



New South Wales

Crimes Amendment (Detention after Arrest) Act 1997 No 48

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Crimes Amendment (Detention after Arrest) Act 1997 No 48

Act No 48, 1997

An Act to amend the *Crimes Act 1900* to make further provision with respect to the powers of police to detain a person after arrest and the rights of persons so detained; to amend the *Children (Criminal Proceedings) Act 1987* consequentially; and for other purposes. [Assented to 2 July 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Detention after Arrest) Act 1997*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 2 commences on the commencement of section 9 of the *Children (Criminal Proceedings) Act 1987*.

3 Amendment of Crimes Act 1900 No 40

The *Crimes Act 1900* is amended as set out in Schedule 1.

4 Amendment of Children (Criminal Proceedings) Act 1987 No 55

The *Children (Criminal Proceedings) Act 1987* is amended as set out in Schedule 2.

Schedule 1 Amendment of Crimes Act 1900

(Section 3)

[1] Section 1 Name of Act and contents

Omit the matter relating to Part 10. Insert instead:

Part 10 Arrest of offenders (secs 352–353C)

Part 10A Detention after arrest for purposes of investigation (secs 354–356Y)

Part 10B Powers of search, powers of entry and discharge of persons in custody:

- (1) Powers of search (secs 357–357E)
- (2) Powers of entry and search in cases of child prostitution or pornography (sec 357EA)
- (3) Powers of entry in cases of domestic violence (secs 357F–357I)
- (4) Discharge of persons in custody (sec 358)
- (5) Disposal of property in the custody of the police (sec 358B)
- (6) Offence relating to escaped prisoners (sec 358C)

[2] Part 10, heading

Omit the heading. Insert instead “**Part 10 Arrest of offenders**”.

[3] Part 10

Omit the heading before section 352.

[4] Part 10A, sections 354–356Y

Insert after section 353C:

Part 10A Detention after arrest for purposes of investigation

354 Objects of Part

The objects of this Part are:

- (a) to provide for the period of time that a person who is under arrest may be detained by a police officer to enable the investigation of the person's involvement in the commission of an offence, and
- (b) to authorise the detention of a person who is under arrest for such a period despite any requirement imposed by law to bring the person before a justice, Magistrate or court without delay or within a specified period, and
- (c) to provide for the rights of a person so detained.

355 Definitions

- (1) In this Part:

Aboriginal person means a person who:

- (a) is a member of the Aboriginal race of Australia, and
- (b) identifies as an Aboriginal, and
- (c) is accepted by the Aboriginal community as an Aboriginal.

authorised justice means:

- (a) a Magistrate, or
- (b) a justice of the peace who is a Clerk of a Local Court, or
- (c) a justice of the peace who is employed in the Attorney General's Department and who is declared under the *Search Warrants Act 1985* to be an authorised justice for the purposes of that Act.

custody manager means the police officer having from time to time the responsibility for the care, control and safety of a person detained at a police station or other place of detention.

detention warrant means a warrant issued under section 356G.

investigation period means the period provided for by section 356D.

permanent Australian resident means a person resident in Australia whose continued presence in Australia is not subject to any limitation as to time imposed by or in accordance with law.

person of non-English speaking background means a person who is born in a country outside Australia and whose first language is not English.

telephone includes radio, facsimile and any other communication device.

Torres Strait Islander means a person who:

- (a) is a member of the Torres Strait Island race, and
 - (b) identifies as a Torres Strait Islander, and
 - (c) is accepted by the Torres Strait Island community as a Torres Strait Islander.
- (2) A reference in this Part to a person who is under arrest or a person who is arrested includes a reference to a person who is in the company of a police officer for the purpose of participating in an investigative procedure, if:
- (a) the police officer believes that there is sufficient evidence to establish that the person has committed an offence that is or is to be the subject of the investigation, or
 - (b) the police officer would arrest the person if the person attempted to leave, or

- (c) the police officer has given the person reasonable grounds for believing that the person would not be allowed to leave if the person wished to do so.
- (3) A person is not taken to be under arrest because of subsection (2) merely because the police officer is exercising a power under a law to detain and search the person or to require the person to provide information or to answer questions.
- (4) For the purposes of this Part, a person ceases to be under arrest for an offence if the person is remanded by a justice, Magistrate or court in respect of the offence.

356 Persons to whom Part applies

- (1) This Part applies to a person, including a person under the age of 18 years, who is under arrest by a police officer for an offence. It is immaterial whether the offence concerned was committed before or after the commencement of this Part or within or outside the State.
- (2) This Part does not apply to a person who is detained under the *Intoxicated Persons Act 1979*.

