



Tuvalu

POLICE POWERS AND DUTIES ACT

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Tuvalu

POLICE POWERS AND DUTIES ACT

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Tuvalu

POLICE POWERS AND DUTIES ACT¹

AN ACT TO PROVIDE FOR THE POWERS AND RESPONSIBILITIES OF THE TUVALU POLICE AND OF SPECIAL CONSTABLES, AND FOR INCIDENTAL MATTERS

Commencement [3rd December, 2009]

1 Short Title

This Act may be cited as the Police Powers and Duties Act 2009.

2 Commencement

This Act commences on the date of publication.

3 Purpose of this Act

The purpose of this Act is:

- (a) to provide the powers that are necessary for effective modern policing and law enforcement; and
- (b) to consolidate and rationalise the powers and duties that police officers have for investigating offences and enforcing the law; and
- (c) to provide consistency in the nature and extent of the powers and duties of police officers; and
- (d) to standardise the way in which the powers and duties of police officers are to be exercised; and
- (e) to ensure fairness to, and to protect the rights of, persons against whom police officers exercise powers; and
- (f) to enable the public to better understand the nature and extent of the powers and duties of police officers.

4 This Act binds the Crown

This Act binds the Crown.

5 Compliance with Act by police officers

- (1) It is the intention of the Parliament that police officers should comply with this Act when exercising powers and performing duties under it.
- (2) A police officer who contravenes this Act may be dealt with as provided under the law.

Examples

Under the Police Service Act for a breach of discipline under the Penal Code for an offence.

6 Performance of duty

A police officer who is performing a function of the police service is performing a duty of a police officer, even if the function could be performed by someone other than a police officer.

Example

If an occupier of a place who may remove a trespasser from the place asks a police officer to remove the trespasser, the police officer, when removing the trespasser at the occupier's request, is performing a function of the police service.

7 This Act does not affect certain principles

- (1) This Act does not prevent a police officer from speaking to anyone or doing anything else that a police officer may lawfully do apart from this Act when performing the police officer's duties without exercising a power under this Act or using any form of compulsion.
- (2) This Act does not affect the powers that a police officer may lawfully exercise as an individual.

Example

powers for protecting property.

- (3) This Act does not affect the principle that everyone in the community has a social responsibility to help police officers to prevent crime and discover offenders.
- (4) This Act does not affect the common law under which a court in a criminal proceeding may:
 - (a) exclude evidence in the exercise of its discretion; or

- (b) stay the proceeding in the interests of justice.

8 Relationship between this Act and other Acts

- (1) If another Act confers a power or imposes a duty on a police officer, this Act prevails over that Act to the extent of any inconsistency between the two Acts.
- (2) A police officer may exercise a power in accordance with this Act in order to do something under another Act, even though the other Act specifies the way to exercise the power.
- (3) The object of this section is to allow police officers to rely generally on this Act, as opposed to a number of Acts, for their powers and duties.

9 Definitions

In this Act, unless the contrary intention appears:

“**approved form**” means a form approved for use under this Act by the Commissioner under section 175;

“**arrest**” includes apprehend, take into custody, detain or remove to another place for examination or treatment;

“**child**” means a person under 18;

“**crime scene**” has the meaning given by section 68;

“**dangerous drug**” has the meaning given in section 2 (Interpretation) of the Dangerous Drugs Act;

“**driver**”, of a vehicle, includes the rider of a motorbike, and the person steering a vessel;

“**dwelling**” includes a building or other structure, or part of a building or other structure, kept by the owner or occupier as a residence;

“**fine unit**” means a fine unit as defined in section 96 of the Police Service Act;²

“**fingerprint**” means an image or impression of the friction ridge detail from the palmar surface of a person’s hand, and includes a digital image of that friction ridge detail;

“**health ministry**” means the ministry that administers the health system in Tuvalu;

“**Minister**” means the Minister responsible for the police service;

“**identifying particulars**” has the meaning given by section 113;

“**night**” means the interval between sunset on one day and sunrise on the next day;

“**notice to appear**” has the meaning given by section 102;

“**officer in charge**” of a place has the meaning given by the Police Service Act;

“**Penal Code**” means the Penal Code that commenced on 18 October 1965;

“**person with impaired capacity**” means a person whose capacity to look after or manage his or her own interests is impaired because of either of the following:

- (a) an obvious loss, or partial loss, of the person’s mental functions;
- (b) an obvious disorder, illness or disease that affects a person’s thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour;

“**place**” includes an aircraft or a vehicle;

“**police officer**” and words referring to ranks in the police service have the meanings given to them under the Police Service Act;

“**police service**” means the Tuvalu Police established in the Constitution;

“**public place**” includes a place that is open to the public, but only while the place is ordinarily open to the public;

Example

when a restaurant in a hotel is open to the public;

“**time out**” includes any time reasonably required:

- (a) to take a person from the place where the person is arrested to the nearest police station; and
- (b) to allow the person to communicate with a relative, a friend, a lawyer, an interpreter, or other person; and
- (c) to allow a relative, a friend, a lawyer, an interpreter, or other person, to arrive at the place where the person is to be questioned; and
- (d) to allow the person to receive medical attention; and
- (e) to allow the person to recover from the effects of intoxication; and
- (f) to allow the person to rest; and
- (g) to allow for the questioning of co-offenders; and
- (h) to allow for an identification parade to be arranged and held; and
- (i) to allow for the performance of a forensic procedure; and
- (j) to allow for witnesses to be interviewed; and
- (k) to allow for investigating police to arrive; and
- (l) to allow for the person to be taken to another place for the investigation or as part of the investigation; and
- (m) to allow for the search of any place, including a crime scene; and
- (n) to decide the appropriate nature and content of a charge against the person and to charge the person and decide whether to release the person on bail or serve on the person a notice to appear or a summons

“**transport law**” has the meaning given by the Police Service Act 2009;

“**vehicle**” includes a vessel;

“**vehicle incident**” means:

- (a) an incident involving a vehicle on a road in which:
 - (i) death or injury was caused to a person; or
 - (ii) damage was caused to a vehicle or any other real or personal property; or
 - (iii) death or injury was caused to an animal; or
- (b) an incident involving a boat in which:
 - (i) death or injury was caused to a person; or
 - (ii) damage was caused to a boat or any other real or personal property;

“**warrant powers**” has the meaning given by section 61.

CHAPTER 2 GENERAL ENFORCEMENT POWERS

PART 2.1 - GENERAL POWERS AND DUTIES

10 General powers and duties

- (1) A police officer has and must exercise the powers and duties of a constable at common law or under any other law.
- (2) This Act does not derogate from the powers, duties and liabilities of a constable at common law or under any other law.

11 Termination of powers

The powers that a person had as a police officer terminate immediately when the person stops being a police officer.

12 Direction and orders of superior officers

When performing duties, a police officer is subject to:

- (a) the directions and orders of the Commissioner; and
- (b) the orders of a more senior police officer.

PART 2.2 - REQUIRING A PERSON'S NAME, ADDRESS AND DATE OF BIRTH

13 Requiring a person to state his or her name and address

- (1) A police officer may require a person to state the person's correct name and residential address if:
- (a) the police officer finds the person committing an offence; or
 - (b) the police officer suspects, on reasonable grounds, that the person has committed an offence; or
 - (c) the police officer suspects, on reasonable grounds, that the person may be able to help in the investigation of:
 - (i) a vehicle incident; or
 - (ii) an alleged felony, because the person was near the place where the alleged felony happened before, when, or soon after the alleged felony happened; or
 - (d) the person is in control of a vehicle that is stationary on a road or has been stopped under section; or
 - (e) the police officer is attempting to enforce a court order in relation to a person; or
 - (f) the police officer is attempting to serve a court document on a person; or
 - (g) the person is performing an activity that is required by law to be performed under a licence.

Note For the meaning of “**felony**”, see the Penal Code, section 4.

Example of court order for paragraph (e) a warrant.

Example of court document for paragraph (f) a summons.

- (2) The police officer may require the person to give evidence of the correctness of the name and address given by the person if, in the circumstances, it would be reasonable to expect the person to be in possession of evidence of the correctness of the name or address.
- (3) A person who fails to comply with a police officer's requirement under this section does not commit an offence if:
- (a) for subsection (1)(a) or (b) — the person is not proved to have committed the offence; or
 - (b) for subsection (1)(c) — the person is not proved to have been able to help in the investigation; or
 - (c) for subsection (1)(e) or (f) — the person is not proved to be the person named in the court order or court document; or

- (d) for subsection (1)(g) — the person is not proved to have been performing an activity that is required by law to be performed under a licence.

Note For the offence of failing to comply, see section 170.

14 Requiring a person to state his or her date of birth

- (1) This section applies if:
- (a) a person is at a place, and the age of the person is relevant to the person's entitlement to be at the place; or
 - (b) a person is engaging in an activity, and the age of the person is relevant to the person's entitlement to engage in the activity.
- (2) A police officer may require a person to state the person's correct date of birth, unless the person has a reasonable excuse.
- (3) It is a reasonable excuse for the person not to comply with the requirement if the person does not know the person's date of birth because the person's date of birth has not been recorded by the entity that is responsible for the registration of births.
- (4) The police officer may require the person to give evidence of the correctness of the stated date of birth if, in the circumstances, it would be reasonable to expect the person to be in possession of evidence of the correctness of the date of birth.
- (5) If a police officer asks a person to give evidence of the person's date of birth, and is not satisfied that the person is old enough to be at the place or to engage in the activity, the police officer may direct the person:
- (a) to immediately leave the place, or the part of the place in which the person's age is relevant, and not re-enter it; or
 - (b) not to engage in the activity.

PART 2.3 - INSPECTING LICENCES, REGISTERS ETC

15 Requiring a person to produce a licence, register etc

- (1) This section applies if a person is required under a law:
- (a) to hold a licence; or
 - (b) to have the approval of any person; or
 - (c) to keep a register or other record.
- (2) A police officer may require the person to produce any of the following things to the police officer for inspection:
- (a) the licence;
 - (b) evidence of the approval;
 - (c) the register or other record.

- (3) The person must produce those things for inspection at the place and time that the police officer reasonably requires.

PART 2.4 - DIRECTING A PERSON TO MOVE ON

16 Directing a person to move on

- (1) A police officer may direct a person who is in or near a public place to move on if a police officer suspects, on reasonable grounds, that:
- (a) the behaviour of the person is, or has been:
 - (i) causing anxiety to a person entering, at, or leaving the public place; or
 - (ii) interfering with trade or business at the public place by unnecessarily obstructing, hindering or impeding someone entering, at, or leaving the public place; or
 - (iii) disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the public place; or
 - (iv) disorderly, indecent, offensive, or threatening to someone entering, at, or leaving the public place; or
 - (b) the presence of the person is, or has been:
 - (i) causing anxiety to a person entering, at, or leaving the public place; or
 - (ii) interfering with trade or business at the public place by unnecessarily obstructing, hindering or impeding someone entering, at, or leaving the public place; or
 - (iii) disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the public place.

Examples for paragraphs (a) and (b)

If a group of people have been fighting in a nightclub car park, the police officer may give the people involved in the fight a direction to leave the premises in opposite directions in order to separate the fighters.

If a person sitting in the entrance to a shop is stopping people entering or leaving the shop when it is open for business, the police officer may give the person a direction to move away from the entrance.

If a person has approached a primary school child near a school in circumstances that would cause anxiety to a reasonable parent, the police officer may give the person a direction to leave the area near the school.

- (2) The police officer may give the person any other direction that is reasonable in the circumstances.

Examples of directions

to leave the public place, and not return to or be in the public place within a stated reasonable time of not more than 24 hours.

to leave a stated part of the public place, and not return to or be in the stated part of the public place within a stated reasonable time of not more than 24 hours.

to move from a particular location at or near the public place for a stated reasonable distance, in a stated direction, and not return to or be in the stated distance from the public place within a stated reasonable time of not more than 24 hours.

- (3) However, the police officer must not give a direction that interferes with a person's right of peaceful assembly unless it is reasonably necessary in the interests of:
- (a) public safety; or
 - (b) public order; or
 - (c) the protection of the rights and freedoms of other persons.

Examples of rights and freedoms for paragraph (c)

the rights and freedoms of the public to enjoy a public place.

the rights of persons to carry on lawful business near a public place.

- (4) The police officer must tell the person the reasons for giving a direction under this section.

PART 2.5 - BREACHES OF THE PEACE, RIOTS AND PREVENTION OF OFFENCES

17 Dealing with breaches of the peace

- (1) This section applies if a police officer suspects, on reasonable grounds, that:
- (a) a breach of the peace is happening or has happened; or
 - (b) there is an imminent likelihood of a breach of the peace; or
 - (c) there is a threatened breach of the peace.

Note: For other police powers, see the Public Order Act.

Example of an event for paragraph (a)

at a demonstration or public assembly.

- (2) A police officer may take the steps that the police officer considers are reasonably necessary to prevent:
- (a) the breach of the peace happening or continuing; or
 - (b) the conduct that is the breach of the peace again happening, even though the conduct might otherwise be lawful.

Examples

The police officer may detain a person until the need for the detention no longer exists.

The police officer may seize property that may be used in breaching the peace for as long as is necessary to prevent the breach.

18 Preventing riots

A police officer may take the steps that the police officer believes, on reasonable grounds, are necessary to suppress a riot.

Note: See also sections 21 (Riot) and 42 (Police powers of arrest) of the Public Order Act.

19 Preventing offences generally

- (1) This section applies if a police officer suspects, on reasonable grounds, that an offence:
 - (a) has been committed; or
 - (b) is being committed; or
 - (c) is about to be committed.
- (2) A police officer may take the steps that the police officer considers are reasonably necessary to prevent the commission of the offence.

Example

A police officer who suspects, on reasonable grounds, that the way in which a person is acting who is near a prisoner threatens the security of the prisoner, may require the person to leave the vicinity of the prisoner.

- (3) A police officer may take the steps that the police officer considers are reasonably necessary to prevent the continuation or repetition of an offence.

Example

A police officer may remove or deface an indecent advertisement that is attached to a building if, because it is visible to members of the public, it contravenes another law.

20 Prevention of particular offences relating to liquor

- (1) This section applies if:
 - (a) a police officer suspects, on reasonable grounds, that a person has committed, is committing, or is about to commit an offence against section 107 (Mixtures of sour toddy) or 118 (Prohibited areas) of the Alcoholic Drink Act; and

- (b) the police officer suspects, on reasonable grounds, that an opened container of alcoholic drink at the place, in the person’s possession or under the person’s control, relates to, is contributing to, or is likely to contribute to, the commission of the offence by the person.
- (2) The police officer may seize:
- (a) the opened container and its contents; and
 - (b) any unopened container of alcoholic drink at the place, and its contents, that the police officer suspects, on reasonable grounds, relates to, or is contributing to, or is likely to contribute to, the commission of an offence against a provision mentioned in subsection (1) at the place by the person or another person.
- (3) A police officer may dispose of anything that is seized in the way that the police officer considers reasonably necessary to prevent the commission, continuation or repetition of the offence.

Example

The police officer may empty the contents of the container onto the ground.

- (4) In this section:

“**alcoholic drink**” has the meaning given by section 2 of the Alcoholic Drink Act.

“**opened container**” includes a container that has been opened, even if it is closed at the material time, and regardless of whether or not some of its contents have been removed.

PART 2.6 - VEHICLES AND TRAFFIC

21 Stopping vehicles

- (1) A police officer may require the person who is in control of a vehicle to stop the vehicle:
- (a) for enforcing a transport law; or
 - (b) to check whether the vehicle or person is complying with a transport law.

Examples for paragraph (a)

to charge the person in control of a vehicle with speeding to conduct a substance test.

- (2) A person commits an offence if the person fails to comply with the requirement, unless the person has a reasonable excuse.
- (3) The maximum penalty for the offence is 20 fine units.
- (4) It is a reasonable excuse for the person not to comply with the requirement if:
- (a) the person believes, on reasonable grounds, that to immediately comply with the requirement would endanger the person or someone else; and

- (b) the person complies with the requirement at the first reasonable opportunity.
- (5) To conduct a substance test, the police officer may enter the vehicle and remain in it for the time that is reasonably necessary for that purpose.

Examples

The police officer may stop a vehicle to conduct a roadworthiness check.

The police officer may board a boat to give the driver of the boat a substance test.

- (6) A “substance test” is a test designed to test whether a person’s physical or mental capacity is impaired by alcohol or a drug.

22 Requiring information about the identity of drivers of vehicles etc

- (1) This section applies if:
 - (a) a person alleges to a police officer that a contravention of a law that involves a vehicle has been committed; or
 - (b) a police officer suspects, on reasonable grounds, that a contravention of a law that involves a vehicle has been committed.
- (2) A police officer may require any of the following persons to give the police officer information that will identify, or help identify, the person who was in control of the vehicle when the contravention happened:
 - (a) an owner of the vehicle;
 - (b) a person in possession of the vehicle;
 - (c) a person in whose name the vehicle is registered;
 - (d) any other person who may reasonably be expected to be able to give the information.
- (3) Also, a police officer may require the driver of the vehicle to give the police officer information about the identity of the owner of the vehicle.
- (4) In order to make a requirement under subsection (2) or (3), a police officer may:
 - (a) go onto someone else’s property; and
 - (b) stay there as long as is reasonably necessary in the circumstances for the police officer:
 - (i) to make the requirement; and
 - (ii) to allow the person to give the information.

Examples of property for paragraph (a)

a vessel

an airfield.

- (5) However, a police officer may use reasonably necessary force to enter the place only if the entry is authorised by a police officer of at least the rank of sergeant.

