

NB: The word *here* refers to the preceding case in *blue*.

Abbreviations:

- PO = police officer
- SPO = senior police officer
- IO = investigating official
- SC = Supreme Court
- CC = County Court
- MC = Magistrates' Court
- MCA = Magistrates' Court Act
- CPA = Criminal Procedure Act
- FP = forensic procedure
- CFP = compulsory forensic procedure
- FSO = forensic sample offence

Table of Contents

Entry onto Land for Search and Arrest	3
Search of a Person and their Possessions	3
By Consent	3
Following lawful arrest (common law) - Cloutier v Langolis	3
With Warrant	4
Evidence Connected to an Indictable Offence: s 456 Crimes Act	4
Search for Stolen Goods: s 92 Crimes Act	4
Drugs: Drugs, Poisons and Controlled Substances Act - s 81	5
Without Warrant (statutory)	5
Inadvertent Discovery	6
Forensic Procedure	7
Definitions - s 464(2) Crimes Act:	7
Voluntary Adult Forensic Procedure - s 464ZGB Crimes Act	7
Non-Voluntary Adult Forensic Procedure - s 464R Crimes Act	7
Forensic Sample Offences - s 464ZF Crimes Act	9
Adult DNA samples - s 464SC Crimes Act	9
Forensic Procedure for Children Aged 10 - 18	10
DNA Samples from a Child Aged 15 - 18 Years: s 464SE Crimes Act	10
Fingerprinting: finger, palm, toe and sole prints - s 464(2) Crimes Act	10
Fingerprinting for Identification - s 464NA Crimes Act	10
Conditions under which a person may be fingerprinted for evidence	11
Procedure for Taking of Fingerprints, Destruction of Prints, and Consequences for POs for Breach	12
Consequences of Breach of Forensic Procedure	13
	1

Police Questioning	14
Provision of Name and Address Details	14
Silence and Privilege Against Self-Incrimination	14
Questioning in Police Custody	14
‘Reasonable Period’ Questioning - s 464A Crimes Act	14
What is a “Reasonable Period” of detention?	14
Procedure for “Reasonable Period” questioning	15
Handling of Admissions	16
Admissibility of Confessions in the course of Official Questioning - s 464H(1) Crimes Act	16
Continuity of Interviews/ Multiple Police Interviews	17
Admissibility of Improperly Obtained Evidence - s 138 Evidence Act	18
Identification Evidence	18
Visual Identification - s 114 Evidence Act	19
Picture Identification - s 115 Evidence Act	20
Jury Warnings for Identification Evidence	20
Judicial Discretion to Exclude Prejudicial Identification Evidence - s 137 Evidence Act	21
Commencement of Criminal Proceedings	22
Arrest - can be separate from the commencement of Criminal Proceedings	22
Statutory power to arrest - With Warrant	22
Arrest without warrant - s 457 Crimes Act	23
Elements of a legal arrest	23
Commencing Trial	25
Decision to Prosecute	25
Choice of Court for Trial	25
Place of Hearing for Trial - s 169 CPA	25
Joint or Separate Trials for Multiple Offenders or Multiple Charges - s 170 CPA	26
Discontinuance of Prosecution - s 177 CPA	26
Trial for Indictable Offences	26
Committal Procedure - Criminal Procedure Act	27
Arraignment for Trial and Pleas - s 215 CPA	28
Rule against Double Jeopardy	29
Exceptions to Double Jeopardy - s 327H CPA (borne of public outrage at Carroll v R)	29
Jury Selection for Trial	30
Eligibility for Jury Service: s 5 Juries Act	30
Empanelment of Jury	31
Judicial Discretion to Discharge a Juror - s 43 Juries Act	32
Conduct of the Jurors	32
Jury Verdicts	33

Entry onto Land for Search and Arrest

- Consent - governed by the common law of trespass
 - Implied - general implied licence to enter property up to front door if no locked gate or signs - *Halliday v Nevill*
 - May be expressly or impliedly revoked, absent another authority - *Plenty v Dillon*
 - Express - no use of force for warrantless arrest, reasonable force for arrest with warrant
 - May generally be revoked with reasonable notice given to Police, unless another authority can sustain presence on property - *Nicholson v Avon*
- Arrest without Warrant - s 495A *Crimes Act*
 - (1) for arrests under s 458 or 459 *Crimes Act*, a Police Officer may enter and search any place the police officer on reasonable grounds believes an offender to be, where:
 - (a) the police officer believes on reasonable grounds that the offender has (i) committed a serious indictable offence in Victoria, (ii) committed an offence elsewhere which would be a serious indictable offence in state, (iii) to be escaping from legal custody
 - (b) the offender is committing a serious indictable offence
 - (2) Police officer may use reasonable force in such entries
- Arrest with Warrant - authority is conveyed by the warrant: s 64(1) *Magistrates Court Act*

Search of a Person and their Possessions

By Consent

- Genuine consent that is not obtained by deception - *R v Jamieson*
- Onus to prove consent on the prosecution - *R v Meyers*
 - Eg. signed authority from searchee