356A Modification of application of Part to certain persons

- (1) The regulations may make provision for or with respect to the modification of the application of this Part to:
 - (a) persons under the age of 18 years, or
 - (b) Aboriginal persons or Torres Strait Islanders, or
 - (c) persons of non-English speaking background, or
 - (d) persons who have a disability (whether physical, intellectual or otherwise).
- (2) Without limiting subsection (1), the regulations may provide for an investigation period for a person or class of persons referred to in that subsection that is shorter than the period provided for by section 356D.

356B Effect of Part on other powers and duties

(1) **Existing powers relating to arrest and other matters**

This Part does not:

- (a) confer any power to arrest a person, or to detain a person who has not been lawfully arrested, or
- (b) prevent a police officer from asking or causing a person to do a particular thing that the police officer is authorised by law to ask or cause the person to do (for example, the power to require a person to submit to a breath analysis under section 4E of the *Traffic Act 1909*), or
- (c) independently confer power to carry out an investigative procedure.

(2) **Certain evidentiary matters and rights not affected**

Nothing in this Part affects:

- (a) the operation of:
 - (i) the following provisions of the *Evidence Act 1995*:
 - section 84 (Exclusion of admissions influenced by violence and certain other conduct)
 - section 85 (Criminal proceedings: reliability of admissions by defendants)
 - section 90 (Discretion to exclude admissions)
 - section 138 (Discretion to exclude improperly or illegally obtained evidence)
 - section 139 (Cautioning of persons), or
 - (ii) any other provision of that Act, or

- (b) any law that permits or requires a person to be present at the questioning of another person who is under arrest (for example, the presence of a parent at the questioning by a police officer of the parent's child), or
- (c) the right of a person to refuse to participate in any questioning of the person or any other investigative procedure unless the person is required by law to do so, or
- (d) the right of a person to leave police custody if the person is not under arrest, or
- (e) the rights of a person under the *Bail Act 1978*.

356C Detention after arrest for purposes of investigation

- (1) A police officer may in accordance with this section detain a person, who is under arrest, for the investigation period provided for by section 356D.
- (2) A police officer may so detain a person for the purpose of investigating whether the person committed the offence for which the person is arrested.
- (3) If, while a person is so detained, the police officer forms a reasonable suspicion as to the person's involvement in the commission of any other offence, the police officer may also investigate the person's involvement in that other offence during the investigation period for the arrest. It is immaterial whether that other offence was committed before or after the commencement of this Part or within or outside the State.
- (4) The person must be:
 - (a) released (whether unconditionally or on bail) within the investigation period, or
 - (b) be brought before a justice, Magistrate or court within that period, or if it is not practicable to do so within that period, as soon as practicable after the end of that period.

- (5) A requirement in another Part of this Act, the *Justices Act 1902*, the *Bail Act 1978* or any other relevant law that a person who is under arrest be taken before a justice, Magistrate or court, without delay, or within a specified period, is affected by this Part only to the extent that the extension of the period within which the person is to be brought before such a justice, Magistrate or court is authorised by this Part.
- (6) If a person is arrested more than once within any period of 48 hours, the investigation period for each arrest, other than the first, is reduced by so much of any earlier investigation period or periods as occurred within that 48 hour period.
- (7) The investigation period for an arrest (the *earlier arrest*) is not to reduce the investigation period for a later arrest if the later arrest relates to an offence that the person is suspected of having committed after the person was released, or taken before a justice, Magistrate or court, in respect of the earlier arrest.

356D Investigation period

- (1) The investigation period is a period that begins when the person is arrested and ends at a time that is reasonable having regard to all the circumstances, but does not exceed the maximum investigation period.
- (2) The maximum investigation period is 4 hours or such longer period as the maximum investigation period may be extended to by a detention warrant.

356E Determining reasonable time

- (1) In determining what is a reasonable time for the purposes of section 356D (1), all the relevant circumstances of the particular case must be taken into account.
- (2) Without limiting the relevant circumstances that must be taken into account, the following circumstances (if relevant) are to be taken into account:
 - (a) the person's age, physical capacity and condition and mental capacity and condition,
 - (b) whether the presence of the person is necessary for the investigation,

- (c) the number, seriousness and complexity of the offences under investigation,
- (d) whether the person has indicated a willingness to make a statement or to answer any questions,
- (e) the time taken for police officers connected with the investigation (other than police officers whose particular knowledge of the investigation, or whose particular skills, are necessary to the investigation) to attend at the place where the person is being detained,
- (f) whether a police officer reasonably requires time to prepare for any questioning of the person,
- (g) the time required for facilities for conducting investigative procedures in which the person is to participate (other than facilities for complying with section 424A) to become available,
- (h) the number and availability of other persons who need to be questioned or from whom statements need to be obtained,
- (i) the need to visit the place where any offence concerned is believed to have been committed or any other place reasonably connected with the investigation of any such offence,
- (j) the time during which the person is in the company of a police officer before and after the person is arrested,
- (k) the time taken to complete any searches or other investigative procedures that are reasonably necessary to the investigation (including any search of the person or any other investigative procedure in which the person is to participate),
- (l) the time required to carry out any other activity that is reasonably necessary for the proper conduct of the investigation.

