioned in the warrant can be seized unless it was found by a police officer while executing the search and the officer believes on reasonable grounds that it is connected with any offence.

Inspection

The application for the warrant, written reasons for the issue of the warrant and other associated documents are to be held at [*Insert the Local Court to which the issuing authorised officer is attached or to which it is intended to forward the documentation.*] You may seek to inspect those documents by arrangement with that Court. You should produce this notice at the Court when seeking to inspect those documents.

Signed [*In the case of a notice relating to a telephone search warrant, in circumstances where the warrant is issued but the notice is not furnished to the applicant (for example, because facsimile facilities are not available), the applicant officer is to complete this Form of notice in the terms dictated by the authorised officer.*]

Date

Form 18 Occupier's notice for search warrant other than Part 5 search warrant

(Clause 7 (b))

(Law Enforcement (Powers and Responsibilities) Act 2002)

A search warrant has been issued by an authorised officer. It gives the authority and power to the persons named in the search warrant to enter and search the premises at [*Address*], being a [*Description of premises (eg dwelling house)*].

Expiry

The search warrant will expire at [*Time*] on [*Date*].

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Warning

You have the right to inspect the search warrant. *[If hindering or obstructing the persons executing the search warrant is an offence under the Act authorising the issue of the warrant, state so here and insert name of Act and section of Act under which it is an offence].*

Powers given by the search warrant

The search warrant gives the power to the persons executing it to do the following things:

- (a) to use such force as is reasonably necessary to enter the premises,
- (b) to break open any receptacle in or on the premises for the purposes of the search of the premises if it is reasonably necessary to do so,
- (c) to search for/inspect the following things: *[List the items to be searched for.]*,
- (d) to exercise the following powers: *[List the powers that are specified in the Act authorising the issue of a search warrant specifically required by the applicant.]*,
- (e) to exercise such other powers as are specified in *[Insert Act and section of Act under which the warrant was issued.]*. These powers include *[Describe main powers.]*

Issue details

The search warrant was granted by *[Name]*, an authorised officer, under *[Insert Act and section of Act under which the warrant was issued.]* on *[Date]* at *[Time]*.

The search warrant was issued on the application of *[Insert name, address, title and the organisation to which the applicant belongs.]*

Basis for the issue of the warrant

The warrant was granted on the basis that the authorised officer found that there were reasonable grounds for the issue of the warrant and, in particular, that the applicant had reasonable grounds to believe *[Insert in summary form the grounds on which the search warrant was issued.]*

Challenging the issue of the warrant or conduct of the search

If you are dissatisfied with the issue of the warrant or the conduct of the people executing the warrant, you should seek legal advice. This advice may assist you to decide whether your rights have been infringed and what action you can take. If your rights have been infringed you may be entitled to a legal remedy.

You should keep this notice as it will assist you if you seek advice.

Limitations on the powers conferred

The following limitations apply to the warrant:

- (a) the warrant must be executed before the date and time of the expiry given above,
- (b) any force used to enter premises must be reasonably necessary,
- (c) the warrant must be executed between the hours of 6.00 am and 9.00 pm unless other times are specified on the warrant,
- (d) the warrant must be shown to you if you ask to see it,
- (e) only functions and powers authorised under the warrant or by the Act authorising the issue of the warrant may be performed.

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Inspection

The application for the warrant, written reasons for the issue of the warrant and other associated documents are to be held at *[Insert the Local Court to which the issuing authorised officer is attached or to which it is intended to forward the documentation.]*. You may seek to inspect those documents by arrangement with that Court. You should produce this notice at the Court when seeking to inspect the application.

Signed *[In the case of a notice relating to a telephone search warrant, in circumstances where the warrant is issued but the notice is not furnished to the applicant (for example, because facsimile facilities are not available), the applicant officer is to complete this Form of notice in the terms dictated by the authorised officer.]*

Date

Form 19 Occupier's notice for crime scene warrant

(Clause 7 (c))

(Law Enforcement (Powers and Responsibilities) Act 2002)

A crime scene warrant has been issued by an authorised officer. It gives the authority and power to *[Name and rank]* of *[Place of work]* to enter the premises at *[Address]*, being a *[Description of premises (eg dwelling house)]*, and exercise all reasonably necessary crime scene powers in relation to *[Specify crime scene.]*

Expiry

The crime scene warrant will expire at *[Time]* on *[Date]*.

Warning

You have the right to inspect the warrant but you must not hinder or obstruct the police officer authorised to enter the premises under the warrant, as to do so may be a criminal offence. Under section 96 (1) of the *Law Enforcement (Powers and Responsibilities) Act 2002*, the maximum penalty for obstructing or hindering, without reasonable excuse, a person acting under a warrant is a fine of \$11,000 or 2 years imprisonment (or both).