23 Investigating vehicle contraventions

- (1) A police officer may make any reasonably necessary investigation, inspection or test:
- (a) to establish whether or not an offence against a transport law has been committed; or
 - (b) to obtain information about a vehicle, animal or other property that was involved in a vehicle incident; or
 - (c) to obtain information about the cause of a vehicle incident, and the circumstances in which it happened.
- (2) Also, a police officer may make any reasonably necessary investigation to obtain information about a person involved in a vehicle incident.
- (3) A police officer may arrange for someone else to make any reasonably necessary inspection or test for establishing whether an offence against a transport law has been committed.
- (4) In order to exercise a power under subsection (1), (2) or (3), a police officer may:
- (a) go onto someone else's property; and
 - (b) stay there as long as is reasonably necessary in the circumstances for the police officer to exercise the power; and
 - (c) do anything reasonable to be done for the inspection or test.

Examples of what the police officer may do for paragraph (c)

enter the vehicle

unlock, unfasten, open or remove any part of the vehicle move the load on the vehicle

start the vehicle's engine.

- (5) However, the police officer may use reasonably necessary force to enter a place only if the entry is authorised by a police officer of at least the rank of sergeant.
- (6) If a police officer suspects, on reasonable grounds, that a vehicle does not comply with a transport law, the police officer may require the owner of the vehicle to have the vehicle inspected at a stated reasonable time and place.
- (7) The requirement:
- (a) must be made by notice in the approved form; or
 - (b) if for any reason it is not practicable to give the notice may be made orally and confirmed by notice in the approved form as soon as practicable.

- (8) A person commits an offence if the person fails to comply with the requirement, unless the person has a reasonable excuse.
- (9) The maximum penalty for the offence is 20 fine units.

24 Regulating vehicular and pedestrian traffic

- (1) A police officer may give the driver or a passenger of a vehicle, or a pedestrian on or about to enter a road, any direction that the police officer reasonably considers is necessary for the safe and effective regulation of traffic on the road.

Example

A police officer may temporarily divert traffic and pedestrians to prevent obstruction to a procession along a road or to treat persons who were involved in a vehicle incident on the road.

- (2) A direction under subsection (1) may include a direction to the owner or driver of a parked vehicle to move the vehicle as soon as practicable.

25 Prohibiting a person driving

- (1) This section applies to the person in control of a motor vehicle that is stationary on a road.
- (2) If a police officer suspects, on reasonable grounds, that the person would contravene a transport law by driving the motor vehicle, the officer may require the person not to drive the motor vehicle in contravention of that law.

Example

The person is under the influence of alcohol.

- (3) A person commits an offence if the person fails to comply with the requirement, unless the person has a reasonable excuse.
- (4) The maximum penalty for the offence is 20 fine units.
- (5) If the position of the motor vehicle on the road may pose a hazard to other road users, the police officer may cause the motor vehicle to be moved to the nearest safe place that no longer poses a hazard to road users.

26 Prohibiting the use of a vehicle

- (1) If a police officer suspects, on reasonable grounds, that a vehicle is unsafe or defective, the police officer may require the owner of the vehicle not to use the vehicle, or permit the vehicle to be used, on a road until:
 - (a) the vehicle is inspected at a stated reasonable place, and found to comply with the Traffic Act; or

- (b) stated reasonable action is taken in relation to the vehicle to ensure that the vehicle complies with the Traffic Act.

Examples for paragraph (b)

The vehicle's load needs be adjusted or moved.

Stated repairs need to be carried out to the vehicle and the vehicle needs to be inspected at a stated place and found to comply with the Traffic Act.

- (2) The requirement must be made by notice in the approved form.
- (3) A person commits an offence if the person fails to comply with the requirement, unless the person has a reasonable excuse.
- (4) The maximum penalty for the offence is 20 fine units.
- (5) It is a reasonable excuse for the person not to comply with the requirement if:
 - (a) the vehicle's registration is cancelled; and
 - (b) the person gives the police officer written notice of the cancellation of the vehicle's registration within 7 days after the cancellation.
- (6) If the driver to whom a notice is given under this section is not the owner of the vehicle, the driver commits an offence if the driver does not immediately give the notice to the owner of the vehicle, unless the driver has a reasonable excuse.
- (7) The maximum penalty for the offence is 30 fine units.

27 Impounding motor vehicles

- (1) A police officer may impound a motor vehicle that the police officer suspects, on reasonable grounds, has been involved in an incident in which a person was killed or injured.
- (2) To impound the motor vehicle, a police officer may:
 - (a) if the motor vehicle is moving — stop the motor vehicle, whether or not the motor vehicle is on a road; or
 - (b) if the motor vehicle is not moving — require the driver of the motor vehicle to remain at the place where it is for the time reasonably necessary; or
 - (c) enter the motor vehicle, if that is necessary to impound it; or
 - (d) enter a place, other than the part of the place that is a dwelling, and stay for a reasonable time at the place; or
 - (e) direct the person who has the key needed to move the motor vehicle:
 - (i) to give the key to a police officer; or
 - (ii) if the motor vehicle is in a dwelling — to move the motor vehicle out of the dwelling, and to give the key to a police officer; or
 - (f) do anything else reasonably necessary for impounding the motor vehicle.

- (3) After impounding the motor vehicle, the police officer must move the motor vehicle, or arrange for the motor vehicle to be moved, to a holding yard in the way that the police officer considers appropriate.
- (4) As soon as reasonably practicable after impounding the motor vehicle, the police officer must give written notice of the impounding to:
 - (a) the driver of the motor vehicle; and
 - (b) if the driver is not the owner or not the only owner of the motor vehicle — the owner or each other owner of the motor vehicle.
- (5) The written notice must state:
 - (a) that the motor vehicle is impounded for a stated period, of not more than one month; and
 - (b) information about how the owner of the motor vehicle may recover the motor vehicle; and
 - (c) that, before the motor vehicle may be recovered, the owner may be required to produce satisfactory evidence of the ownership of the motor vehicle; and
 - (d) that, if the driver of the motor vehicle when the motor vehicle was impounded was an adult, and the driver is found guilty of the offence for which the motor vehicle was impounded, the court may order the driver to pay the costs of moving and keeping the motor vehicle; and
 - (e) that, if the driver of the motor vehicle when the motor vehicle was impounded was a child, and the driver is found guilty of the offence for which the motor vehicle was impounded, the court may order the child or the child's parent or guardian to pay the costs of moving and keeping the motor vehicle.
- (6) The motor vehicle may be kept for the time, up to 1 month, that is reasonably necessary for an inspection or test:
 - (a) to determine whether the vehicle was involved in an incident in which a person was killed or injured; and
 - (b) to collect evidence of the commission of any offence arising from the incident.
- (7) A police officer may apply to a magistrate for an order that allows the motor vehicle to be kept for more than a month.
- (8) As soon as reasonably practicable after a date is set for the hearing of an application for an order under subsection (7), a police officer must give the driver of the motor vehicle and each owner of the motor vehicle written notice of the date, time and place of the hearing.
- (9) If the driver or owner is a child, and it is reasonably practicable to do so, written notice must also be given to the child's parent or guardian.

28 Disposing of motor vehicle if not recovered after impounding ends

- (1) If the owner of the motor vehicle does not recover the motor vehicle within 2 months after the period of impounding ends, the Commissioner may:
 - (a) sell the motor vehicle, and anything in or on the motor vehicle, by public auction; or
 - (b) dispose of the motor vehicle in any way that does not cause an actual, or apparent, conflict of interest for the Commissioner.
- (2) The Commissioner must give notice of the proposed sale or disposal of the motor vehicle:
 - (a) to the owner of the motor vehicle (if known) unless, after making reasonable efforts, the Commissioner cannot find the owner; and
 - (b) in any of the following ways:
 - (i) by advertisement in a newspaper circulating generally throughout Tuvalu;
 - (ii) by advertisement on a radio station that transmits at the place where the motor vehicle was seized;
 - (iii) on the police service website.
- (3) If the Commissioner decides to sell the motor vehicle, the proceeds of the sale are to be applied in the following order:
 - (a) in payment of the expenses of the sale;
 - (b) in payment of the costs of moving and keeping the motor vehicle, and of giving notice of impounding the motor vehicle;
 - (c) if the Commissioner knows that there is an amount owing to a person under a security interest for the motor vehicle — in payment of the amount owing to the holder of the security interest;
 - (d) in payment of any balance to the owner.
- (4) Compensation is not recoverable from the Crown for any payment made under this section.

PART 2.7 - HELPING ENFORCEMENT OFFICERS**29 Helping enforcement officers exercise powers under other laws**

- (1) This section applies if a law authorises a person (an “enforcement officer”) to perform inspection, investigation or other enforcement functions under the law.
- (2) With the consent of the Commissioner, a police officer may help an enforcement officer to perform the enforcement officer’s functions under the law.

- (3) The enforcement officer must explain to the police officer the powers that the enforcement officer has under the law, before the police officer helps the enforcement officer.
- (4) If the enforcement officer is not present or will not be present when the help is to be given, the police officer may give the help only if the police officer is satisfied that giving the help in the enforcement officer's absence is reasonably necessary in the particular circumstances.
- (5) While helping an enforcement officer, the police officer has the same powers and protection under the law that the enforcement officer has.
- (6) Subsection (5) is in addition to, and does not limit, the powers and protection that a police officer has under this Act or any other law.

PART 2.8 - SECURITY SERVICES FOR GOVERNMENT BUILDINGS

30 Power relating to entry to government buildings

- (1) A police officer may require an entrant to a building belonging to the government to state the entrant's reason for entering the building.
Examples of buildings; a police station, a courthouse.
- (2) If the police officer considers, on reasonable grounds, that it is necessary to do so, the police officer may ask the entrant to do one or more of the following:
 - (a) allow the police officer to inspect the entrant's belongings;
 - (b) remove one or more of the outer garments worn by the entrant, as specified by the police officer, and allow the police officer to inspect the garments;
 - (c) remove all articles from the entrant's clothing and allow the police officer to inspect them;
 - (d) open a vehicle or a part of a vehicle, and allow the police officer to inspect the vehicle;
 - (e) remove an article from the vehicle, as specified by the police officer, and allow the police officer to inspect the article;
 - (f) open an article for inspection, and allow the police officer to inspect the article and any contents.
- (3) The police officer may touch a garment that the entrant is wearing only if the police officer is of the same sex as the entrant.
- (4) The police officer may direct the entrant to leave the building immediately, and to take the entrant's belongings out of the building, if the entrant fails:
 - (a) to state the entrant's reasons for entering the building; or
 - (b) to allow a police officer to exercise a power under subsection (2).

- (5) If the entrant fails to leave the building, the police officer may remove the entrant from the building.

PART 2.9 - ENTERING SOMEONE ELSE'S PROPERTY

DIVISION 2.9.1 - GENERAL

31 Purpose of this Part

The purpose of this Part is to allow a police officer who is performing his or her duties to go onto someone else's property (including private premises, in certain circumstances) when it would otherwise be trespassing.

32 Definitions

- (1) In this Part:

“domestic relationship” means a relationship between 2 persons:

- (a) who are, or were, married to each other; or
- (b) who are, or were, in an intimate personal relationship or other personal relationship with each other; or
- (c) who are, or were, related to each other; or
- (d) one of whom is a child who:
 - (i) ordinarily resides, or resided, with the other person; or
 - (ii) regularly resides or stays, or resided or stayed, with the other person; or
- (e) one of whom is, or was, a child of whom the other person is, or was, a guardian;

“domestic violence”, for a person, means violence against the person by any other person with whom that person is, or has been, in a domestic relationship;

“other personal relationship” means a personal relationship of a domestic nature in which the lives of the persons are, or were, interrelated and the actions of one person affects, or affected, the other person;

“police order” means an order made under section 42. **“private premises”** means:

- (a) premises that are not open to the general public to enter; or
- (b) that part of premises that is not open to the public to enter;

Example for paragraph (a) a person's dwelling.

Example for paragraph (b) the kitchen of a restaurant;

“related”, for a person, means another person who:

- (a) is related to the person, taking into consideration the cultural, social or religious backgrounds of the 2 persons; or
- (b) is related to the person's:
 - (i) spouse or former spouse; or
 - (ii) de facto spouse or former de facto spouse;

“violence” means:

- (a) physical abuse; or
 - (b) sexual abuse; or
 - (c) psychological abuse, including:
 - (i) intimidation; or
 - (ii) harassment; or
 - (iii) damage to property; or
 - (iv) threats of physical abuse, sexual abuse, or psychological abuse; or
 - (v) for a child — abuse of the kind mentioned in subsection (2).
- (2) Without limiting paragraph (c) of the definition of violence in subsection (1):
- (a) a person psychologically abuses a child if the person:
 - (i) causes or allows the child to see or hear the physical, sexual, or psychological abuse of a person with whom the child has a domestic relationship; or
 - (ii) puts the child, or allows the child to be put, at real risk of seeing or hearing that abuse occurring; and
 - (b) the person who suffers that abuse is not regarded, for this subsection, as having caused or allowed the child to see or hear the abuse, or as having put the child, or allowed the child to be put, at risk of seeing or hearing the abuse.
- (3) Without limiting subsection (2):
- (a) a single act may amount to abuse for that subsection; and
 - (b) a number of acts that form part of a pattern of behaviour may amount to abuse for that purpose, even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.
- (4) Behaviour may be psychological abuse for paragraph (c) of the definition of violence in subsection (1), that does not involve actual or threatened physical or sexual abuse.

DIVISION 2.9.2 ENTERING A PROPERTY**33 Entering property to investigate a matter**

- (1) In order to investigate a matter, a police officer may:
 - (a) go onto someone else's property; and
 - (b) stay there as long as is reasonably necessary in the circumstances for the police officer:
 - (i) to ask questions of anyone on the property; and
 - (ii) to make any reasonable observations.

Example

A police officer may enter someone else's property to ask if anyone on the property has seen a missing child walk through the property.

- (2) However, the police officer may enter private premises on the property only if:
 - (a) the occupier of the private premises agrees to allow the police officer to enter the private premises; or
 - (b) a warrant or another authority allows the police officer to enter the private premises.

34 Entering property to serve a document

- (1) In order to serve a document, a police officer may:
 - (a) go onto someone else's property; and
 - (b) stay there as long as is reasonably necessary in the circumstances for the police officer to serve the document.
- (2) However, the police officer may enter private premises on the property only if:
 - (a) the occupier of the private premises agrees to allow the police officer to enter the private premises; or
 - (b) a warrant or another authority allows the police officer to enter the private premises.

35 Entering property to arrest a person

- (1) In order to arrest a person (whether with or without a warrant) a police officer may:
 - (a) go onto someone else's property; and
 - (b) search the property; and
 - (c) stay there as long as is reasonably necessary in the circumstances for the police officer to arrest the person.

- (2) However, the police officer may enter and search private premises on the property only if:
 - (a) the occupier of the private premises agrees to allow the police officer to enter the private premises; or
 - (b) a warrant or another authority allows the police officer to enter the private premises; or
 - (c) the police officer suspects, on reasonable grounds, that the person to be arrested is inside the private premises.

Example for paragraph (c)

The police officer chased the person into the private premises.

36 Entering property to prevent offence, injury or violence

- (1) This section applies if a police officer suspects, on reasonable grounds, that:
 - (a) an act of violence or domestic violence is occurring, or has occurred before the officer's arrival, at a place; or
 - (b) there is an imminent risk of either of the following happening at a place:
 - (i) violence or injury to a person;
 - (ii) an offence involving damaging property.
- (2) The police officer may:
 - (a) enter the place; and
 - (b) stay there for as long as is reasonably necessary in the circumstances for the police officer:
 - (i) to establish whether the reason for the entry exists; and
 - (ii) to ensure that, in the officer's opinion, an imminent risk of violence, injury or damage does not exist at the place; and
 - (iii) to give or arrange for reasonable help to any person at the place.
- (3) The police officer may detain anyone at the place for as long as is reasonably necessary to establish whether the reason for the entry exists.
- (4) If the police officer is reasonably satisfied that a reason for the entry exists, the police officer may do any of the following:
 - (a) detain a person for a search, or to prevent acts of violence or damage to property;
 - (b) search anyone detained for anything that may be, or has been, used to cause the violence, injury or damage;
 - (c) search the place:
 - (i) for anyone who may be subject to an act of violence or at risk of being injured; and

- (ii) for anything that may be, or has been, used to cause the violence, injury or damage;
- (d) seize anything found at the place or on a person at the place that may be, or has been, used to cause the violence, injury or damage.
- (5) The police officer must, before searching the place, inform the occupier of the place, if present, that the occupier may accompany the police officer while the place is being searched.
- (6) For this section, a place that is a building, includes a vehicle at the place.

37 Entering property on suspicion of death or injury

- (1) This section applies if a police officer suspects, on reasonable grounds, that someone inside private premises is dead or in need of urgent medical treatment.
- (2) Even though the police officer does not have the consent of the occupier of the private premises, the police officer may:
 - (a) use the force that is reasonably necessary to break into the private premises; and
 - (b) enter the private premises to find out whether someone in the private premises is dead or in need of urgent medical treatment; and
 - (c) if someone is found dead or in need of urgent medical treatment, stay there for only as long as is reasonably necessary in the circumstances for the police officer to ensure that anything that needs to be done for the person is done.

38 Entering property on suspicion of fire

- (1) This section applies if a police officer suspects, on reasonable grounds, that there is an unsupervised fire inside private premises.
- (2) Even though the police officer does not have the consent of the occupier of the private premises, the police officer may:
 - (a) use the force that is reasonably necessary to break into the private premises; and
 - (b) enter the private premises to find out whether there is an unsupervised fire inside the private premises; and
 - (c) stay there for only as long as is reasonably necessary in the circumstances for the police officer:
 - (i) to rescue any person or property in the private premises from the fire; and
 - (ii) to put out the fire.