- (3) In any criminal proceedings in which the reasonableness of any period of time that a person was detained under this Part is at issue, the burden lies on the prosecution to prove on the balance of probabilities that the period of time was reasonable.

356F Certain times to be disregarded in calculating investigation period

- (1) The following times (to the extent that those times are times during which any investigative procedure in which a person who is detained under this Part is to participate is reasonably suspended or deferred) are not to be taken into account in determining how much of an investigation period has elapsed:
- (a) any time that is reasonably required to convey the person from the place where the person is arrested to the nearest premises where facilities are available for conducting investigative procedures in which the person is to participate,
 - (b) any time that is reasonably spent waiting for the arrival at the place where the person is being detained of police officers, or any other persons prescribed by the regulations, whose particular knowledge of the investigation, or whose particular skills, are necessary to the investigation,
 - (c) any time that is reasonably spent waiting for facilities for complying with section 424A to become available,
 - (d) any time that is required to allow the person (or someone else on the person's behalf) to communicate with a friend, relative, guardian, independent person, legal practitioner or consular official,
 - (e) any time that is required to allow such a friend, relative, guardian, independent person, legal practitioner or consular official to arrive at the place where the person is being detained,

- (f) any time that is required to allow the person to consult at the place where the person is being detained with such a friend, relative, guardian, independent person, legal practitioner or consular official,
 - (g) any time that is required to arrange for and to allow the person to receive medical attention,
 - (h) any time that is required to arrange for the services of an interpreter for the person and to allow the interpreter to arrive at the place where the person is being detained or become available by telephone for the person,
 - (i) any time that is reasonably required to allow for an identification parade to be arranged and conducted,
 - (j) any time that is required to allow the person to rest or receive refreshments or to give the person access to toilet and other facilities as referred to in section 356U,
 - (k) any time that is required to allow the person to recover from the effects of intoxication due to alcohol or another drug (or both),
 - (l) any time that is reasonably required to prepare, make and dispose of any application for a detention warrant or any application for a search warrant that relates to the investigation,
 - (m) any time that is reasonably required to carry out charging procedures in respect of the person.
- (2) In any criminal proceedings in which the question of whether any particular time was a time that was not to be taken into account because of this section is at issue, the burden lies on the prosecution to prove on the balance of probabilities that the particular time was a time that was not to be taken into account.

356G Detention warrant to extend investigation period

- (1) A police officer may, before the end of the investigation period, apply to an authorised justice for a warrant to extend the maximum investigation period beyond 4 hours.

- (2) The person to whom an application for a detention warrant relates, or the person's legal representative, may make representations to the authorised justice about the application.
- (3) The authorised justice may issue a warrant that extends the maximum investigation period by up to 8 hours.
- (4) The maximum investigation period cannot be extended more than once.
- (5) An authorised justice must not issue a warrant to extend the maximum investigation period unless satisfied that:
 - (a) the investigation is being conducted diligently and without delay, and
 - (b) a further period of detention of the person to whom the application relates is reasonably necessary to complete the investigation, and
 - (c) there is no reasonable alternative means of completing the investigation otherwise than by the continued detention of the person, and
 - (d) circumstances exist in the matter that make it impracticable for the investigation to be completed within the 4-hour period.

356H Procedure for applying for and issuing detention warrant

- (1) An application for a detention warrant may be made by the applicant in person or by telephone.
- (2) An application for a detention warrant made in person must be made in writing in the form prescribed by the regulations. The authorised justice must not issue the detention warrant unless the information given by the applicant in or in connection with the application is verified before the authorised justice on oath or affirmation or by affidavit. An authorised justice may administer an oath or affirmation or take an affidavit for the purposes of an application for a detention warrant.