Further, you must not fail or refuse to comply with a request made or direction given by a police officer exercising crime scene powers at the crime scene as to do so may also be a criminal offence. Under section 96 (2) of the *Law Enforcement (Powers and Responsibilities) Act 2002*, the maximum penalty for failing or refusing, without reasonable excuse, to comply with a request made or direction given by a police officer exercising such powers under this warrant is a fine of \$1,100.

Powers given by the warrant

The police officer executing the warrant has the following powers:

- (a) to enter the named premises, using such force as is reasonably necessary for that purpose,
- (b) to use any persons necessary to assist in the execution of this warrant,
- (c) to exercise any lawful power to arrest a person,
- (d) to direct a person to leave the crime scene or remove a vehicle, vessel or aircraft from the crime scene,

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- (e) to remove from the crime scene a person who fails to comply with a direction to leave the crime scene or a vehicle, vessel or aircraft a person fails to remove from the crime scene,
- (f) to direct a person not to enter the crime scene,
- (g) to prevent a person from entering the crime scene,
- (h) to prevent a person from removing evidence from or otherwise interfering with the crime scene or anything in it and, for that purpose, detain and search the person,
- (i) to remove or cause to be removed an obstruction from the crime scene,
- (j) to perform any necessary investigation, including, for example, search the crime scene and inspect anything in it to obtain evidence of the commission of an offence,
- (k) for the purpose of performing any necessary investigation, to conduct any examination or process,
- (l) to open anything at the crime scene that is locked,
- (m) to take electricity, gas or any other utility, for use at the crime scene,
- (n) to direct the occupier of the premises or a person apparently involved in the management or control of the premises to maintain a continuous supply of electricity at the premises,
- (o) to photograph or otherwise record the crime scene and anything in it,
- (p) to seize, detain, remove from the crime scene or guard all or part of a thing that might provide evidence of the commission of an offence,
- (q) to dig up anything at the crime scene,
- (r) to remove wall or ceiling linings or floors of a building, or panels of a vehicle,
- (s) to exercise any other power reasonably necessary or incidental to a power listed in paragraphs (e)–(s),
- (t) to stay on the premises for the purpose of exercising the powers set out in paragraphs (d)–(s).

Issue details

The warrant was granted by [Name], an authorised officer, under the *Law Enforcement (Powers and Responsibilities) Act 2002* on [Date] at [Time].

The warrant was issued on the application of [Name and rank] of [Place of work].

Basis for the issue of the warrant

The warrant was granted on the basis that the authorised officer found that there were reasonable grounds for the issue of the warrant and, in particular, that the applicant police officer had reasonable grounds to suspect that it was necessary to exercise crime scene powers at a crime scene for the purpose of preserving, or searching for and gathering, evidence of the commission of:

- (a) *the offence of [Specify offence.], which is a serious indictable offence,
- (b) *the offence of [Specify offence.] that is being/was/may have been* committed in connection with a traffic accident that has resulted in the death of/serious injury* to a person.

[* Delete if inapplicable.]

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Challenging the issue or execution of the warrant

If you are dissatisfied with the issue or the execution of the warrant, you should seek legal advice. This advice may assist you to decide whether your rights have been infringed and what action you can take. If your rights have been infringed you may be entitled to a legal remedy.

You should keep this notice as it will assist you if you seek advice.

Limitations on the powers conferred

The following limitations apply to the warrant:

- (a) the warrant must be executed before the date and time of the expiry given above,
- (b) any force used to enter the premises must be reasonably necessary,
- (c) the warrant must be executed between the hours of 6.00 am and 9.00 pm unless other times are specified on the warrant,
- (d) the warrant must be shown to you if you ask to see it,
- (e) the powers listed in paragraphs (d)–(s) under the heading “**Powers given by the warrant**” may be exercised only if it is reasonably necessary to do so.

Inspection

The application for the warrant, written reasons for the issue of the warrant and other associated documents are to be held at [*Insert the Local Court to which the issuing authorised officer is attached or to which it is intended to forward the documentation.*] You may seek to inspect those documents by arrangement with that Court. You should produce this notice at the Court when seeking to inspect the application.

Signed [*In the case of a notice relating to a telephone crime scene warrant, in circumstances where the warrant is issued but the notice is not furnished to the applicant (for example, because facsimile facilities are not available), the applicant officer is to complete this Form of notice in the terms dictated by the authorised officer.*]

Date

Form 20 Report to authorised officer about execution of warrant

(Clause 9 (1))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Note. This report must be made within 10 days after the execution of the warrant or the expiry of the warrant, whichever first occurs.