39 Entering licensed premises etc

- (1) This section applies to a place:
 - (a) that is connected to a licence issued under a law; or
 - (b) where a register is required to be kept under a law.Examples of licences for paragraph (a);
a licence to sell liquor;
a licence to possess arms;
a licence to sell explosives.
- (2) In order to ensure that the law is being complied with, a police officer may, at any reasonable time:
 - (a) enter the place; and
 - (b) stay there as long as is reasonably necessary in the circumstances for the police officer to investigate whether the law is being complied with.

DIVISION 2.9.3 DOMESTIC VIOLENCE**40 Investigation of suspected domestic violence**

A police officer is to investigate whether an act of domestic violence is being, has been, or is likely to be, committed, if the police officer reasonably suspects that a person is committing, or has committed, an act of domestic violence that:

- (a) is a criminal offence; or
- (b) has put the safety of a person at risk.

41 Action to be taken by police officer after investigating suspected domestic violence

After an investigation mentioned in section 40, or after entering or searching premises under this Part, a police officer is to make:

- (a) a police order; or
- (b) a written record of the reasons why he or she did not take the action set out in paragraph (a).

42 When police order may be made

- (1) A police officer may make a police order if the police officer:
 - (a) either:
 - (i) reasonably believes that:

- (A) a person has committed an act of domestic violence and is likely again to commit such an act; or
- (B) a child has been exposed to an act of domestic violence committed by or against a person with whom the child is in a domestic relationship and the child is likely again to be exposed to such an act; or
- (ii) reasonably fears, or reasonably believes that another person reasonably fears, that:
 - (A) a person will have committed against him or her an act of domestic violence; or
 - (B) a child will be exposed to an act of domestic violence committed by or against a person with whom the child is in a domestic relationship; and
- (b) reasonably believes that making an order is necessary to ensure the safety of a person.
- (2) However, a police officer must not make a police order unless:
 - (a) the police officer has the approval of the officer in charge of a police station; or
 - (b) the police officer:
 - (i) believes on reasonable grounds that he or she should exercise the powers under subsection (1) urgently; and
 - (ii) cannot use remote communication to apply for the approval.

43 Matters to be considered by police officer

In considering whether to make a police order, and the terms of a police order, a police officer is to have regard to the following:

- (a) the need to ensure that a person is protected from acts of domestic violence;
- (b) the need to prevent behaviour that could reasonably be expected to cause fear that a person will have committed against him or her an act of domestic violence;
- (c) the need to ensure that children are not exposed to acts of domestic violence;
- (d) the wellbeing of children likely to be affected by the behaviour of the persons involved or by the operation of a proposed order;
- (e) the accommodation needs of the persons involved;
- (f) hardship that may be caused if the order is made;
- (g) any similar behaviour by any person involved, whether in relation to the same person or otherwise;

- (h) any other matter the police officer considers relevant.

44 Effect of police order

- (1) A person against whom a police order is issued must immediately:
 - (a) surrender to a police officer any weapon in his or her possession or control; and
 - (b) vacate any land or building occupied by a person at risk, whether or not he or she has a legal or equitable interest in the land or building.
- (2) It is a condition of every police order that the person against whom the police order is issued must not:
 - (a) physically or sexually abuse a person at risk; or
 - (b) threaten to physically or sexually abuse a person at risk; or
 - (c) damage, or threaten to damage, property of a person at risk; or
 - (d) engage, or threaten to engage, in other behaviour, including intimidation or harassment, that amounts to psychological abuse of a person at risk; or
 - (e) encourage any person to engage in behaviour against a person at risk, where the behaviour, if engaged in by the person against whom the order is issued, would be prohibited by the order; or
 - (f) watch, loiter near, or prevent or hinder access to or from the dwelling, business, or employment of a person at risk, or an educational institution attended by a person at risk, or any other place that a person at risk often visits; or
 - (g) follow a person at risk, or stop or accost a person at risk, in any place; or
 - (h) where a person at risk is present on any land or building — enter or remain on that land or building in circumstances that constitute a trespass; or
 - (i) make any other contact with a person at risk (whether by telephone, correspondence, or otherwise) except such contact as is reasonably necessary in any emergency.
- (3) In this section:
 - “**person at risk**” means:
 - (a) the person named in the police order for whose safety the order is issued; and
 - (b) any child residing with that person.

45 Children not to be restrained by police orders

A police order cannot impose restraints on a child.

46 Police order to be served and explained

- (1) A police officer who issues a police order must arrange for the order to be served on the person against whom the order is issued.
- (2) For subsection (1), the police officer may detain the person against whom the police order is to be issued for a period not exceeding 2 hours, that may be necessary to enable the order to be issued and served.
- (3) At the time a police order is served, a police officer must explain to the person against whom the order is issued:
 - (a) the purpose, duration, and effect of the order; and
 - (b) the consequences that may follow if the person against whom the order is issued contravenes the order.
- (4) A police officer who issues a police order must also, either before or after issue and service of the order, explain to the person for whose safety the order is issued the matters mentioned in subsections (3)(a) and (b).
- (5) For subsections (3) and (4), the police officer must reasonably satisfy himself or herself that the persons understand the effect of the police order.

47 Duration of police orders

- (1) A police order:
 - (a) remains in force for up to 72 hours after it has been served on the person to be bound by it; and
 - (b) has no effect if it is not served on the person to be bound by it within:
 - (i) for an order in force for 24 hours — 2 hours after the order is made; or
 - (ii) for an order in force for 48 hours — 4 hours after the order is made; or
 - (iii) for an order in force for 72 hours — 6 hours after the order is made.
- (2) A police order is to specify the duration of the order.
- (3) However, a police officer may, with the approval of the officer in charge of a police station, cancel a police order if the police officer reasonably believes that:
 - (a) there is no longer a risk to the safety of the person for whom the order was issued; and
 - (b) the grounds on which the order was made no longer apply.

48 Police order not to be renewed by police officer

A police officer cannot extend or renew a police order or make another order in relation to the same facts.

49 Failure to comply with police order

- (1) If a person refuses or fails to comply with a police order, a police officer may, using such force as is reasonably necessary, take the person into custody.
- (2) The person who is taken into custody under subsection (1) must be brought before a magistrates' court as soon as possible.
- (3) If a magistrate is satisfied that the person has refused or failed to comply with a police order, the magistrate may:
 - (a) if the order has not expired — direct that the order continue in force for a further period not exceeding 14 days from that time; or
 - (b) if the order has expired — direct that another order be issued in the same terms as the expired order and served in accordance with section 46.

50 Offence of failure to comply with police order

- (1) A person against whom a police order is issued and who breaches the order commits an offence.
- (2) The maximum penalty for the offence is 20 fine units or 1 years imprisonment, or both.
- (3) It is a defence to a prosecution under subsection (1) that the person breached a term of the police order only:
 - (a) to instruct or act through a legal practitioner; or
 - (b) to use conciliation, mediation or another form of consensual dispute resolution provided by a legal practitioner (including the People's Lawyer); or
 - (c) because a police officer did not serve or explain the form in accordance section 46; or
 - (d) if the person is acting as a result of an emergency and an ordinary person in similar circumstances would have acted in the same or a similar way; or
 - (e) by aiding, abetting, counselling or procuring the commission of the offence constituted by breach of the order if the order has been made for the protection of the person.

Note: A person for whose benefit a police order is made should not be arrested for breach of the order if the person invites the person against whom the order is made back into the domestic relationship while the order is current, unless a police officer believes the invitation was given to induce the other person to breach the order.

51 Police employees etc protected from proceedings

No action or proceedings may be brought against the Crown or any police officer for anything done, or omitted to be done, for the purpose of carrying out the provisions of this Division, if the Crown or the police officer acted in good faith and with reasonable care.

PART 2.10 - USING FORCE

52 Using force against individuals

- (1) A police officer who is exercising or attempting to exercise a power under this Act or another law against an individual, and anyone helping the police officer, may use reasonably necessary force to exercise the power.
- (2) A police officer may use reasonably necessary force to prevent a person from escaping from lawful custody.
- (3) The force that a police officer may use under this section does not include force that is likely to cause:
 - (a) grievous bodily harm to a person; or
 - (b) a person's death.

53 Using force against individuals in critical situations

- (1) This section applies if a police officer suspects, on reasonable grounds, that a person:
 - (a) has committed, is committing, or is about to commit, an offence that is punishable by life imprisonment; or
 - (b) has committed an offence punishable by life imprisonment, and is attempting to escape arrest or has escaped from arrest or custody.
- (2) This section also applies if:
 - (a) a police officer suspects, on reasonable grounds, that a person is doing, or is about to do, something that is likely to cause grievous bodily harm to, or the death of, another person; and
 - (b) the police officer suspects, on reasonable grounds, that the police officer cannot prevent the grievous bodily harm or death other than in the way authorised under this section.
- (3) The police officer may use the force reasonably necessary:
 - (a) to prevent the continuation or repetition of the offence, or the commission of another offence, that is punishable by life imprisonment; or
 - (b) to apprehend the person; or
 - (c) to prevent the escape of a person from arrest or custody; or

- (d) to prevent the commission of an act mentioned in subsection (2).
- (4) The force that a police officer may use under this section includes force that is likely to cause:
 - (a) grievous bodily harm to a person; or
 - (b) a person's death.
- (5) If the police officer believes, on reasonable grounds, that it is necessary to use force likely to cause grievous bodily harm to a person or a person's death, the police officer must, if practicable, first call on the person to stop doing the act.

54 Using force to exercise certain powers

- (1) This section does not apply to the use of force against an individual.
- (2) A police officer, and anyone helping the police officer, may use reasonably necessary force when exercising or attempting to exercise a power under this Act or another law.

Examples

Forced entry may be necessary to execute a search warrant and seize items.
Force may be necessary to stop a vehicle.

55 Police officer not to use corporal punishment

A police officer must not use corporal punishment against a person who is in police custody.

PART 2.11 - INVESTIGATING UNNATURAL DEATHS

56 Investigating unnatural deaths

- (1) This section applies if a police officer suspects, on reasonable grounds, that a person's death was brought about, or accelerated, by an unnatural cause.
- (2) The police officer must, unless the body cannot be found:
 - (a) arrange for the deceased person's body to be taken to hospital; and
 - (b) ask a magistrate to order a medical practitioner to examine the deceased person's body and determine the cause of death.
- (3) The police officer may seize anything, that the police officer suspects on reasonable grounds might be relevant to a magistrate's inquiry into the cause of the death, at the place where:
 - (a) the deceased person's body was found; or
 - (b) if the body has been destroyed or cannot be found — the death apparently occurred.

- (4) The police officer may photograph the deceased person's body or anything else at the place that the police officer suspects on reasonable grounds may be relevant to a magistrate's inquiry into the cause of the death.
- (5) The police officer must prepare a report in the form set out in Schedule 1 to the Death and Fire Inquiries Act.
- (6) The police officer must give the report to a magistrate for the district in which:
 - (a) the death occurred; or
 - (b) the body was found.

57 Requiring information for inquiry into the cause of an unnatural death

- (1) This section applies if:
 - (a) a police officer is helping a magistrate to inquire into the cause of a death; and
 - (b) the officer believes, on reasonable grounds, that a person may be able to give information that is relevant to the inquiry.
- (2) The police officer may require the person to give information that is relevant to the inquiry.
- (3) When making the requirement, the police officer must inform the person that:
 - (a) the person may refuse to give the information, if the information would tend to incriminate the person; and
 - (b) the person may seek legal advice before giving the information.

CHAPTER 3 - SEARCHING FOR AND SEIZING EVIDENCE

PART 3.1 - SEARCHING WITHOUT A WARRANT

58 Searching persons without a warrant

- (1) This section applies if a police officer suspects, on reasonable grounds, that a person has something that:
 - (a) may be a weapon or explosive that the person may not lawfully possess; or
 - (b) may be an unlawful dangerous drug; or
 - (c) may be stolen property; or
 - (d) may have been used, is being used, is intended to be used, or is primarily designed for use:
 - (i) for housebreaking; or
 - (ii) for unlawfully using or stealing a vehicle; or

- (iii) for administering a dangerous drug; or
 - (e) may have been used, is being used, or is intended to be used, to commit an offence that may threaten:
 - (i) the security or management of a prison; or
 - (ii) the security of a prisoner; or
 - (f) may be something that the person intends to use to cause harm to himself or herself, or to someone else.
- (2) The police officer, without a warrant, may:
- (a) stop and detain the person; or
 - (b) search the person and anything in the person's possession for a thing mentioned in subsection (1).
- (3) The police officer may seize all or part of a thing:
- (a) that may provide evidence of the commission of an offence; or
 - (b) that the person intends to use to cause harm to himself or herself, or to someone else.

59 Searching vehicles without a warrant

- (1) This section applies if a police officer suspects, on reasonable grounds, that:
- (a) there is something in a vehicle that:
 - (i) may be a weapon or explosive that a person may not lawfully possess; or
 - (ii) may be an unlawful dangerous drug; or
 - (iii) may be stolen property; or
 - (iv) may have been used, is being used, is intended to be used, or is primarily designed for use:
 - (A) for housebreaking; or
 - (B) for unlawfully using or stealing a vehicle; or
 - (C) for administering a dangerous drug; or
 - (v) may have been used, is being used, or is intended to be used, to commit an offence that may threaten:
 - (A) the security or management of a prison; or
 - (B) the security of a prisoner; or
 - (vi) may be something that the person intends to use to cause harm to himself or herself, or to someone else; or
 - (b) a vehicle is being used unlawfully; or
 - (c) a person in a vehicle may be arrested with a warrant or without a warrant.
- (2) The police officer, without a warrant, may:

- (a) stop the vehicle; or
 - (b) detain the vehicle and anyone in the vehicle; or
 - (c) search the vehicle, and anything in the vehicle, for a thing mentioned in subsection (1)(a).
- (3) Also, if a person in a vehicle is arrested for an offence involving something that a police officer may search for under section 58, the police officer, without a warrant, may:
- (a) detain the vehicle and anyone in the vehicle; or
 - (b) search the vehicle, and anything in the vehicle, for a thing mentioned in subsection (1)(a).
- (4) If it is impracticable to search for a thing that may be concealed in a vehicle at the place where the vehicle is stopped, the police officer may:
- (a) take the vehicle to a place that has appropriate facilities for searching the vehicle; and
 - (b) search the vehicle at that place.
- (5) The police officer may seize all or part of a thing:
- (a) that may provide evidence of the commission of an offence; or
 - (b) that the person intends to use to cause harm to himself or herself, or to someone else.
- (6) Power under this section to search a vehicle includes power to enter the vehicle, stay in the vehicle, and re-enter vehicle as many times as is necessary to remove from the vehicle something seized under subsection (5).

60 Searching public places without a warrant

A police officer, or a person acting under the direction of the police officer, may do any of the following things in a public place without a search warrant:

- (a) enter a public place and stay on the public place for the time that is reasonably necessary to do the things mentioned in paragraphs (b) to (e);
- (b) search a public place for anything that may be evidence of the commission of an offence;
- (c) seize a thing found at a public place, which is not in a person's possession, that a police officer suspects, on reasonable grounds, may be evidence of the commission of an offence;
- (d) dig up land at a public place;
- (e) photograph anything at a public place that the police officer suspects, on reasonable grounds, may provide evidence of the commission of an offence.

PART 3.2 - SEARCHING WITH A WARRANT

DIVISION 3.2.1 - WARRANT POWERS

61 What are the warrant powers

- (1) In this Part, the powers that may be exercised under a warrant (the “warrant powers”) are powers:
- (a) to enter the place stated in the warrant, and to stay at the place for the time that is reasonably necessary to exercise the powers authorised by this section; and
 - (b) to pass over, through, along or under another place to enter the place to which the warrant relates; and
 - (c) to prevent a person from entering the place; and
 - (d) to detain anyone at the place for the time that is reasonably necessary to find out if the person has the evidence sought under the warrant; and
 - (e) if the police officer suspects, on reasonable grounds, that a person at the place has been involved in the commission of the offence to which the warrant relates — to detain the person for the time taken to search the place; and
 - (f) to direct a person to leave the place, or to remove a vehicle or animal from the place; and
 - (g) to remove from the place:
 - (i) a person who fails to comply with a direction to leave the place; or
 - (ii) a vehicle or animal that a person fails to remove from the place; and
 - (h) to search:
 - (i) the place and anything at the place; or
 - (ii) any person at the place for the evidence that is sought under the warrant and that can be concealed on the person; and
 - (i) to open anything at the place that is locked; and
 - (j) to remove wall or ceiling linings or floors of a building, or panels of a vehicle, to search for the evidence sought at the place under the warrant; and
 - (k) to dig up land to search for the evidence sought at the place under the warrant; and
 - (l) to photograph anything that the police officer suspects, on reasonable grounds, may provide the evidence sought at the place under the warrant, even if the thing is not seized under the warrant; and

- (m) to seize anything found at the place, or on a person at the place, that the police officer suspects, on reasonable grounds, may provide the evidence sought under the warrant; and
- (n) to take electricity for use at the place; and
- (o) to direct the occupier of the place or a person apparently in charge of the place to maintain a continuous supply of electricity at the place; and
- (p) to direct a person at the place who has access to documents that are stored on a computer at the place:
 - (i) to give a police officer any password that the police officer needs to be able to access the information on the computer; and
 - (ii) to give a police officer access to the computer:
 - (A) to examine the information on the computer to find out whether it may be evidence of the commission of an offence; or
 - (B) to make a copy of any information that may be evidence of the commission of an offence.

