



NORTHERN TERRITORY OF AUSTRALIA

No. 36 of 1992

AN ACT

to amend the *Police Administration Act*

[Assented to 25 June 1992]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Police Administration Amendment Act (No. 2) 1992*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Police Administration Act* is in this Act referred to as the Principal Act.

4. ARREST WITHOUT WARRANT BY MEMBERS OF POLICE FORCE

Section 123 of the Principal Act is amended by omitting subsection (2).

5. TIME FOR BRINGING PERSON BEFORE JUSTICE OR COURT

Section 137 of the Principal Act is amended -

- (a) by omitting from subsection (1) "subsection (2) of this section" and substituting "subsections (2) and (3) of this section";
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- (b) by omitting from subsection (2) "(including the common law)" and "involving that person" and substituting "(including the common law), but subject to subsection (3)" and "that the member believes on reasonable grounds involves the person" respectively; and
 - (c) by omitting from subsection (2) paragraph (d) and substituting the following:
 - "(d) the offence was committed in the Territory,and the person shall not be granted bail under Part III or section 33 of the *Bail Act* while so detained, whether or not he or she has been charged with an offence."; and
 - (d) by adding at the end the following:
 - "(3) A member of the Police Force may continue to hold a person under subsection (2) for the purposes of enabling the person to be questioned or investigations to be carried out to obtain evidence of or in relation to -
 - (a) the offence in respect of which the person was taken into custody, only if it is an offence the maximum penalty for which, in the jurisdiction in which it is believed to have been committed, is imprisonment for any period; or
 - (b) an offence that is not the offence in respect of which the person was taken into custody, only if it is an offence the maximum penalty for which, in the jurisdiction in which it is believed to have been committed, is imprisonment for 5 years or more."
6. DETERMINING REASONABLE PERIOD DURING WHICH PERSONS DETAINED, &c., TO BE BROUGHT BEFORE JUSTICE OR COURT
- Section 138 of the Principal Act is amended -
- (a) by omitting from paragraph (d) "members of the Police Force" and substituting "investigators";
 - (b) by omitting from the end of paragraph (q)(ii) "and";
 - (c) by omitting from paragraph (r) "identification parade." and substituting "identification parade."; and
 - (d) by adding at the end the following:
 - "(s) the time taken for an operating electronic recording facility to become available to record the interviewing of the person; and

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- (t) any interruptions to the electronic recording of the interviewing of the person because of technical reasons (such as a breakdown in equipment or a power failure) beyond the control of the interviewing member."

7. NEW DIVISION

The Principal Act is amended by inserting in Part VII, after Division 6, the following:

*"Division 6A - Recording of Confessions
and Admissions*

"139. DEFINITION

"In this Division -

'electronic recording' includes a recording of sound and/or pictures, by electronic means;

'relevant offence', in relation to a confession or admission, means -

- (a) in the case of an admission or confession made on or after 1 July 1992 and before 1 July 1993, an offence the maximum penalty for which is imprisonment for life or in excess of 7 years;
- (b) in the case of an admission or confession made on or after 1 July 1993 and before 1 July 1994, an offence the maximum penalty for which is imprisonment for life or for 7 years or more;
- (c) in the case of an admission or confession made on or after 1 July 1994, an offence the maximum penalty for which is imprisonment in excess of 2 years.

"140. PERSON TO BE WARNED AND GIVEN OPPORTUNITY TO INFORM FRIEND OR RELATIVE OF PERSON'S WHEREABOUTS

"Before any questioning or investigation under section 137(2) commences, the investigating member must inform the person in custody that the person -

- (a) does not have to say anything but that anything the person does say or do may be given in evidence; and
- (b) may communicate with or attempt to communicate with a friend or relative to inform the friend or relative of the person's whereabouts,

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and, unless the investigating member believes on reasonable grounds that -

- (c) the communication would result in the escape of an accomplice or the fabrication or destruction of evidence; or
- (d) the questioning or investigation is so urgent, having regard to the safety of other people, that it should not be delayed,

the investigating member must defer any questioning or investigation that involves the direct participation of the person for a time that is reasonable in the circumstances and afford the person reasonable facilities to enable the person to make or attempt to make the communication.

"141. WARNING AND OFFER OF FACILITIES TO COMMUNICATE TO BE TAPE-RECORDED

"The investigating member who is required by section 140 to give the person in custody the information required by that section to be given shall, if practicable, electronically record the giving of the information and the person's responses, if any.

"142. ELECTRONIC RECORDING OF CONFESSIONS AND ADMISSIONS

"(1) Subject to section 143, evidence of a confession or admission made to a member of the Police Force by a person suspected of having committed a relevant offence is not admissible as part of the prosecution case in proceedings for a relevant offence unless -

- (a) where the confession or admission was made before the commencement of questioning, the substance of the confession or admission was confirmed by the person and the confirmation was electronically recorded; or
- (b) where the confession or admission was made during questioning, the questioning and anything said by the person was electronically recorded,

and the electronic recording is available to be tendered in evidence.

"(2) If the questioning of a person is electronically recorded as required by this section, or the giving of information is recorded as required under section 141, the investigating member shall -

- (a) inform the person that the person is entitled to a copy of the electronic recording on request;

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- (b) if the recording is an audio recording only or a video recording only, cause the recording or a copy of it to be made available to the person or the person's legal representative, without charge, within 7 days after request;
- (c) if both an audio recording and a video recording were made, cause the audio recording or copy of it to be made available to the person or the person's legal representative, without charge, within 7 days after request and cause the person or the person's legal representative to be notified that an opportunity will be provided, on request, for viewing the video recording; and
- (d) if the transcript of the electronic recording is prepared by the police, cause a copy of the transcript to be made available on request to the person or the person's legal representative, without charge, within 7 days after the request.

"(3) Except as provided in this section, nothing in this section prevents the use of an electronic recording in proceedings for an offence against a law in force in the Territory.

"143. CERTAIN EVIDENCE MAY BE ADMITTED

"A court may admit evidence to which this Division applies even if the requirements of this Division have not been complied with, or there is insufficient evidence of compliance with those requirements, if, having regard to the nature of and the reasons for the non-compliance or insufficiency of evidence and any other relevant matters, the court is satisfied that, in the circumstances of the case, admission of the evidence would not be contrary to the interests of justice."