Following lawful arrest (common law) - *Cloutier v Langolis*

- Person who is lawfully arrested may be searched to:
 - preserve evidence on their person - *Bessell v Wilson*
 - or to reasonably search and seize weapons or implements that may be used to escape or harm police, themselves or others - *Lindley v Rutter*
- **Victoria:** What is reasonable to search depends on the circumstances, but in Victoria the power to search may extend beyond the above authorities - *DPP v Tupper*
 - Consider police's reasonable belief as to the likelihood that the prisoner will attempt to conceal evidence or something to escape or harm someone against the arrestee's privacy and dignity
 - Likely does not extend to intrusive seizure of intimate clothing (underwear), but very well could depending on the circumstances
- Person must be told the true and specific purposes for the search - *Brazil v Chief Constable of Surrey*
 - Here, being told a search was for 'safety' was insufficient, and a subsequent search with no communicated purpose was also insufficient
- Limits to search and seizure - only items found in the possession or under the control of D to be used as evidence to support guilt for the specific offence that D has been arrested for - *Elias v Passmore*

- Does not extend to searching the home of D away from the location of the initial offence without a warrant for evidence relating to a second offence - *Jeffrey v Black*

With Warrant

- General requirements - *Majzoub v Kepreokis*
 - Warrant must sufficiently identify the offence and its nature (but not necessarily to full specificity of an indictment)
 - Objective assessment of whether this is achieved is required by looking at the warrant in its entirety
 - Failure to specify any offence is invalid, but failure to specify correct section numbers or the relevant act while still setting out nature of offence is valid
 - Consequences of invalidly issued warrant - *R v Borg* - warrant is invalid and trial judge must make a determination whether evidence acquired is of sufficiently great probative value at trial to overcome prejudice to the accused - s 138 *Evidence Act*
 - *Here*: failure by PO to issue oath/ affirmation supporting evidence invalidated search warrants
- **Evidence Connected to an Indictable Offence: s 456 *Crimes Act***
 - (1) Magistrate may grant a search warrant when satisfied by evidence provided by senior sergeant or above under oath/ affidavit that there are reasonable grounds to believe that a building or vehicle contains anything
 - (a) in respect of which an indictable offence has been committed, is being committed or will be committed within 72 hours
 - (b) that there is grounds to believe will be evidence regarding the commission of an indictable offence
 - (c) which there is a reasonable ground to believe will be used for committing an indictable offence against the person for which the offender may be arrested without warrant (weapons)
 - **Purpose:** uncover evidence that is relevant (but not necessarily conclusive) to the potential guilt of a person of an offence - *Crowley v Murphy*
 - **Safeguards:** Judiciary must ensure strict compliance with statutory conditions for grant of warrants due to highly invasive and *ex parte* nature of the powers granted - HCA obiter in *George v Rockett*
- **Search for Stolen Goods: s 92 *Crimes Act***
 - (1) Magistrate may grant a search warrant when satisfied by oath/ affidavit that if there is reasonable cause to believe to believe that a person has stolen goods
 - (a) on their person
 - (b) on any premises of the person
 - (c) in a particular vehicle
 - (2) A police officer of rank Inspector or higher may give written authority to a constable to search premises for stolen goods if
 - (a) the person who occupies the premises has been convicted in the past five years of handling stolen goods or any dishonesty offence punishable by imprisonment
 - (b) a person convicted of handling stolen goods within the past five years has occupied the premises within the last 12 months

- **Safeguards:** intention of parliament that this only be used 'in the most urgent of circumstances'
- **Drugs:** *Drugs, Poisons and Controlled Substances Act* - s 81
 - (1) Magistrate may grant search warrant when satisfied by evidence on oath/ affirmation by PO of sergeant or above that there is reasonable grounds to believe that a premises or vehicle will contain
 - (a) any thing in respect of which an offence under this Act has been committed or is likely to be committed within 72 hours (drugs)
 - (b) any thing relating to an offence under this act (parraphenalia)
 - (c) any document relating to transactions or dealings contrary to this act
 - Scope: sub s (3)(c)(i) - search land or premises, or any vehicle or person found on the land for the above (a), (b), or (c), and to (3)(b) arrest persons found contravening the act

Without Warrant (statutory)

- **Drugs** - s 82 *Drugs, Poisons and Controlled Substances Act*
 - (1) PO may (f) search and (g) seize without warrant when they have reasonable grounds for *suspecting* that a drug of dependence is
 - (a) in a vehicle in a public place,
 - (b) on an animal
 - (c) in the possession of a person
 - (d) on a boat or vessel
 - (e) on a plane
 - *DPP v Darby* - sniffer dogs' sensory perception does not amount to a search, and can sustain reasonable grounds for suspicion above
- **Weapons** - s 10 *Control of Weapons Act*
 - (1) PO may search (d) person, their vehicle and anything under their control, and (e) seize weapons if (a) they have reasonable grounds for suspecting that a person has in their possession in a public place a weapon contrary to the Act
 - (2) presence in a high crime area can inform reasonable grounds for suspicion