Example for paragraph (m)

seizing a vehicle for scientific examination.

(2) In this section:

“**computer**” includes any device on which information may be stored electronically.

Example

a mobile telephone.

“**password**” means any information that a person needs to use to be able to access and read information stored on a computer.

DIVISION 3.2.2 - SEARCH WARRANTS

62 Applying for a search warrant

- (1) A police officer may apply for a warrant (a “search warrant”) to enter and search a place in order to obtain evidence of the commission of an offence.
- (2) The application must be made to a magistrate.
- (3) The application must be sworn, and state:
 - (a) the name, rank and station of the police officer seeking the application; and
 - (b) a description of the place to be searched; and
 - (c) if the place is an occupied place — the name of the occupier of the place, if known; and

- (d) the offence to which the application relates; and
 - (e) a description of the nature of the thing sought that is suspected of being evidence of the commission of the offence; and
 - (f) the information or evidence that is being relied on to support a suspicion that evidence of the commission of an offence:
 - (i) is at the place; or
 - (ii) is likely to be taken to the place within the next 72 hours; and
 - (g) for each search warrant issued in the previous year in relation to the place, or to a person suspected of being involved in the commission of the offence to which the application relates:
 - (i) when and where the search warrant was issued; and
 - (ii) the type of offence to which the warrant related; and
 - (iii) whether anything was seized under the warrant or whether a proceeding was started after the search; and
 - (h) if authority to execute the warrant at night is being sought — why it is necessary to execute the warrant at night.
- (4) The magistrate may refuse to consider the application until the police officer gives all the information that the magistrate requires about the application, in the way that the magistrate requires.

Example

The magistrate may require additional information in support of the application to be given by statutory declaration.

- (5) The magistrate may issue the search warrant only if satisfied that there are reasonable grounds for suspecting that evidence of the commission of an offence:
- (a) is at the place; or
 - (b) is likely to be taken to the place within the next 72 hours.

63 What the search warrant must state

The search warrant must state:

- (a) a description of the place that may be entered; and
- (b) brief particulars of the offence to which the warrant relates; and
- (c) what evidence may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date and time when the warrant ends; and
- (f) that a police officer may exercise the warrant powers mentioned in section 61 in accordance with the warrant.

64 Copy of the search warrant must be given to the occupier

- (1) If a police officer executes the search warrant when the place is occupied, the police officer must give the occupier:
 - (a) a copy of the warrant; or
 - (b) a notice that states:
 - (i) the type of powers that a police officer may exercise under the warrant; and
 - (ii) that the most senior police officer who is present during the search must, as soon as reasonably practicable, state the police officer's name, rank and station; and
 - (iii) that the occupier may ask any other police officer who is present during the search for his or her name, rank and station.
- (2) If the occupier is not at the place when the police officer executes the search warrant, the police officer must leave a copy of the warrant in a conspicuous position at the place.

65 When the search warrant ends

The search warrant ends:

- (a) if the warrant is issued because there are reasonable grounds for suspecting that there is evidence of the commission of an offence at a place — 7 days after the warrant is issued; or
- (b) if the warrant is issued because there are reasonable grounds for suspecting that evidence of the commission of an offence is likely to be taken to a place within the next 72 hours — 72 hours after the warrant is issued.

DIVISION 3.2.3 LOSS OF EVIDENCE WARRANT**66 Search to prevent loss of evidence**

- (1) This section applies if a police officer suspects, on reasonable grounds, that:
 - (a) a thing at or about a place, or in the possession of a person at or about a place, is evidence of the commission of a felony; and
 - (b) the evidence may be concealed or destroyed unless the place is immediately entered and searched.
- (2) A police officer may enter the place and exercise the warrant powers mentioned in section 61.

- (3) However, as soon as reasonably practicable after exercising the powers, the police officer must apply in writing to a magistrate for a warrant approving the search.
- (4) The application must be sworn, and state:
 - (a) the name, rank and station of the police officer applying for the search warrant; and
 - (b) the information or evidence that was relied on, before the search, to support a reasonable suspicion that evidence of the commission of a felony:
 - (i) was at or about the place, or in the possession of a person at or about the place; and
 - (ii) would have been concealed or destroyed unless the place was immediately entered and searched; and
 - (c) the type of felony in relation to which the search was conducted; and
 - (d) the nature of the thing that was reasonably suspected of being evidence of the commission of the felony; and
 - (e) the time, date and place of the search; and
 - (f) a description of any thing seized because of the search; and
 - (g) if known, the name, age and address of each person detained or searched; and
 - (h) information about any proceeding started against a person, before or because of the search, for a felony in relation to which the search was conducted.
- (5) The police officer need not appear before the magistrate when the magistrate is considering the application, unless the magistrate requires it.
- (6) The magistrate may refuse to consider the application until the police officer gives all the information that the magistrate requires about the application, in the way that the magistrate requires.

Example

The magistrate may require additional information supporting the application to be given by statutory declaration.

- (7) The magistrate may issue the search warrant only if satisfied that:
 - (a) in the circumstances existing before the police officer exercised the powers under the warrant:
 - (i) the police officer had a reasonable suspicion for exercising the powers under the warrant; and
 - (ii) there was a reasonable likelihood that the evidence would be concealed or destroyed; or

- (b) having regard to the nature of the evidence found during the search, it is in the public interest to issue the warrant.
- (8) If the magistrate refuses to issue the search warrant, the magistrate must order the return or disposal of any thing that was seized because of the search.

67 Appeal against refusal to issue a loss of evidence warrant

- (1) This section applies if a police officer considers the Commissioner should appeal against a decision of a magistrate to order the return or disposal of any thing that was seized because of a search to prevent loss of evidence.
- (2) The police officer must give the Commissioner a report that explains the reasons for appealing the order.
- (3) The report must be accompanied by:
 - (a) a copy of the application for the order authorising the search; and
 - (b) a copy of any transcript of the proceedings; and
 - (c) an affidavit identifying any relevant document, and stating anything else relevant to the appeal.
- (4) The Commissioner may appeal against the order to the High Court within 28 days after the magistrate made the order.
- (5) If the Commissioner appeals, the Commissioner must retain any thing that was seized until the appeal is decided.

DIVISION 3.2.4 - CRIME SCENES

68 Gaining access to a crime scene

- (1) This section applies if a police officer suspects, on reasonable grounds, that:
 - (a) a place is a crime scene; and
 - (b) it is necessary to protect the place for the time that is reasonably necessary to search for and gather evidence of the commission of an offence.
- (2) A “crime scene” is a place where:
 - (a) a felony has happened; or
 - (b) there may be evidence, of significant probative value, of the commission of a felony that happened somewhere else.
- (3) The police officer may:
 - (a) enter a place to reach the suspected crime scene; and
 - (b) enter the suspected crime scene; and
 - (c) stay at the suspected crime scene for the time reasonably necessary to decide whether to establish a crime scene.

- (4) What is a reasonable time for subsection (3)(c) will depend on the particular circumstances, including:
 - (a) the nature of any information obtained, or any observation made, that suggests the place is a crime scene; and
 - (b) visible evidence that will help decide whether the place is a crime scene; and
 - (c) any preliminary inspection of the place.
- (5) If the police officer decides to establish a crime scene, the police officer may exercise the warrant powers mentioned in section 61 in relation to the crime scene.

69 Identifying a crime scene

- (1) This section applies if a police officer:
 - (a) enters a place that is a suspected crime scene, or is lawfully at a place; and
 - (b) decides the place is a crime scene.
- (2) The police officer may establish a crime scene by:
 - (a) identifying what is the crime scene; and
 - (b) deciding the boundaries necessary to protect the crime scene; and
 - (c) marking the boundaries of the crime scene in a way that gives anyone else wanting to enter the place enough notice that the place is a crime scene.

Examples of what a police officer may do

stand at a door to stop people entering a building and tell them they cannot enter the building.

put around the place barricades or tapes indicating that the place is a crime scene.

display a written notice that states the place is a crime scene and that unauthorised entry is prohibited.

70 Preserving evidence at a crime scene

- (1) The most senior police officer at the crime scene must immediately take the steps that he or she considers reasonably necessary to protect anything at the crime scene from being damaged, interfered with or destroyed.

Examples

steps to ensure people, including police officers, whose presence at the crime scene is not essential do not enter the crime scene.

steps to prevent unnecessary movement inside the boundaries of the crime scene.

steps to establish a safe walking area in the crime scene for reducing the risk of damage to any evidence that may be at the crime scene.

- (2) The most senior police officer at the crime scene must ensure that a person does not enter the crime scene unless:
- (a) the person has a special reason, associated with the investigation, for entering the crime scene; or
 - (b) the presence of the person is necessary to preserve life or property at the crime scene; or
 - (c) the person is authorised to enter by the most senior police officer present.

Examples for paragraph (a)

a police officer removing someone from the crime scene who should not be there a police officer investigating the offence.

a person who is accompanying a police officer to assist in the investigation or who has special knowledge of the place that is relevant to the investigation.

- (3) For subsection (2)(c), the responsible officer may authorise the entry subject to stated requirements.
- (4) The most senior police officer at the crime scene must ensure that nothing at the crime scene is unnecessarily touched or moved:
- (a) until all necessary forensic and technical examinations are finished; or
 - (b) unless there is a possibility that evidence could be damaged, interfered with or destroyed if it is not moved.

Example for paragraph (b) by rain.

- (5) The most senior police officer at the crime scene must ensure that a record is made of:
- (a) the name of each person who:
 - (i) is present when the crime scene is established; or
 - (ii) enters the crime scene after it is established; and
 - (b) when each person enters the crime scene after it is established, and the purpose of the entry.

PART 3.3 - GENERAL PROVISIONS ABOUT SEARCHES OF PERSONS AND VEHICLES

71 General provision about searches of persons

- (1) A police officer searching a person must:

- (a) ensure, as far as reasonably practicable, that the way in which the person is searched causes minimal embarrassment to the person; and
- (b) take reasonable care to protect the dignity of the person; and
- (c) unless an immediate and more thorough search of a person is necessary — restrict a search of the person in public to an examination of outer clothing; and
- (d) if a more thorough search of a person is necessary but does not have to be conducted immediately, conduct a more thorough search of the person out of public view.

Examples for paragraph (d)

in a toilet of a hotel.

if a police station is nearby, in the police station.

- (2) Unless an immediate search is necessary, the person conducting the search must be:
 - (a) a police officer of the same sex as the person to be searched; or
 - (b) if there is no police officer of the same sex available to search the person — someone acting at the direction of a police officer and of the same sex as the person to be searched; or
 - (c) a doctor acting at the direction of a police officer.

72 Taking a person to another place for search

- (1) If it is impracticable to search for a thing that may be concealed on a person at the place where the person is, the police officer may take the person to another place that has adequate facilities for conducting the search.
- (2) However, before taking a person to another place for the search, the police officer must consider the following:
 - (a) whether the thing sought may be concealed on the person;
 - (b) whether, for an effective search, the search should be conducted at another place;
 - (c) the need to protect the dignity of the person.

73 Removing clothing for search

- (1) A police officer who is conducting a lawful search of a person under this Part may require a person to remove all items of clothing, or all items of outer clothing, from either the upper or the lower part of the body.
- (2) If reasonably practicable:
 - (a) the police officer must, before conducting the search:

- (i) tell the person that he or she will be required to remove clothing during the search; and
 - (ii) tell the person why it is necessary to remove the clothing; and
 - (iii) ask for the person's cooperation; and
- (b) the person must be given the opportunity to remain partly clothed during the search.

Example for paragraph (b)

by allowing the person to dress his or her upper body before being required to remove items of clothing from the lower part of the body.

- (3) The search must be conducted in a way that provides reasonable privacy for the person.

Example

by ensuring that, as far as reasonably practicable, the person cannot be seen by anyone of the opposite sex or anyone who does not need to be present.

- (4) Also, the search must be conducted as quickly as reasonably practicable, and the person searched must be allowed to dress as soon as the search is finished.
- (5) The police officer who is conducting the search must not make physical contact with the genital or anal area of the person searched, but may require the person:
- (a) to hold his or her arms in the air; or
 - (b) to stand with legs apart and bend forward to enable a visual examination to be made.
- (6) If the police officer seizes clothing because of the search, the police officer must ensure that the person is left with or given reasonably appropriate clothing.

74 General provision about searches of vehicles

- (1) This section deals with the searching of vehicles under this Act.
- (2) Before deciding to take a vehicle to a place with appropriate facilities for searching the vehicle, a police officer must consider whether searching the vehicle somewhere else would be more effective because of the nature and size of a thing sought that may be concealed in the vehicle.
- (3) If a police officer decides to take a vehicle to a place with appropriate facilities for searching the vehicle, the police officer must, if the person apparently in possession of the vehicle is known and present:
- (a) tell the person where the vehicle is to be taken; and
 - (b) ask the person if he or she wants to be present during the search.
- (4) If a police officer searches an unattended vehicle or anything in the vehicle, the police officer must leave a notice in a conspicuous place in or on the vehicle that states:

- (a) that the vehicle or a stated thing in or on the vehicle has been searched; and
 - (b) the police officer's name, rank and station.
- (5) After searching an unattended vehicle or anything in the vehicle, the police officer must ensure, as far as reasonably practicable, that the vehicle is left secured at least to the same extent as it was before the search.

75 Limit on period of detention for search

A police officer who detains a person or vehicle for a search must not detain the person or vehicle for any longer than is reasonably necessary for the search.

76 Dealing with persons who obstruct a search

If a person obstructs a police officer who is conducting a lawful search of the person, someone else, a vehicle, or anything in the vehicle, a police officer must, if reasonably practicable:

- (a) warn the person that it is an offence to obstruct a police officer in the performance of the police officer's duties; and
- (b) give the person a reasonable opportunity to stop obstructing the search.

Examples of when it may not be reasonably practicable

There is an immediate or sudden need to use force because the person is struggling with a police officer.

There is a reasonable expectation that, if warned, the person may immediately dispose of, or destroy, evidence.

An immediate search is necessary to protect the safety of a person.

PART 3.4 - SEIZING THINGS

DIVISION 3.4.1 - SEIZING THINGS

77 Seizing evidence generally

- (1) This section applies if a police officer:
 - (a) lawfully enters a place or is at a public place; and
 - (b) finds at the place a thing that the police officer suspects, on reasonable grounds, is:
 - (i) evidence of the commission of an offence; or
 - (ii) a thing that poses a risk of serious harm or death to a person.
- (2) The police officer may seize the thing:

- (a) whether or not as evidence under a warrant; and
 - (b) if the police officer is acting under a warrant — whether or not the offence is one for which the warrant is issued.
- (3) Having seized a thing, the police officer may:
- (a) move the seized thing from the place; or
 - (b) leave the seized thing at the place, but take reasonable steps to restrict access to it.

Examples for paragraph (b)

sealing the seized thing, and marking the seized thing to show that access to the seized thing is restricted.

sealing the entrance to a room where the seized thing is situated, and marking the seized thing to show that access to the seized thing is restricted.

- (4) If the police officer restricts access to the seized thing, a person commits an offence if the person tampers, or attempts to tamper, with the seized thing, or something restricting access to the seized thing, without the approval of a police officer.
- (5) The maximum penalty for the offence is 120 fine units.
- (6) The police officer may photograph the seized thing or the place from which the thing was seized.
- (7) The police officer may stay at the place and re-enter the place for the time that is reasonably necessary to remove the seized thing from the place.

78 Examining seized things

- (1) To remove doubt, it is declared that a power to seize a thing under this Part includes:
 - (a) power to examine the seized thing; and
 - (b) power to arrange for someone else to examine the seized thing.
- (2) The power to examine a thing seized includes a power to do something that is reasonably necessary for, or as part of, a scientific or other investigative procedure involving the seized thing, even though doing the thing may damage or destroy the seized thing.

Examples

performing an analysis involving the seized thing.

making an appraisal of the seized thing inspecting the seized thing.

perusing the seized thing scanning the seized thing sifting the seized thing.

79 Receipt for seized things

- (1) If a police officer seizes a thing under this Part or a warrant, the police officer must, as soon as is reasonably practicable after seizing the thing:
 - (a) if the person from whom the thing is seized is present — give or cause to be given to the person a receipt for the seized thing; or
 - (b) if the occupier of the premises is not present — leave a receipt for the seized thing in a conspicuous place on the premises.
- (2) The receipt must include the following information:
 - (a) a description of the seized thing;
 - (b) the date and time that the thing was seized;
 - (c) if taken from a person — the name, address and telephone number of the person, if known;
 - (d) if taken from an occupied place — the name, address and telephone number of the occupier of the place, if known;
 - (e) the name, rank, station and telephone number of the police officer who seized the thing;
 - (f) where the seized thing will be taken;
 - (g) the date that the receipt is issued.
- (3) The receipt may be for a single thing or for all things seized from the person or the place.
- (4) This section does not apply if the police officer believes, on reasonable grounds, that:
 - (a) there is no one apparently in possession of the seized thing; or
 - (b) the seized thing has been abandoned; or
 - (c) the seized thing has no value other than as evidence of the commission of an offence.

Examples for paragraph (c)

blood, saliva, semen, hair, impressions, paint, glass, fibres, fire debris or trace evidence.

DIVISION 3.4.2 - DUTIES REGARDING SEIZED THINGS IN POSSESSION OF THE POLICE SERVICE**80 Purpose of this Division**

The purpose of this Division is to ensure, as far as practicable, that a seized thing:

- (a) is retained by the police service only for as long as is reasonably necessary in the circumstances; and

- (b) is handled in an efficient, safe and accountable way.