This report is made to the authorised officer who issued the attached warrant. [*Unless completed on the back of the warrant, attach the original warrant issued by the authorised officer or telephone warrant completed by the applicant.*]

- *1 The warrant was not executed for the following reasons:
- *2 The warrant was executed on [*Date*].
- *3 [*To be completed unless 4 applies.*] The warrant was executed at [*Specify time at which execution of warrant was completed.*]

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- *4 *[To be completed if the warrant authorised the use of a dog for general drug detection.].* The warrant was executed during the period/periods* of *[Specify period/periods.]*
- *5 The result of the execution of the warrant (including a description of the things seized) is briefly as follows: *[If a receipt is given for anything seized, attach a copy.]*
- *6 The things seized are now in the custody of *[Specify the person who has responsibility for the safekeeping of the things seized. Specify the place where the things are held unless specifying the place where they are held would adversely affect the security of the things seized.]*
- *7 The occupier's notice was not served/served on* *[Specify manner of service and on whom notice was served.]*

[Delete if inapplicable.]*

Signed *[Print name and insert signature.]*

Date

Rank or designation

Place of work

Date of receipt of report by authorised officer

Authorised officer *[Print name and insert signature.]*

Note. On completion of the report, forward the report and attachments to the Local Court named in the Occupier's Notice.

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Guidelines for custody managers and other police officers

Schedule 2

Schedule 2 **Guidelines for custody managers and other police officers** (cf Crimes (Detention after Arrest) Regulation 1998, Sch 1)

(Clause 18)

Part 1 **Specific guidelines for custody managers**

1 **Questioning detained person**

The custody manager for a detained person should not put specific questions to the person regarding the person's involvement in any offence.

2 **Detained person's property**

The custody manager for a detained person should ascertain what property the person has with him or her when the person comes to the police station or other place of detention concerned, or had taken from him or her on arrest, and should arrange for safekeeping of the property if it remains at the police station or other place of detention.

3 **Vulnerable persons—consideration of whether a detained person has certain kind of impaired intellectual functioning**

In considering whether a detained person has a total or partial loss of his or her mental functions, or a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction, the custody manager for the detained person should have regard to whether the person appears:

- (a) to have difficulty understanding questions and instructions, or
- (b) to respond inappropriately or inconsistently to questions, or
- (c) to have a short attention span, or
- (d) to receive a disability support pension, or
- (e) to reside at a group home or institution, or be employed at a sheltered workshop, or
- (f) to be undertaking education, or to have been educated at a special school or in special education classes at a mainstream school, or
- (g) to have an inability to understand a caution given to the person under section 122 of the Act.

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Schedule 2 Guidelines for custody managers and other police officers

Part 2 Placing of certain vulnerable persons in cells

4 Aboriginal persons and Torres Strait Islanders (adults)

If an Aboriginal person or Torres Strait Islander who is not a child is placed in a police cell:

- (a) wherever possible, that person should be accommodated with another Aboriginal person or Torres Strait Islander who is not a child, and
- (b) the person should not be placed alone in the cell unless there is no reasonably practicable alternative.

5 Aboriginal persons and Torres Strait Islanders (children)

- (1) An Aboriginal person or Torres Strait Islander who is a child should not be placed in a police cell except in exceptional circumstances that make it necessary for the well-being of the child.
- (2) If it is necessary to detain such a child overnight in a police cell, the custody manager for the child should arrange for a support person to remain with the child unless it is not reasonably practicable to do so.

6 Children other than Aboriginal or Torres Strait Islander children

- (1) This clause applies to a child who is not an Aboriginal person or Torres Strait Islander.
- (2) A child to whom this clause applies should not be placed in a cell unless:
 - (a) no other secure accommodation is available and the custody manager for the child considers that it is not practicable to supervise the child if the child is not placed in a cell, or
 - (b) the custody manager considers that a cell provides more comfortable accommodation than other secure accommodation in the police station.
- (3) Such a child should not be placed in a cell with a detained person who is not a child except in exceptional circumstances that make it necessary for the well-being of the child.

Part 3 Miscellaneous

7 Use of restraints in cells

If a detained person is placed in a locked police cell, no additional restraint should be used within the cell unless absolutely necessary.

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Guidelines for custody managers and other police officers

Schedule 2

8 Use of interpreters

- (1) A police officer should bear in mind that a person with some ability in conversational English may still require an interpreter in order to ensure that the person understands his or her legal rights.
- (2) A qualified interpreter should be preferred over a person who speaks the detained person's language but is not a qualified interpreter. A qualified interpreter is one who is accredited to professional level by the National Accreditation Authority of Translators and Interpreters in the language concerned.
- (3) An interpreter should not be used as a support person.

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Schedule 2 Guidelines for custody managers and other police officers