81 Application of this Division

- (1) This Division applies to a thing that is lawfully in the possession of the police service because it was seized by a police officer, whether before or after the commencement of this section.
- (2) However, this Division does not apply to a vehicle that is impounded under section 27.

82 Duties of police officer taking possession of seized things

- (1) A police officer who seizes a thing must ensure that the seized thing is given to the officer in charge of the police station where the police officer is stationed, as soon as reasonably practicable, unless:
 - (a) the seized thing is earlier returned or disposed of under this Division; or
 - (b) it is necessary to keep the seized thing for use during questioning or for an investigative procedure involving the seized thing.
- (2) If the police officer keeps a seized thing under subsection (1)(b), the police officer must deliver the seized thing to the officer in charge of the police station where the police officer is stationed, as soon as reasonably practicable after the reason for keeping the seized thing ends.
- (3) Until the seized thing is delivered to the officer in charge, the police officer is responsible for the safekeeping of the seized thing.
- (4) The Commissioner must:
 - (a) ensure that reasonable inquiries and reasonable efforts are made to locate anyone lawfully claiming to be entitled to possession of a seized thing; and
 - (b) facilitate the lawful disposal or return of a seized thing to its owner or the person who had lawful possession of it before it came into the possession of the police service.
- (5) What are reasonable inquiries and efforts must be decided having regard to the nature, condition and value of the seized thing.
- (6) Subsection (4) does not apply to a seized thing if the Commissioner is satisfied it is inappropriate to return the seized thing to its owner or the person who had possession of it before the seized thing came into the possession of the police service.

Example

because it is not lawful for the person to have possession of the seized thing.

83 Right to inspect seized documents

- (1) Unless a magistrate otherwise orders, a police officer who seizes a document must allow a person who would be entitled to the document:
 - (a) to inspect the document at any reasonable time, and from time to time; and
 - (b) to take extracts from, or make copies of, the document.
- (2) However, the police officer may refuse to comply with subsection (1) if the officer suspects, on reasonable grounds, that it would enable the person to repeat or continue an offence, or to commit another offence.

DIVISION 3.4.3 - RETURN OR FORFEITURE OF SEIZED THINGS**84 Returning seized things**

- (1) Unless a magistrate orders otherwise, a police officer must return a seized thing to its owner, or the person who had lawful possession of the seized thing before it came into the possession of the police service, if the police officer is satisfied:
 - (a) the seized thing is not required to be retained; and
 - (b) it is lawful for the person to have possession of the seized thing.
- (2) If the seized thing is evidence of the commission of an offence and the police officer considers it appropriate, the police officer must take the steps that are reasonably necessary to minimise the need to retain the seized thing as evidence by, as soon as reasonably practicable:
 - (a) arranging for the seized thing to be photographed; or
 - (b) arranging for any necessary test or examination of the seized thing; or
 - (c) gathering any other available secondary evidence in relation to the seized thing.
- (3) Despite subsection (1), the police officer may retain the seized thing for a reasonable time after the thing is seized if the police officer considers, on reasonable grounds, that retaining the seized thing is necessary:
 - (a) to prevent a person using the seized thing to cause harm to himself or herself, or to someone else; or
 - (b) to prevent an offence happening.

85 Magistrate's order for return or forfeiture of seized things

A magistrate may order:

- (a) the return of a seized thing; or
- (b) the forfeiture of a seized thing to the Crown.

86 Commissioner's order for forfeiture of seized things

- (1) The Commissioner may order the forfeiture of a seized thing to the Crown if:
 - (a) the Commissioner is satisfied that:
 - (i) it is necessary to retain the seized thing to prevent it being used in the commission of an offence; or
 - (ii) possession of the seized thing is an offence because the possession is not authorised, justified or excused by law; or
 - (iii) the owner of the seized thing cannot be found after reasonable inquiries; or
 - (iv) having regard to the nature, condition and value of the seized thing — it is not reasonable to make inquiries about its owner; or
 - (b) the Commissioner is unable, after making reasonable efforts, to return the seized thing to its owner.

Example for paragraph (b)

because the owner refuses to take possession of the seized thing.

- (2) If the owner of the seized thing is known and can be found, the Commissioner must, at least 30 days before making an order for forfeiture, give the owner a written notice that describes the seized thing and states:
 - (a) the reason under subsection (1) why the Commissioner believes the seized thing may be forfeited to the Crown; and
 - (b) that an application may be made to a magistrate under section 85 for an order for the return of the seized thing; and
 - (c) that, if an application is not made to a magistrate within 28 days after the notice is given, the Commissioner may order that the seized thing be forfeited to the Crown.
- (3) If the owner of the seized thing is not known, the notice may be given:
 - (a) by advertisement in a newspaper circulating generally throughout Tuvalu; or
 - (b) by advertisement on a radio station that transmits at the place where the thing was seized; or
 - (c) on the police service website.
- (4) However, subsections (2) and (3) do not apply if the cost of giving the notice is more than the value of the seized thing.

87 Dealing with forfeited things

- (1) If a magistrate or the Commissioner orders the forfeiture of a seized thing to the Crown, the seized thing becomes the property of the Crown.

- (2) The Commissioner may deal with a forfeited thing in any way that does not cause an actual, or apparent, conflict of interest for the Commissioner.
- (3) Without limiting subsection (2), the Commissioner may:
 - (a) donate a forfeited thing to the police service or another government body;
or
 - (b) destroy a forfeited thing.
- (4) If a forfeited thing is sold, it must be sold by public auction and the proceeds of the sale are to be paid in the following order:
 - (a) in payment of the expenses of the sale;
 - (b) in payment of the expenses of the seizure and storage of the forfeited thing, and doing anything necessary to prepare the forfeited thing for sale;
 - (c) to the Consolidated Fund.

CHAPTER 4 - ARREST AND CUSTODY POWERS

PART 4.1 - ARREST WITHOUT A WARRANT

88 Arrest without warrant

- (1) A police officer, without a warrant, may arrest an adult who the police officer suspects, on reasonable grounds, has committed or is committing an offence, if it is reasonably necessary for 1 or more of the following reasons:
 - (a) to prevent the continuation or repetition of an offence, or the commission of another offence;
 - (b) to make inquiries to establish the person's identity;
 - (c) to ensure the person's appearance before a court;
 - (d) to obtain or preserve evidence relating to the offence;
 - (e) to prevent the harassment of, or interference with, a person who may be required to give evidence relating to the offence;
 - (f) to prevent the fabrication of evidence;
 - (g) to preserve the safety or welfare of any person, including the person arrested;
 - (h) to prevent a person fleeing from a police officer or the location of an offence;
 - (i) because the offence is an offence against section 169 (Offence to assault or obstruct police officer) or 170 (Offence to contravene direction or requirement of police officer);
 - (j) because of the nature and seriousness of the offence.

- (2) Also, a police officer, without a warrant, may arrest a person who the police officer suspects, on reasonable grounds, is committing or has committed an offence, in order to:
 - (a) question the person about the offence; or
 - (b) investigate the offence.
- (3) A police officer, without a warrant, may arrest a child if the police officer suspects, on reasonable grounds, that the child is committing or has committed an offence.

89 Arrest of person in relation to bail

- (1) This section applies if a person has been granted bail for an offence, whether or not the person was arrested for the offence.
- (2) A police officer, without a warrant, may arrest the person if the police officer suspects, on reasonable grounds, that:
 - (a) the person has left the precincts of the court that granted bail without fulfilling all the conditions that the person must comply with before leaving the precincts of the court; or
 - (b) the police officer suspects, on reasonable grounds, that the person is likely to contravene, is contravening, or has contravened, another condition on which the person was granted bail; or
 - (c) the police officer suspects, on reasonable grounds, that the person is likely to fail to appear before a court to answer a charge against the person for the offence; or
 - (d) the police officer suspects, on reasonable grounds, that the person is directly or indirectly harassing or interfering with a person who may be required to give evidence relating to the offence for which the person has been released on bail; or
 - (e) the police officer suspects, on reasonable grounds, that:
 - (i) a surety for the person's appearance is dead; or
 - (ii) for any reason, the security for the person's appearance is no longer adequate; or
 - (f) a surety has given to a police officer written notice stating that the surety wishes to be relieved of the obligation of being a surety for the person because the surety believes that the person is likely to contravene the condition for the person's appearance before a court.
- (3) However, before arresting a child under subsection (2), a police officer must consider whether, in all the circumstances, it would be more appropriate for an application to be made for a variation or revocation of the child's bail.

90 Arrest of person in relation to notice to appear or summons

- (1) This section applies to a person who has been given a notice to appear, or a summons for an offence, whether or not the person has been arrested for the offence.
- (2) A police officer, without a warrant, may arrest the person if the police officer suspects, on reasonable grounds, that the person:
 - (a) is likely to fail to appear before a court to answer a charge against the person for the offence; or
 - (b) is directly or indirectly harassing or interfering with a person who may be required to give evidence relating to the offence for which the person has been given a notice to appear or a summons.
- (3) This section does not apply to a child.

91 Arrest of escapees

A police officer, without a warrant, may arrest a person who the police officer suspects, on reasonable grounds, is escaping or has escaped from lawful custody.

PART 4.2 - ARREST WITH A WARRANT**92 Arrest with a warrant**

A police officer acting under a warrant issued under any law may arrest the person who is named in the warrant.

93 Arrest warrant application

- (1) A police officer may apply to a magistrate for a warrant to arrest a person for an offence (an “arrest warrant”).
- (2) The police officer may apply for the arrest warrant, whether or not a proceeding has been started against the person by notice to appear or by summons.
- (3) The application must be sworn, and state the grounds on which the arrest warrant is sought.
- (4) If the application:
 - (a) relates to an offence other than a felony; and
 - (b) is made because the police officer applying for the arrest warrant believes, on reasonable grounds, that proceeding or continuing to proceed against the person named in the application, by notice to appear or by summons, would be ineffective;

the application must state the belief and the reasons for the belief.

- (5) The magistrate may refuse to consider the application until the police officer gives the magistrate all the information that the magistrate requires about the application, in the way that the magistrate requires.

Example

The magistrate may require additional information supporting the application to be given by statutory declaration.

- (6) The magistrate may issue an arrest warrant only if satisfied there are reasonable grounds for suspecting:
- (a) that the person has committed the offence; and
 - (b) for an offence other than a felony — that proceedings, by way of a notice to appear or a summons, would be ineffective.

Example for paragraph (b)

because the person cannot currently be located or served with a notice to appear or a summons for the offence.

94 What arrest warrant must state

- (1) The arrest warrant must state:
- (a) the name, rank and station of the police officer applying for the arrest warrant; and
 - (b) that any police officer may arrest the person named in the warrant; and
 - (c) the offence that the person is alleged to have committed.
- (2) It is sufficient to describe the offence in the words of the law defining it, or in similar words.
- (3) A description of persons or things that would be sufficient in an indictment is sufficient in an arrest warrant.

95 Compliance with limitation of proceedings

For a provision of a law that imposes a limitation of proceedings for the offence by reference to when a complaint was made for the offence, or to when proceedings for the offence are started, a complaint is taken to be made, and the proceedings started, when the arrest warrant is issued.

PART 4.3 - DISCONTINUING AN ARREST

96 Effect of release under this Part

If an arrested person is released under this Part:

- (a) any charge of an offence for which the arrested person is released is discontinued; and
- (b) any proceeding against the person for the offence is discontinued, even though the person may have been charged with having committed the offence.

97 When an arrest may be discontinued — general rule

- (1) It is the duty of a police officer to release an arrested person at the earliest reasonable opportunity if:
 - (a) the person is no longer suspected, on reasonable grounds, of having committed the offence for which the person was arrested; or
 - (b) the police officer considers there is not enough evidence to bring the person before a court on a charge of the offence.
- (2) However, subsection (1) does not apply if the person:
 - (a) is suspected, on reasonable grounds, of having committed another offence, whether or not the other offence arises out of the circumstances of the offence for which the person was arrested; or
 - (b) may be detained for another reason; or
 - (c) is in custody for another offence.

Example for paragraph (b)

because of a breach of a bail condition.

98 When arrest of adult may be discontinued

- (1) This section applies to an arrested person who is an adult.
- (2) It is the duty of a police officer to release the person at the earliest reasonable opportunity if:
 - (a) the reason for arresting the person no longer exists, or is unlikely to happen again if the person is released; and
 - (b) it is more appropriate to take the person before a court by a notice to appear or by a summons, and the notice to appear or the summons has been served on the person.
- (3) However, subsection (2) does not apply to a person who is arrested:
 - (a) in order to prevent the person fleeing from a police officer or the location of an offence; or
 - (b) if, because of the nature or seriousness of an offence for which the person is a suspect, it is inappropriate to release the person.
- (4) Also, a police officer must release the person at the earliest reasonable opportunity if:

- (a) the police officer considers, on reasonable grounds, that it is more appropriate for the arrested person to be dealt with other than by charging the person with an offence; and
- (b) the person and any victim of the offence agree to the person being dealt with in that way.

99 When arrest of child may be discontinued

- (1) This section applies to an arrested person who is a child.
- (2) It is the duty of a police officer to release the child at the earliest reasonable opportunity if:
 - (a) the reason for arresting the child no longer exists, or is unlikely to happen again if the child is released; and
 - (b) after considering:
 - (i) the circumstances of the alleged offence; and
 - (ii) the child's previous history known to the police officer;it is more appropriate to deal with the child in a way provided by subsection (3).
- (3) For subsection (2), the police officer may decide it is more appropriate:
 - (a) to take no action; or
 - (b) to administer a caution to the child; or
 - (c) to take the child before a court by notice to appear or by summons.
- (4) Subsection (2) does not apply to a child who is arrested if, because of the nature or seriousness of an offence for which the child is a suspect, it is inappropriate to release the child.
- (5) Also, subsection (2) does not apply to the arrest of a child by a police officer while the police officer believes, on reasonable grounds, that the child is an adult.
- (6) In deciding whether the police officer had a reasonable belief, a court may have regard to the child's apparent age and the circumstances of the arrest.

100 When arrest for being drunk in a public place may be discontinued

- (1) This section applies if:
 - (a) a person is arrested for being drunk in a public place; and
 - (b) a police officer is satisfied that it is more appropriate for the person to be taken to a place (a "place of safety"), other than a police station, that the police officer considers is a place where the person can receive the treatment or care that is necessary to enable the person to recover safely from the effects of being drunk.

Examples for paragraph (b)

A hospital may be a place of safety for a person who needs medical attention.

A person's home, or the home of a relative or friend, may be a place of safety for a person who is drunk, if there is no likelihood of violence happening at the place.

- (2) It is the duty of the police officer, at the earliest reasonable opportunity:
 - (a) to take the person to the place of safety; and
 - (b) to release the person at the place of safety.
- (3) However, subsection (3) does not apply if the police officer is satisfied that:
 - (a) a person at the place of safety is unable to provide care for the person; or
 - (b) the person's behaviour may pose a risk of harm to another person at the place of safety.

Example for paragraph (b); through an act of violence.

- (4) A person taken to a place of safety cannot be made to stay there.

PART 4.4 - ALTERNATIVE TO ARREST

101 Purpose of this Part

- (1) The purpose of this Part is to provide an alternative way for a police officer to start or continue a proceeding against a person for an offence that:
 - (a) reduces the need for the custody that is associated with arrest; and
 - (b) does not involve the delay associated with issuing a summons.
- (2) So, instead of arresting the person, or issuing a summons on the person, a police officer may give the person a notice to appear before a magistrate in relation to the offence (a "notice to appear").
- (3) A requirement in a notice to appear that a person appear before a court in relation to the offence, at a stated time and place, is not a requirement to which section 170 applies.
- (4) The Criminal Procedure Code and any other law applies to a notice to appear in the same way as it applies to a summons, subject to the differences mentioned in this Part.

102 Notice to appear

- (1) If a police officer suspects, on reasonable grounds, that a person has committed or is committing an offence, the police officer may give the person a notice to appear.
- (2) The notice to appear must:

- (a) state the substance of the offence alleged to have been committed; and
 - (b) state the name of the person alleged to have committed the offence; and
 - (c) state whether the person was, at the time of the alleged offence, an adult or a child; and
 - (d) require the person to appear before a magistrate in relation to the offence at a stated time and place; and
 - (e) be signed by the police officer serving the notice to appear.
- (3) The place stated in a notice to appear must be a place where a magistrate will be sitting at the time stated.
- (4) The time stated in a notice to appear must be a reasonable time after the notice to appear is given to the person.
- (5) In the notice to appear, the statement of the substance of the offence alleged to have been committed need only provide general particulars of the offence.

Examples

the type of offence

when and where the offence is alleged to have been committed.

- (6) If 2 or more matters are joined in 1 notice to appear:
- (a) each matter need not be set out in a separate paragraph; and
 - (b) objection cannot be taken to the notice to appear because each matter is not set out in a separate paragraph.
- (7) Subsection (5) does not affect the duty of the prosecution to provide proper particulars of an offence in the course of prosecution.
- (8) When a person on whom a notice to appear has been served appears before a court in response to the notice, the court must ensure that the person:
- (a) is provided promptly with proper particulars of the offence; and
 - (b) is granted any adjournment of the proceeding necessary to consider the proper particulars of the offence.

103 Notice to appear must be served personally on the person

- (1) A notice to appear must be served personally on a person.
- (2) A notice to appear must be served on a child:
- (a) as discreetly as practicable; and
 - (b) not at or near the child's school or place of employment, unless there is no other place where service may be reasonably made.

104 After being served, notice to appear must be filed with the court

- (1) As soon as reasonably practicable after serving a notice to appear on a person, and before the time when the person is required to appear at a court under the notice, the notice must be filed with the clerk of the court.
- (2) A person must not be ordered to pay filing costs in the proceeding for the offence.

105 Failing to appear as required by a notice to appear

- (1) If a person fails to appear before a court as required by a notice to appear served on the person, the court may:
 - (a) order that a warrant be issued for the arrest of the person to be brought before the court to be dealt with according to law; or
 - (b) hear and decide the matter in the absence of the person.
- (2) However, if a person fails to appear and the court is not satisfied that the person was served as required under this Part or that a reasonable time was not given for the person to appear, the court must strike out the notice to appear.
- (3) The striking out of a notice to appear does not prevent another proceeding being started for the offence for which the notice to appear was purportedly served.
- (4) If the person appears voluntarily before a court after the arrest warrant is issued, a magistrate may revoke the warrant.
- (5) A court may delay the issue or execution of a warrant for the arrest of a person to allow the person a further opportunity to appear before the court.
- (6) A person who is arrested under a warrant issued under subsection (1)(a) is taken to have been arrested for the offence stated in the notice to appear.
- (7) A document that purports to be a copy of a notice to appear, that is signed by the police officer who served it, and that states the following is evidence of what it states:
 - (a) the date it was served; and
 - (b) when and where it was served.

PART 4.5 - DUTIES AFTER AN ARREST**106 Information to be given to arrested person**

- (1) A police officer who arrests a person, whether or not under a warrant, must, as soon as is reasonably practicable after the arrest, inform the person:
 - (a) that the person is under arrest; and
 - (b) of the nature of the offence for which the person is arrested.

- (2) A police officer who arrests a person with a warrant must inform the person that the person is under arrest and of the nature of the warrant.
- (3) A police officer must give to the person, in writing, the name, rank and station of the arresting officer before the person is released from police custody.

107 Parent to be advised of arrest or service of notice to appear

- (1) A police officer who arrests a child must promptly advise a parent or guardian of the child of:
 - (a) the arrest; and
 - (b) the whereabouts of the child.
- (2) A police officer who serves a notice to appear on a child must promptly advise a parent or guardian of the child of the service of the notice to appear.
- (3) Subsections (1) and (2) do not apply in relation to a child if:
 - (a) a parent or guardian can not be found after reasonable inquiry; or
 - (b) a police officer believes, on reasonable grounds, that the child is an adult.
- (4) When deciding whether the police officer had the reasonable belief, a court may have regard to the child's apparent age and the circumstances of the arrest or service of the notice.

108 Duty of police officer after arrest etc of person

- (1) If a police officer does any of the following, the police officer must, as soon as reasonably practicable, take the person before a court to be dealt with according to law:
 - (a) arrests a person, whether or not under a warrant;
 - (b) receives into custody a person who is arrested or detained by someone other than a police officer.
- (2) Subsection (1) does not apply if the person:
 - (a) is released under Part 4.3 (Discontinuing an arrest); or
 - (b) is being detained for a felony under Part 4.9 (Detaining a person suspected of committing a felony); or
 - (c) is arrested under a warrant that requires the police officer to take the person before another body or to another place; or
 - (d) is delivered into the custody of the officer in charge of a police station; or
 - (e) is arrested, but is later released without having been charged with the offence for which the person was arrested.

109 Duty of police officer receiving custody of person arrested for an offence

- (1) This section applies if:
 - (a) a person who has been arrested for an offence, whether or not under a warrant, is delivered into the custody of the officer in charge of a police station; and
 - (b) the person is not being detained under Part 4.9 (Detaining a person suspected of committing a felony); and
 - (c) it is not practicable to bring the person before a court promptly.
- (2) The officer in charge of the police station, as soon as reasonably practicable, must:
 - (a) decide whether or not to grant the person bail; or
 - (b) decide whether or not to issue and serve a notice to appear on the person; or
 - (c) for a person arrested for being drunk in a public place, decide whether to discontinue the arrest under Part 4.3 (Discontinuing an arrest); or
 - (d) take the person before a court to be dealt with according to law.
- (3) This section does not apply to a child.

110 Duty of officer receiving custody of person arrested under warrant, other than for an offence

- (1) This section applies if:
 - (a) a person (including a police officer) arrests a person who is named in a warrant that was issued under another law; and
 - (b) the person is delivered into the custody of the officer in charge of a police station.
- (2) The officer in charge must, as soon as reasonably practicable, ensure that the warrant is complied with.

PART 4.6 - SEARCHING PERSONS IN CUSTODY**111 Police officer may search person in custody**

- (1) A police officer may search and re-search a person if the person:
 - (a) is lawfully arrested; or
 - (b) is in lawful custody for a charge of an offence that has not been decided; or
 - (c) is in custody under a sentence for a period of imprisonment; or
 - (d) is otherwise lawfully detained under another law.

Example for paragraph (b) because bail has been revoked.

- (2) A police officer may seize from the person anything found during the search that the police officer suspects, on reasonable grounds, might provide evidence of the commission of an offence.
- (3) Also, the police officer may take and retain, while the person is in custody:
 - (a) anything that may endanger anyone’s safety, including the person’s safety; or
 - (b) anything that may be used for an escape; or
 - (c) anything else that the police officer considers, on reasonable grounds, should be kept in safe custody while the person is in custody.
- (4) If a police officer takes a thing from a person who is taken to a place of safety under section 100, the police officer may give the thing to an adult who is apparently in charge of the place of safety, for safe-keeping while the person is at the place.
- (5) The person to whom the thing is given must give the police officer a signed receipt in the approved form for the thing.
- (6) If the place of safety is not the home of the person from whom the thing was taken (the “owner”), the person to whom the thing is given must return the thing to its owner before the owner leaves the place of safety.

PART 4.7 - FINGERPRINTS AND OTHER IDENTIFYING PARTICULARS

112 This Part applies to 1-year offences

This Part applies to an offence for which the maximum penalty is imprisonment for at least one year (a “1-year offence”).

113 Taking identifying particulars of a person in custody

- (1) If a person is in custody for a 1-year offence, the charge of which has not been decided, a police officer may take any or all of the person’s identifying particulars.
- (2) The “identifying particulars” of a person are any of the following:
 - (a) fingerprints;
 - (b) palmprints;
 - (c) footprints;
 - (d) voiceprints;
 - (e) handwriting;
 - (f) a photograph of the person’s identifying features;

- (g) a measurement of any part of the person's body, other than the person's genital or anal area, buttocks, or a female's breasts.

Examples for paragraph (f)

a photograph of scars or tattoos a photograph of the person.

- (3) If the person is to be released after arrest for the offence, a police officer may detain the person for the time that is reasonably necessary to take any or all of the person's identifying particulars.
- (4) If the offence involves the conduct of a number of persons acting alone or together, a police officer may photograph the person at the scene of the arrest before taking any or all of the person's identifying particulars.

114 Taking identifying particulars immediately

- (1) This section applies if a police officer decides to start a proceeding against an adult for a 1-year offence by a notice to appear or by a summons.
- (2) Within a reasonable time before, or immediately after, serving the notice to appear or the summons, a police officer may detain the person for the time that is reasonably necessary to take any or all of the person's identifying particulars.

115 Taking identifying particulars later

- (1) This section applies if a police officer:
 - (a) decides to start, or continues, a proceeding against an adult for a 1-year offence by a notice to appear or by a summons; and
 - (b) decides that it is not necessary to immediately take the identifying particulars.
- (2) A police officer may, by written notice given to the person, require the person:
 - (a) to report to a police officer at a stated police station, within 7 days after the issue of the notice, to enable the police officer to take any or all of the person's identifying particulars; and
 - (b) to stay at the police station for the time that is reasonably necessary to enable the person's identifying particulars to be taken.
- (3) The notice:
 - (a) may state the days and times within which the person must attend the police station; and
 - (b) must state:
 - (i) that it is an offence to fail to comply with the notice; and
 - (ii) that, before the identifying particulars are taken, the person must produce satisfactory evidence of his or her identity.

- (4) The notice must be given to the person with the notice to appear or the summons.
- (5) If the person attends at a police station as required under the notice, a police officer may take any or all of the person's identifying particulars.

116 Court may order taking of identifying particulars

- (1) This section applies if, in a proceeding for a 1-year offence against an adult, a court is satisfied that it is necessary to take the person's identifying particulars in order to help:
 - (a) identify the person in relation to the offence, or another offence that the person is suspected of having committed; or
 - (b) confirm the person's identity; or
 - (c) find out the person's criminal history; or
 - (d) keep criminal records.
- (2) The court may make either of the following orders:
 - (a) an order that a police officer may detain the person to enable a police officer to take any or all of the person's identifying particulars;
 - (b) an order:
 - (i) that the person report to a police officer at a stated police station on a stated day, or between stated hours, within 7 days; and
 - (ii) that the person stay at the place for the time that is reasonably necessary to enable a police officer to take any or all of the person's identifying particulars; and
 - (iii) authorising a police officer to detain the person to enable a police officer to take any or all of the person's identifying particulars, if the person does not comply with subparagraphs (i) and (ii).
- (3) If the person is not already in custody, the time for which the person may be detained under the order is:
 - (a) 1 hour; or
 - (b) a longer reasonably necessary time, having regard to the particular circumstances.
- (4) A person commits an offence if the person contravenes an order made under subsection (2)(b), unless the person has a reasonable excuse.
- (5) The maximum penalty for the offence is imprisonment for 2 years.
- (6) It is not a reasonable excuse for the person to contravene the order that complying with it may tend to incriminate the person.

117 Destroying identifying particulars

- (1) If a person is found not guilty of a 1-year offence, or is not further proceeded against for the offence, any identifying particulars taken under this Part in relation to the offence must be destroyed, within a reasonable time, in the presence of a magistrate.
- (2) Subsection (1) does not apply if:
 - (a) the person has been proceeded against for another 1-year offence, the charge of which has not been decided; or
 - (b) the person has previously been found guilty of another 1-year offence, whether before or after the commencement of this section; or
 - (c) the identifying particulars are required for the investigation of another 1-year offence that the person is suspected, on reasonable grounds, of having committed; or
 - (d) the person is not proceeded against for the 1-year offence because he or she has been found incapable of standing trial because of mental illness.
- (3) If, because of subsection (2)(a), a person's identifying particulars are not destroyed and the person is found not guilty of the other 1-year offence, or the charge of that other offence is not proceeded with, the identifying particulars must be destroyed within a reasonable time after the relevant event happens.
- (4) However, the identifying particulars must not be destroyed under subsection (3) if subsection (2) continues to apply to the person.
- (5) In this section, the "identifying particulars" of a person includes a photograph, photocopy or other reproduction of the identifying particulars.

PART 4.8 - RELEASE FROM CUSTODY ON BOND OR BAIL**118 Bond**

- (1) This section applies if a person is released from custody upon executing a bond under section 19 (Refusal to give name and residence) of the Criminal Procedure Code.
- (2) The bond must be in the approved form.

119 Bail

- (1) This section applies if a person is released from custody upon entering into a recognisance under section 23 (Detention of persons arrested without warrant) of the Criminal Procedure Code.
- (2) The recognisance must be in the approved form.

PART 4.9 - DETAINING A PERSON SUSPECTED OF COMMITTING A FELONY

120 Part applies only to felonies

This Part applies to a person who is suspected of being involved in the commission of a felony (a “suspect”).

121 Right to remain silent not affected

Nothing in this Part affects the right of a suspect to refuse to answer a question, unless the suspect is required to answer the questions by or under another law.

122 Initial period of detention for questioning or investigation

- (1) This section applies only to a suspect who:
 - (a) is lawfully arrested for a felony; or
 - (b) is in lawful custody.
- (2) A police officer may detain a suspect for a reasonable time:
 - (a) to question the suspect about any felony that the suspect is suspected of having committed, whether or not it is the felony for which the suspect was arrested or is in custody; or
 - (b) to investigate a felony.
- (3) When deciding what is a reasonable time to detain a suspect under subsection (2), the following must be taken into consideration:
 - (a) whether the suspect’s detention is necessary for the investigation of a felony;
 - (b) the number of felonies under investigation;
 - (c) the seriousness and complexity of a felony under investigation;
 - (d) whether the suspect has indicated a willingness to make a statement or to answer questions;
 - (e) the suspect’s age, physical capacity and condition, and mental capacity and condition;
 - (f) for a suspect who was arrested for the felony — any time spent questioning the suspect before the arrest;
 - (g) the need to delay or suspend questioning of the suspect for the purposes of time out.
- (4) If the suspect decides not to answer questions or not to continue answering questions, continuing the detention period may still be reasonable if:
 - (a) it is necessary to carry out further investigations; or

- (b) the suspect consents to participate in an investigative procedure; or
- (c) another authority requires the suspect to participate in an investigative procedure.

Example for paragraph (b)

consenting to take part in an identification parade.

Example for paragraph (c)

if a magistrate orders a medical examination of the suspect.

- (5) Despite subsection (2), the suspect must not be detained under this Part for more than the following period (the “detention period”), unless that period is extended under this Part:
 - (a) 24 hours; or
 - (b) in the case of a suspect who is arrested after the courts close on a Friday afternoon — 72 hours.
- (6) During the detention period:
 - (a) the suspect may be questioned for not more than 4 hours; and
 - (b) if the suspect is detained for 6 hours or more — the suspect must be given reasonably sufficient food and drink.
- (7) The detention period starts when the suspect:
 - (a) is arrested for the felony; or
 - (b) is taken into police custody under an order made under section 125; or
 - (c) enters into the company of a police officer at a prison for the purpose of questioning the suspect.

123 Order extending the detention period

- (1) A police officer may apply to a magistrate for an order extending the detention period.
- (2) The application must be made before the detention period ends.
- (3) The police officer must do the following before the application is made:
 - (a) tell the suspect or the suspect’s lawyer of the application; and
 - (b) give the suspect or the suspect’s lawyer a copy of the application; and
 - (c) ask the suspect or the suspect’s lawyer if he or she:
 - (i) agrees to the application or wants to oppose it; and
 - (ii) wants to make submissions to the magistrate who hears the application.
- (4) The application must be made in a way that allows the suspect or the suspect’s lawyer to make submissions about the application.

Example

If the application is faxed to a magistrate, the suspect must be allowed to speak to the magistrate by telephone.

- (5) The application must be sworn, and state:
 - (a) the name, rank and station of the police officer applying for the warrant; and
 - (b) the following information about the suspect:
 - (i) the suspect's name, address and date of birth;
 - (ii) whether the suspect is a child or a person with impaired capacity;
 - (iii) if the suspect is a child or a person with impaired capacity — whether a parent or guardian of the child or person has been advised of the detention of the child or person; and
 - (c) whether, since the questioning or detention began, the suspect has asked to telephone or speak to a relative, friend or lawyer and has since spoken to the relative, friend or lawyer; and
 - (d) when the detention period began, how long the suspect has been questioned, and what delays to questioning had happened; and
 - (e) the felony to which the questioning or investigation relates, and information and evidence about the nature and seriousness of the felony; and
 - (f) information or evidence supporting a reasonable suspicion that the suspect has committed the felony mentioned in the application; and
 - (g) what investigations have taken place; and
 - (h) why further detention of the suspect is necessary; and
 - (i) the time sought for time out, and the time sought for questioning.
- (6) The police officer who made the application must tell the magistrate whether the suspect or the suspect's lawyer wants to make submissions to the magistrate.
- (7) The suspect or the suspect's lawyer may make submissions to the magistrate about the application.
- (8) A magistrate may make the order extending the detention period if satisfied that:
 - (a) the nature and seriousness of the felony require the extension; and
 - (b) further detention of the suspect is necessary:
 - (i) to preserve or obtain evidence of the felony; or
 - (ii) to complete the investigation into the felony; or
 - (iii) to continue questioning the suspect about the felony; and

- (c) the investigation is being conducted properly and without unreasonable delay; and
 - (d) the suspect or the suspect's lawyer has been given the opportunity to make submissions about the application.
- (9) The order extending the detention period must state:
- (a) the time, of not more than 4 hours, for which the suspect may be questioned; and
 - (b) how much time is to be allowed as time out, which must be at least half of the time for which the suspect may be questioned; and
 - (c) that the suspect may continue to be detained for the total of the periods decided for paragraphs (a) and (b).

124 When a suspect detained may be taken to a place other than a police station

A police officer may take a suspect to whom this Part applies to a place other than a police station if the police officer considers it is reasonably necessary to facilitate the purpose of the detention.

Example

A suspect who has been arrested and is being questioned about a felony may be taken to the scene of the felony to identify the scene or to re-enact the felony, or to a doctor for examination or medical treatment.

125 Removing a suspect from lawful custody

- (1) This section applies to a suspect who is in custody in a prison:
 - (a) for a charge of a felony that has not been decided; or
 - (b) under a sentence for a term of imprisonment.
- (2) A police officer must get the approval of the officer in charge of a police station before removing the suspect from the prison to the custody of the police officer for:
 - (a) the questioning of the suspect about a felony; or
 - (b) the investigation of a felony.
- (3) The officer in charge may give the approval only if satisfied that the custody is reasonably necessary for:
 - (a) the questioning of the suspect about the felony; or
 - (b) the investigation of the felony.
- (4) If the officer in charge gives the approval, the police officer may remove the suspect from the prison.

- (5) Section 122 applies to the detention in the custody of the police officer.

CHAPTER 5 - QUESTIONING PERSONS

PART 5.1 - PRELIMINARY

126 When this Part applies to a suspect

- (1) This Part applies to a person who is in the company of a police officer for the purpose of being questioned as a suspect about his or her involvement in the commission of an offence (the “suspect”).
- (2) However, this Part does not apply to a person only if the police officer is exercising:
 - (a) a power conferred under any law to detain the person for a search; or
 - (b) a power conferred under any law to require the person to give information or answer questions.

127 Questioning generally

- (1) A police officer who is questioning a suspect must not obtain a confession by threat or promise.
- (2) The police officer must suspend questioning under this Part and comply with this section 133 if, during questioning, it becomes apparent that the suspect is not:
 - (a) a Tuvalu citizen; or
 - (b) a foreign national with a right of residence in Tuvalu.

PART 5.2 - OTHER PERSONS MAY BE PRESENT DURING QUESTIONING

128 Right to communicate with relative, friend or lawyer

- (1) Before a police officer starts to question a suspect for an offence, the police officer must inform the suspect that the suspect may telephone or speak to:
 - (a) a relative or friend:
 - (i) to inform the relative or friend of the suspect’s whereabouts; and
 - (ii) to ask the relative or friend to be present during questioning.
 - (b) a lawyer:
 - (i) to inform the lawyer of the suspect’s whereabouts; and
 - (ii) to ask the lawyer to be present during questioning.

- (2) If the suspect wishes to telephone or speak to a relative, friend or lawyer, the police officer must:
 - (a) as soon as practicable, make a telephone available to the suspect; and
 - (b) delay the questioning for a reasonable time to allow the suspect to telephone or speak to the relative, friend or lawyer.
- (3) If the suspect arranges for a relative, friend or lawyer to be present during questioning, the police officer must delay the questioning for a reasonable time to allow the relative, friend or lawyer to arrive.
- (4) What is a reasonable time to allow a relative, friend or lawyer to arrive will depend on the particular circumstances.

Examples

how far the relative, friend or lawyer has to travel to the place

the time of day when the relative, friend or lawyer is travelling to the place
whether the travel is to be made when no public transport is available

when the relative, friend or lawyer indicated that he or she would arrive at the place.

- (5) Unless special circumstances exist, a delay of more than 2 hours may be unreasonable.

129 Speaking to, and presence of, relative, friend or lawyer

If the suspect asks to speak to a relative, friend or lawyer, the investigating police officer must:

- (a) as soon as practicable, provide reasonable facilities to enable the suspect to speak to the relative, friend or lawyer; and
- (b) allow the suspect to speak to the relative, friend or lawyer in circumstances in which the conversation can not be overheard; and
- (c) allow the relative, friend or lawyer to be present, and give advice to the suspect, during the questioning.

130 Provision of information to relative, friend or lawyer

- (1) This section applies if a relative, friend or lawyer of a suspect asks for information about the suspect's whereabouts.
- (2) If the person asking for the information is not known to the police officer who receives the request, the police officer must ask the person:
 - (a) if he or she is a relative, friend or lawyer of the suspect; and
 - (b) for the person's name and address or, for a lawyer, place of business; and

- (c) if the person makes the request personally — for proof of his or her identity.
- (3) The police officer may also ask any other question that the police officer considers necessary to establish that the person is a relative, friend or lawyer of the suspect.
- (4) A police officer must, if practicable, inform the suspect of the request and, after doing so, give the information to the relative, friend or lawyer who asked for it.
- (5) The police officer is not required to disclose the suspect's whereabouts if:
 - (a) the suspect refuses to agree to giving the information under subsections (2) and (3), and the refusal is in writing or electronically recorded; or
 - (b) the whereabouts of the suspect are not known to the police officer; or
 - (c) the police officer suspects, on reasonable grounds, that the person who is asking for the information is not a relative, friend or lawyer of the suspect; or
 - (d) the police officer suspects, on reasonable grounds, that disclosing the suspect's whereabouts may jeopardise the investigation of the felony that the suspect is suspected of having committed because:
 - (i) evidence relating to the felony may be concealed, fabricated or destroyed; or
 - (ii) an accomplice or accessory of the suspect may take steps to avoid apprehension.

131 Questioning children

- (1) This section applies if:
 - (a) a police officer wants to question a suspect; and
 - (b) the suspect appears to be a child.
- (2) The police officer must not question the child unless:
 - (a) the police officer has, if practicable, allowed the child to speak to a relative, friend or lawyer chosen by the child, in a place where the conversation will not be overheard; and
 - (b) the relative, friend or lawyer is present while the child is being questioned.
- (3) The police officer must suspend questioning under this Part and comply with this section if, during questioning, it becomes apparent that the suspect is a child.

132 Questioning suspects with impaired capacity

- (1) This section applies if:

- (a) a police officer wants to question a suspect; and
 - (b) the suspect appears to be a person with impaired capacity.
- (2) The police officer must not question the suspect unless:
- (a) the police officer has, if practicable, allowed the suspect to speak to a relative, friend or lawyer, in a place where the conversation will not be overheard; and
 - (b) the relative, friend or lawyer is present while the suspect is being questioned.
- (3) The police officer must suspend questioning under this Part and comply with the section if, during questioning, it becomes apparent that the suspect is a person with impaired capacity.

133 Questioning visiting foreign nationals

- (1) This section applies if:
- (a) a police officer wants to question a suspect; and
 - (b) the suspect appears not to be:
 - (i) a Tuvalu citizen; or
 - (ii) a foreign national with a right of residence in Tuvalu.
- (2) In order to decide whether the suspect has the right to contact an embassy, high commission or consular office, a police officer may ask the suspect a question, other than a question related to the suspect's involvement in the offence for which the suspect is to be questioned.
- (3) If the police officer suspects, on reasonable grounds, that the suspect has the right to contact an embassy, high commission or consular office, the police officer must inform the suspect of that right in a way substantially complying with the following:
- “Before I ask you any questions, I must tell you that you have the right to contact the embassy, high commission or consular office of the country of which you are a citizen.
- Do you want to contact your embassy, high commission or consular office?”
- (4) If the police officer suspects, on reasonable grounds, that the suspect does not understand the advice, the police officer may ask the suspect to explain the advice in his or her own words.
- (5) If necessary, the police officer must further explain the advice.
- (6) If the suspect wishes to contact the embassy, high commission or consular office, the police officer must:
- (a) as soon as practicable, enable the suspect to make the contact; and

- (b) delay the questioning for a reasonable time to allow the suspect to contact the embassy, high commission or consular office.

134 Questioning persons who do not speak the language

- (1) This section applies if:
 - (a) a police officer wants to question a suspect; and
 - (b) the suspect appears to be unable, because of inadequate knowledge or a physical disability, to speak with reasonable fluency in the language spoken by the police officer.
- (2) In order to decide whether to arrange for the presence of an interpreter during questioning of the suspect, the police officer may ask the suspect a question, other than a question related to the suspect's involvement in the offence for which the suspect is to be questioned.
- (3) In particular, the police officer may ask questions that may help the police officer decide whether or not the suspect:
 - (a) is capable of understanding the questions put to the suspect, what is happening to him or her, and his or her rights at law; and
 - (b) is capable of effectively communicating answers to the questions; and
 - (c) is aware of the reason that the questions are being asked.
- (4) If the police officer decides that an interpreter should be present, the police officer must delay the questioning or investigation until the interpreter is present.
- (5) In this section, "investigation" means the process of using investigative methodologies that involve interaction by a police officer with the suspect.

Example

an examination or the taking of samples from the suspect.

- (6) However, "investigation" does not include fingerprinting, searching or taking photographs of the suspect.
- (7) The police officer must suspend questioning under this Part and comply with this section if, during questioning, it becomes apparent that the suspect is not able to speak with reasonable fluency in the language spoken by the police officer.
- (8) For this section, an interpreter may be present in person or by electronic means.

135 Questioning intoxicated suspects

- (1) This section applies if:
 - (a) a police officer wants to question a suspect; and

- (b) the suspect appears to be under the influence of alcohol or a drug.
- (2) The police officer must delay the questioning until the police officer is reasonably satisfied that the influence of the alcohol or drug no longer affects:
 - (a) the suspect's ability to understand his or her rights; and
 - (b) the suspect's ability to decide whether to answer questions.
- (3) The police officer must suspend questioning under this Part and comply with this section if, during questioning, it becomes apparent that the suspect is under the influence of alcohol or a drug.

136 When sections 128 to 133 do not apply

- (1) Sections 128 to 133 do not apply if a police officer suspects, on reasonable grounds, that compliance with the sections is likely to result in:
 - (a) an accomplice or accessory of the suspect taking steps to avoid apprehension; or
 - (b) an accomplice or accessory being present during questioning; or
 - (c) evidence being concealed, fabricated or destroyed; or
 - (d) a witness being intimidated.
- (2) Also, a police officer is not required to delay questioning if, having regard to the safety of other people, the police officer suspects, on reasonable grounds, that questioning is so urgent that it should not be delayed.
- (3) This section applies only for as long as the police officer has the reasonable suspicion.

PART 5.3 - CAUTIONING AND RIGHTS OF SUSPECTS

137 Cautioning suspects of their right to remain silent

- (1) A police officer must caution a suspect about the suspect's right to remain silent, before the suspect is questioned.
- (2) The caution must be given in, or translated into, a language in which the suspect is able to communicate with reasonable fluency, but need not be given in writing unless the suspect can not hear adequately.
- (3) If the police officer suspects, on reasonable grounds, that the suspect does not understand the caution, the police officer may ask the suspect to explain the meaning of the caution in his or her own words.
- (4) If necessary, the police officer must further explain the caution.
- (5) If questioning is suspended or delayed, the police officer must ensure that the suspect is aware that he or she still has the right to remain silent and, if necessary, again caution the suspect when questioning continues.

- (6) This section does not apply if another law requires the suspect to answer questions put by, or do things required by, a police officer.

138 Person's right to remain silent not affected

- (1) If a suspect, the suspect's lawyer, or someone whose presence is required during the questioning of the suspect indicates to the police officer who is questioning or intending to question the suspect:
- (a) if questioning has not started — that the suspect does not want to answer questions; or
 - (b) if questioning has started — that the suspect does not want to answer any further questions,
- the police officer must not question or continue to question the suspect.
- (2) If it is indicated that the suspect does not want to answer any further questions, the police officer may continue to put allegations to the suspect, to give the suspect a further opportunity to respond.
- (3) However, if the suspect later indicates that he or she is prepared to answer questions, a police officer must, before questioning or continuing to question the suspect, ask the suspect:
- (a) why the suspect has decided to answer questions; and
 - (b) whether a police officer or someone else in authority has told the suspect to answer questions.

139 Rights of a suspect to be recorded

A police officer who is required under this Division to give a suspect information (including a caution) must make a written record of:

- (a) the giving of the information to the suspect; and
- (b) the suspect's response.

PART 5.4 - GENERAL

140 Questioning of suspect after proceedings have started

- (1) Nothing in this Chapter prevents a suspect, after a proceeding for the offence has been started, from helping a police officer by making a statement or answering questions relating to the matter for which the suspect is charged.
- (2) Also, a police officer may question a suspect to clarify any ambiguity in relation to what was previously said by the suspect.
- (3) If new evidence of the offence becomes available, a police officer may tell the suspect of the evidence and invite the suspect to make a statement.

Example

If a suspect has been charged with the offence of rape, and a DNA analysis connects the suspect with the offence, the police officer may tell the suspect of the DNA analysis and invite the suspect to make a statement.

141 List of interpreters

- (1) The Commissioner must keep, and regularly revise, a list of interpreters.
- (2) The list must specify the languages that each person on the list is able to understand and speak.

CHAPTER 6 - IDENTIFYING SUSPECTS

PART 6.1 - CERTAIN WAYS OF IDENTIFYING SUSPECTS

142 Certain ways of identifying suspects

- (1) This section applies if a police officer uses any of the following procedures to help gather evidence of the identity of a person (the “suspect”) who is suspected of having committed an offence:
 - (a) an identification parade;
 - (b) a photoboard;
 - (c) a videotape;
 - (d) computer-generated images;
 - (e) drawings.
- (2) The way in which the procedure is conducted must allow only 1 person (the “witness”) to see or hear the procedure at a time.
- (3) After a witness has taken Part in the procedure, the witness must, as far as reasonably practicable, be prevented from speaking about the procedure to any other witness until the procedure ends.
- (4) If reasonably practicable, the way in which a witness identifies a person during the procedure must be recorded.
- (5) A police officer must not stop a person being present during a procedure to support the witness, unless:
 - (a) the other person is another witness; or
 - (b) the police officer suspects, on reasonable grounds, that the person will influence the witness’s decision or disrupt the procedure.
- (6) If the police officer stops someone being present during the procedure to support a witness, the police officer must:

- (a) give the witness the reasons for stopping the person being present; and
- (b) advise the witness that he or she may arrange for someone else to be present to support the witness; and
- (c) if asked by the witness, allow someone else to be present.

(7) This section does not limit the ways that a police officer may identify a suspect.

PART 6.2 - IDENTIFICATION USING AN IDENTIFICATION PARADE

143 Procedure before an identification parade

- (1) A police officer may ask a suspect to take part in an identification parade.
- (2) The suspect may refuse to take part in the identification parade.
- (3) If the suspect agrees to take part in the identification parade, the police officer must explain the procedure for the identification parade to the suspect before conducting the identification parade.
- (4) If the police officer suspects, on reasonable grounds, that the suspect does not understand the procedure, the police officer must ask the suspect to explain the procedure in his or her own words.
- (5) If necessary, the police officer must further explain the procedure.
- (6) The explanation must include the police officer telling the suspect the following:
 - (a) the identification parade cannot be conducted unless the suspect agrees;
 - (b) the suspect may have a relative, friend or lawyer present at the identification parade if the relative, friend or lawyer can attend within a reasonable time;
 - (c) anyone present must not interfere with the procedure in any way;
 - (d) the suspect may choose a position in the parade, and may change position in the parade after each witness has viewed the parade;
 - (e) the suspect's identity will not be given to a witness, unless:
 - (i) the witness identifies the suspect; and
 - (ii) a proceeding is started against the suspect.

PART 6.3 - IDENTIFICATION USING A PHOTOBOARD

144 Photoboard conditions

- (1) A photoboard must include photographs of the suspect, and at least 11 other people of similar physical appearance and wearing similar clothing.

- (2) To avoid directing the attention of the witness to a particular photo, the police officer must ensure that nothing is marked on any photograph or the backing board on which the photograph is mounted.

145 Conducting a photoboard identification

- (1) A police officer who is showing witnesses a photoboard must show the photoboard to each witness separately.
- (2) Also, the police officer must ask the witness:
 - (a) to carefully view the photoboard; and
 - (b) to state whether the witness recognises anyone whose photograph is on the photoboard.
- (3) The police officer must ask the question in a way that does not suggest the identity of a person whose photograph is on the photoboard.
- (4) If the witness indicates that he or she recognises a person, the police officer must ask the witness to:
 - (a) clearly state the number of the photograph that the witness has identified as being that of the person alleged to be responsible for committing the offence; and
 - (b) write the photograph number and the date when the photoboard was shown to the witness:
 - (i) on the back of the photoboard or the selected photo; or
 - (ii) on the front of an unmarked photocopy of the photoboard; and
 - (c) sign the photoboard, photograph or photocopy where the witness has written on it.

CHAPTER 7 - MISCELLANEOUS PROVISIONS

PART 7.1 - PENALTY NOTICES

146 Definition

In this Part:

“**penalty notice**” offence means an offence prescribed by the regulations as a penalty notice offence.

147 Police may issue penalty notices for certain offences

A police officer may serve a penalty notice on a person if it appears to the police officer that:

- (a) the person has committed a penalty notice offence; and
- (b) it may be an effective deterrent to the person committing further offences.

Note A penalty notice may not be an effective deterrent for a habitual drink driver. Court proceedings that may result in the loss of the person's drivers licence may be more effective. Also, if the police officer is aware that the person has continually failed to pay penalty notices, it may be more appropriate for the person to appear in court for the offence.

148 Penalty notices

- (1) A penalty notice is a written notice to the effect that:
 - (a) if the person served does not wish to have the matter determined by a court, the person can pay, within 28 days and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence dealt with under this Part; and
 - (b) if the person does not pay in accordance with paragraph (a), the person must appear in court for the offence, or the matter may be dealt with in the person's absence.
- (2) A police officer issuing a penalty notice may include in the notice a date, being a sitting day of the court that is at least 28 days after the issue of the notice, for the person to attend court if the notice is not paid before that date.
- (3) A penalty notice must be served personally.

149 Penalty notices must not be issued to children

- (1) A penalty notice must not be issued to a child.
- (2) If a penalty notice is issued to a child, the following provisions have effect:
 - (a) the amount that was payable under the notice is not payable;
 - (b) any amount that is paid under the notice is repayable to the person who paid the amount;
 - (c) further proceedings for the alleged offence may be taken against any person (including the child on whom the notice was served) as if the notice had not been served.
- (3) Nothing in this section requires further proceedings to be taken for an alleged offence if a penalty notice is issued to a child.

150 Penalty notice offences and penalties

- (1) The regulations may prescribe:

- (a) an offence under any Act, or any statutory rule made under an Act, as a penalty notice offence; and
 - (b) the penalty payable for a penalty notice offence; and
 - (c) different penalties for different offences or classes of offences; and
 - (d) different penalties for the same penalty notice offence; and
 - (e) the islands on which a penalty notice may be issued.
- (2) The amount of a penalty prescribed for a penalty notice offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.

151 Effect of payment of penalty

- (1) If the amount of penalty prescribed for an alleged penalty notice offence is paid, no person is liable to any further proceedings for the alleged offence.
- (2) Payment of a penalty under this Part is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (3) This section is subject to section 154.

152 Procedure on non-payment of penalty

- (1) If the amount of penalty prescribed for an alleged penalty notice offence is not paid within 28 days after the penalty notice is served:
 - (a) if the penalty notice includes a court date in accordance with subsection 148(2):
 - (i) the person may attend court on that day for the alleged offence to be dealt with; or
 - (ii) if the person does not attend court on that day — the court may deal with the matter in the person's absence; or
 - (b) in any other case — the Registrar of the court must issue a summons for the person to attend court for the alleged offence to be dealt with.
- (2) If the person does not appear in response to a summons issued under paragraph (1)(b), the court may deal with the matter in the person's absence.

153 Limitation on exercise of penalty notice powers

This Part does not authorise a police officer to serve a penalty notice in relation to:

- (a) an industrial dispute, or
- (b) an apparently genuine demonstration or protest, or
- (c) a procession, or

- (d) an organised assembly.

154 Withdrawal of penalty notice

- (1) A commissioned police officer may at any time withdraw a penalty notice issued by a police officer under this Part.
- (2) A commissioned police officer must withdraw a penalty notice immediately if directed to do so by the Attorney-General.
- (3) The following provisions have effect in relation to an alleged offence if a penalty notice for the alleged offence is withdrawn in accordance with this section:
 - (a) the amount that was payable under the notice ceases to be payable;
 - (b) any amount that has been paid under the notice is repayable to the person by whom it was paid;
 - (c) any subsequent action already taken in relation to the notice, including any enforcement action, is to be reversed;
 - (d) any costs relating to that subsequent action are not payable and, if paid, are repayable;
 - (e) further proceedings for the alleged offence may, subject to any time limit within which those proceedings are required to be commenced, be taken against any person (including the person on whom the notice was served) as if the notice had never been served.
- (4) Nothing in this section requires further proceedings to be taken in respect of an alleged offence if a penalty notice is withdrawn.

155 Application for review by Commissioner

- (1) A person who has been served with a penalty notice, or a person acting on that person's behalf and with that person's consent, may apply to the Commissioner for review of the decision to serve the penalty notice if the person believes:
 - (a) the decision:
 - (i) was contrary to law; or
 - (ii) involved a mistake of identity; or
 - (b) that special circumstances apply to the person; or
 - (c) that the conduct for which the penalty notice was served should be excused, having regard to any exceptional circumstances relating to the penalty notice offence.
- (2) The application:
 - (a) may be made at any time before the expiry of the period for bringing a proceeding for the offence to which the penalty notice relates; and

- (b) must be in writing; and
 - (c) must state the grounds on which the decision should be reviewed; and
 - (d) must provide the person's current address for service of the notice under section 157(2)(b) of the outcome of the decision; and
 - (e) may only be made once for any 1 penalty notice offence for the person.
- (3) The period within which the penalty must be paid is extended until the time mentioned in section 159 that applies to the penalty notice.

156 Request for additional information

- (1) The Commissioner may, in writing, request from the person applying for the review under section 155 any additional information that the Commissioner requires to conduct a review under section 157.
- (2) If the Commissioner makes a request under subsection (1), he or she must suspend the review until the earlier of:
- (a) 35 days after the date specified in the document making the request; or
 - (b) the date when the additional information is provided.
- (3) Within 14 days after service of the request for additional information, the person:
- (a) must provide the additional information; or
 - (b) if additional time is required — may request in writing an extension of time to provide the additional information.
- (4) If the person requests additional time in accordance with subsection (3)(b), the Commissioner may:
- (a) refuse to extend the time for the provision of the additional information; or
 - (b) grant an extension of time for that information to be provided.
- (5) If the Commissioner grants an extension of time under subsection (4)(b), the Commissioner must inform the person in writing of the period of the extension.
- (6) If the person fails to provide the information requested under subsection (1) to the police service within the period specified in subsection (3) or, if an extension is granted under subsection (4)(b), within the period of that extension, the Commissioner:
- (a) may, under section 157, review the decision without the additional information; or
 - (b) despite subsections (3) and (4):
 - (i) if the person provides the additional information to the police service out of time — may accept that late information; and

- (ii) may, under section 157, review the decision with that late information.

157 Review by Commissioner

- (1) If the Commissioner receives an application for review under section 155, the Commissioner must:
 - (a) review the decision to serve a penalty notice on the person; and
 - (b) suspend any procedures that are being used for the enforcement of the penalty mentioned in the penalty notice in respect of the penalty notice until:
 - (i) the review is completed; and
 - (ii) the person is sent advice of the outcome.
- (2) The Commissioner must:
 - (a) review a decision:
 - (i) within the prescribed time; or
 - (ii) if the Commissioner requests additional information under section 156, within the prescribed period mentioned in subparagraph (i) plus 35 days, whether or not the additional information was received by the Commissioner; and
 - (b) within 21 days after deciding the review, serve on the person a written notice advising of the outcome of the review.
- (3) If the Commissioner fails to comply with subsection (2), the penalty notice is taken to be withdrawn.
- (4) Nothing in this section limits the power of the Commissioner to review a decision to serve a penalty notice on any other basis.

158 What can Commissioner decide on review?

- (1) Subject to subsection (2), after reviewing a decision under section 157, the Commissioner may:
 - (a) confirm the decision to serve a penalty notice; or
 - (b) withdraw the penalty notice and serve an official warning in place of the penalty notice; or
 - (c) withdraw the penalty notice; or
 - (d) withdraw the penalty notice and refer the matter to the court in accordance with this Part; or
 - (e) for a penalty notice offence involving additional steps, alter or vary those steps, provided the alteration or variation is consistent with the Act or other instrument establishing the offence; or

- (f) waive any or all prescribed costs; or
 - (g) approve a payment plan; or
 - (h) do any combination of any of the actions mentioned in paragraphs (a) to (g).
- (2) For an application under section 155(1)(b) that special circumstances apply to the person served with the penalty notice, after reviewing a decision under section 157, the Commissioner may:
- (a) confirm the decision to serve a penalty notice; or
 - (b) withdraw the penalty notice and serve an official warning in place of the penalty notice; or
 - (c) withdraw the penalty notice.
- (3) If the Commissioner makes a decision under subsection (2)(a) confirming the decision to serve the penalty notice, the Commissioner must refer the matter to the court in accordance with this Part.

159 Time to pay if decision confirmed

- (1) Subject to subsection (2), if the Commissioner confirms a decision to serve a penalty notice under section 158(1)(a), the person must pay the infringement penalty and any prescribed costs by the latest of the following times:
- (a) the due date specified in the penalty notice;
 - (b) the due date specified in the penalty reminder notice;
 - (c) within 14 days after the person has been served with written notice advising of the outcome of the review.
- (2) For a penalty notice offence involving additional steps, if the Commissioner confirms a decision to serve a penalty notice under section 158(1)(a), the person must:
- (a) pay the fine mentioned in the penalty notice and any prescribed costs by the latest of the following times:
 - (i) the due date specified in the penalty notice;
 - (ii) the due date specified in the penalty reminder notice;
 - (iii) within 14 days after the person has been served with written notice advising of the outcome of the review; and
 - (b) perform the additional steps by the latest of the following times:
 - (i) the end of the remedy period specified in the penalty notice;
 - (ii) within 14 days after the person has been sent advice of the outcome of the review.

160 Review by Attorney-General

- (1) A person who is not satisfied with a decision by the Commissioner under section 158 may, within 14 days after the person has been served with written notice advising of the outcome of the review, apply to the Attorney-General for review of the decision to serve the penalty notice.
- (2) For that purpose, sections 155 to 159 apply as if a reference to the Commissioner were a reference to the Attorney-General.

161 Effect of Part on other procedures and powers

- (1) This Part (except as provided by section 151) does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (2) Nothing in this Part limits any functions that police officers have apart from this Part (including the power to issue a penalty notice under any other Act or statutory rule).
- (3) Nothing in this Part requires a police officer to issue a penalty notice instead of taking any other proceeding or action a police officer may take in respect of an alleged offence.

162 Limited implementation of penalty notice provisions

- (1) The regulations may limit the application of this Part to offences dealt with in a specified part or parts of Tuvalu for a specified period or periods.
- (2) If a regulation is made under this section, the application of the Part is limited as specified by the regulation, even though the specified provisions of this Part have commenced.

PART 7.2 - WARRANTS ETC**163 Serving and enforcing warrants etc**

- (1) A police officer may serve or enforce a warrant, summons, order or command of any court, judge, or magistrate:
 - (a) even though the warrant, summons, order or command is not addressed to the police officer; and
 - (b) despite the requirements of any other law, or rule having the force of law, about who may enforce the warrant, summons, order or command.
- (2) A police officer who serves a warrant, summons, order or command must, if reasonably practicable, write the following information on the back of the original warrant, summons, order or command, and sign the document:
 - (a) the day and time of service;

- (b) the name of the person on whom it was served;
- (c) if supplied — the name of the occupier of the place;
- (d) the name, rank and station of the police officer.

164 Obtaining warrants and orders by telephone etc

- (1) A police officer may apply for a warrant or order by telephone, fax, radio, email or another similar facility, if the police officer considers it necessary because of urgent or other special circumstances.

Example

because of the police officer's remote location.

- (2) Before applying for the warrant or order, the police officer must prepare an application stating the grounds on which the warrant or order is sought.
- (3) If, apart from this section, the application is required to be sworn, the police officer may apply for the warrant or order before the application is sworn.
- (4) If transmission by fax is available, the police officer must transmit a copy of the application to the judge or magistrate who is to decide the application.
- (5) After issuing the warrant or order, the judge or magistrate must immediately fax or email a copy of the warrant or order to the police officer if it is reasonably practicable to do so.
- (6) If it is not reasonably practicable to fax or email a copy of the warrant or order to the police officer:
 - (a) the judge or magistrate must tell the police officer:
 - (i) what the terms of the warrant or order are; and
 - (ii) the day and time when the warrant or order was issued; and
 - (b) the police officer must complete a form of warrant or order (a "prescribed authority form") and write on it:
 - (i) the name of the judge or magistrate; and
 - (ii) the day and time when the judge or magistrate issued the warrant or order; and
 - (iii) the terms of the warrant or order.
- (7) The warrant or order that was faxed or emailed, or the prescribed authority form properly completed by the police officer, authorises the entry and the exercise of the other powers stated in the warrant or order issued by the judge or magistrate.
- (8) The police officer must send, at the first reasonable opportunity, to the judge or magistrate:
 - (a) the sworn application; and

- (b) if a copy of the warrant or order was not faxed or emailed to the police officer — the completed prescribed authority form.
- (9) On receiving those documents, the judge or magistrate must attach them to the warrant or order.

165 Presumption about exercise of powers under warrant or order

A court must find that the exercise of a power by a police officer was not authorised by a warrant or order if:

- (a) an issue arises in a proceeding before the court whether the exercise of the power was authorised by a warrant or order; and
- (b) the warrant or order is not produced in evidence; and
- (c) it is not proved by the police officer who is relying on the lawfulness of the exercise of the power that a police officer obtained the warrant or order.

PART 7.3 - DAMAGE TO PROPERTY DURING EXERCISE OF POWERS

166 Use of force to enter places that is likely to cause damage

- (1) This section applies if a police officer intends to enter a place to arrest or detain someone, or to search a place, or to establish a crime scene.
- (2) The police officer must, if reasonably practicable:
 - (a) ask the occupier of the place to allow the police officer to enter the place; and
 - (b) give the occupier a reasonable opportunity to allow the entry;before the police officer uses force that may cause damage to the place in order to gain entry to the place.

Examples

There is an immediate or sudden need to use force because, for example, the person is struggling with a police officer.

There is a reasonable expectation that, if warned, the person may immediately dispose of or destroy evidence.

An immediate search is necessary to protect the safety of any person.

167 Police officer to give notice of damage

- (1) This section applies if:
 - (a) a police officer damages any thing when exercising a power under this or another law; or

- (b) someone who is assisting the police officer damages any thing.
- (2) The police officer must promptly give written notice to the person who appears to be the person who was in possession of the thing:
 - (a) stating the nature of the damage; and
 - (b) if the police officer believes the damage was caused by a latent defect in the thing or circumstances beyond the police officer's or assistant's control — stating the police officer's belief.
- (3) If the owner is not present, the notice must be left in a conspicuous place near the damage.
- (4) This section does not apply:
 - (a) to damage that the police officer believes, on reasonable grounds, is trivial; or
 - (b) if the police officer believes, on reasonable grounds, that:
 - (i) there is no one apparently in possession of the thing; or
 - (ii) the thing has been abandoned.

168 Compensation for damage

- (1) This section applies if a person suffers loss because his or her property is damaged when a police officer exercises powers under this Act.
- (2) Compensation is payable by the Crown to the person whose property is damaged.
- (3) However, compensation is not payable to a person if, because of the exercise of the powers, the person is found guilty of the commission of a felony.
- (4) Also, compensation is not payable for the lawful seizure of a thing under this Act.
- (5) The Attorney-General is to decide the amount of the compensation.
- (6) A person who is dissatisfied with the Attorney-General's decision under subsection (5) may apply to a court, within 28 days, for compensation under this section.
- (7) If the person applies under subsection (6), the court may decide the amount of the compensation.

PART 7.4 - OFFENCES

169 Offence to assault or obstruct police officer

- (1) A person commits an offence if the person assaults or wilfully obstructs:
 - (a) a police officer in the performance of the police officer's duties; or

- (b) another person assisting the police officer.
- (2) The maximum penalty for the offence is 200 fine units or 2 years imprisonment, or both.
- (3) In this section, “obstruct” includes hinder, resist, and attempt to obstruct.

170 Offence to contravene direction or requirement of police officer

- (1) A person commits an offence if the person contravenes a requirement or direction given by a police officer under this Part, including a requirement or direction contained in a notice given by a police officer, unless the person has a reasonable excuse.
- (2) The maximum penalty for the offence is 20 fine units.
- (3) Unless otherwise expressly provided, it is a reasonable excuse for a person not to comply with a requirement or direction to give information if giving the information would tend to incriminate the person.
- (4) If a person fails to comply with the direction or requirement that was given orally, a police officer must, if practicable, warn the person:
 - (a) that it is an offence to fail to comply with the direction or requirement, unless the person has a reasonable excuse; and
 - (b) that the person may be arrested for the offence.
- (5) The police officer must give the person a further reasonable opportunity to comply with the direction or requirement.

PART 7.5 - OTHER GENERAL PROVISIONS

171 Helping courts and tribunals

- (1) This section applies if, under another law, a court or other deliberative tribunal has power:
 - (a) to lawfully order the apprehension or detention of a person, including under a warrant; or
 - (b) to order the exclusion or removal of a person from the place where the court or tribunal is sitting; or
 - (c) to give any other order or direction for which the help of a police officer may be reasonably necessary.
- (2) A police officer must comply with any lawful direction, request, or order of the court or tribunal and any reasonable request that the judge or other presiding officer may lawfully make.

172 Protection of police information

- (1) This section applies to information that could, if disclosed, reasonably be expected:
 - (a) to prejudice the investigation of an offence or suspected offence; or
 - (b) to enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
 - (c) to endanger a person's life or physical safety; or
 - (d) to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; or
 - (e) to prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or
 - (f) to facilitate a person's escape from lawful custody.
- (2) In a proceeding, a police officer cannot be required to disclose that information, unless the court is satisfied that disclosure of the information is necessary:
 - (a) for the fair trial of the defendant; or
 - (b) to find out whether the scope of a law enforcement investigation has exceeded the limits imposed by law; or
 - (c) in the public interest.
- (3) Subsection (2) does not affect a provision of another law under which a police officer cannot be compelled to disclose information or make statements in relation to the information.

173 Lost property

- (1) This section applies to a thing that is lawfully in the possession of the police service, whether before or after the commencement of this section, because:
 - (a) it was found by someone, other than a police officer, who gave it to a police officer as apparently lost property; or
 - (b) it came into the possession of a police officer in the course of performing the police officer's functions, other than by being seized by a police officer.
- (2) The police officer who receives the thing must ensure that the thing is given to the officer in charge of the police station where the police officer is stationed, as soon as reasonably practicable, unless the thing is earlier returned or forfeited under this Act.
- (3) Until the thing is delivered to the officer in charge, the police officer is responsible for the safekeeping of the thing.
- (4) The Commissioner must:

- (a) ensure that reasonable inquiries and reasonable efforts are made to locate anyone lawfully claiming to be entitled to possession of the thing; and
 - (b) facilitate the lawful disposal or return of the thing to its owner or the person who had lawful possession of it before it came into the possession of the police service.
- (5) What are reasonable inquiries and efforts, must be decided having regard to the nature, condition and value of the thing.

174 Availability of this Act

The Commissioner must ensure that this Act is available for inspection at any police station by anyone who asks to inspect it.

175 Approved forms

The Commissioner may approve forms for use under this Act.

176 Review of Act

The Minister must ensure that the operation of this Act is regularly reviewed.

177 Regulation-making power

- (1) The Minister may make regulations under this Act.
- (2) Without limiting subsection (1), regulations may make provision about:
 - (a) the duties of police officers; or
 - (b) the way in which a police officer may give directions; or
 - (c) forensic procedures, including the taking and analysis of a person's blood, DNA or urine; or
 - (d) the electronic recording of the questioning of persons; or
 - (e) the keeping of a register to record information about the exercise of powers by police officers, and the release of that information.
- (3) Regulations made for subsection (2)(a) or (b) may include operational guidelines for police officers.
- (4) However, operational guidelines are not part of the regulations.

ENDNOTES

¹ Act 12 of 2009

² A fine unit is valued for the time being at \$10