- (3) An authorised justice must not issue a detention warrant on an application made by telephone unless satisfied that the warrant is required urgently and that it is not practicable for the application to be made in person. An application for a detention warrant made by telephone must be made by facsimile (instead of orally) if the facilities to do so are readily available for that purpose.
- (4) If it is not practicable for an application made by telephone to be made directly to an authorised justice, the application may be transmitted to the authorised justice by another person on behalf of the applicant.
- (5) An authorised justice who issues a detention warrant on an application made by telephone must:
 - (a) complete and sign the warrant, and
 - (b) furnish the warrant to the person who made the application or inform that person of the terms of the warrant and of the date and time when it was signed.
- (6) If a detention warrant is issued on an application made by telephone and the applicant was not furnished with the warrant, the applicant is to complete a form of detention warrant in the terms indicated by the authorised justice under subsection (5) and write on it the name of that authorised justice and the date and time when the warrant was signed. A form of detention warrant so completed is taken to be a detention warrant issued in accordance with this section.
- (7) A detention warrant issued on an application made by telephone is to be furnished by the authorised justice by transmitting it by facsimile, if the facilities to do so are readily available. The copy produced by that transmission is taken to be the original document.
- (8) As soon as practicable after a detention warrant is issued, the custody manager for the person to whom the warrant relates:
 - (a) must give the person a copy of the warrant, and
 - (b) must orally inform the person of the nature of the warrant and its effect.

- (9) In the case of an application for a detention warrant made by telephone, the applicant for the warrant must, within one day after the day on which the warrant is issued, give or transmit to the authorised justice concerned an affidavit setting out the information on which the application was based that was given to the authorised justice when the application was made.
- (10) In any criminal proceedings, the burden lies on the prosecution to prove on the balance of probabilities that the warrant was issued.
- (11) In this section, *facsimile* includes any electronic communication device that transmits information in a form from which written material is capable of being reproduced with or without the aid of any other device or article.

356I Information in application for detention warrant

- (1) An authorised justice must not issue a detention warrant unless the application for the warrant includes the following information:
 - (a) the nature of any offence under investigation,
 - (b) the general nature of the evidence on which the person to whom the application relates was arrested,
 - (c) what investigation has taken place and what further investigation is proposed,
 - (d) the reasons for believing that the continued detention of the person is reasonably necessary to complete the investigation,
 - (e) the extent to which the person is co-operating in the investigation,
 - (f) if a previous application for the same, or substantially the same, warrant was refused, details of the previous application and of the refusal and any additional information required by section 356J,
 - (g) any other information required by the regulations.

- (2) The applicant must provide (either orally or in writing) such further information as the authorised justice requires concerning the grounds on which the detention warrant is being sought.
- (3) Nothing in this section requires an applicant for a detention warrant to disclose the identity of a person from whom information was obtained if the applicant is satisfied that to do so might jeopardise the safety of any person.

356J Further application for detention warrant after refusal

If an application by a person for a detention warrant is refused by an authorised justice, that person (or any other person who is aware of the application) may not make a further application for the same, or substantially the same, warrant to that or any other authorised justice unless the further application provides additional information that justifies the making of the further application.

356K False or misleading information in applications

- (1) A person must not, in or in connection with an application for a detention warrant, give information to an authorised justice that the person knows to be false or misleading in a material particular.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

- (2) This section applies to an application made by telephone as well as in person.
- (3) This section applies whether or not the information given is also verified on oath or affirmation or by affidavit.
- (4) Proceedings for an offence under this section are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

356L Provisions relating to detention warrants

- (1) An authorised justice who issues a detention warrant is to cause a record to be made of all relevant particulars of the grounds the authorised justice has relied on to justify the issue of the warrant.
- (2) The regulations may make provision for or with respect to:
 - (a) the keeping of records in connection with the issue and execution of detention warrants, and
 - (b) the inspection of any such records, and
 - (c) any other matter in connection with any such records.
- (3) Any matter that might disclose the identity of a person must not be recorded under this section if the authorised justice is satisfied that to do so might jeopardise the safety of any person.
- (4) A detention warrant must be in the form prescribed by the regulations.
- (5) A detention warrant is not invalidated by any defect other than a defect that affects the substance of the warrant in a material particular.

356M Custody manager to caution, and give summary of Part to, detained person

- (1) As soon as practicable after a person who is detained under this Part comes into custody at a police station or other place of detention, the custody manager for the person must orally and in writing:
 - (a) caution the person that the person does not have to say or do anything but that anything the person does say or do may be used in evidence, and
 - (b) give the person a summary of the provisions of this Part that is to include reference to the fact that the maximum investigation period may be extended beyond 4 hours by application made to

an authorised justice and that the person, or the person's legal representative, may make representations to the authorised justice about the application.

- (2) The giving of a caution under subsection (1) (a) does not affect a requirement of any law that a person answer questions put by, or do things required by, a police officer.
- (3) After being given the information referred to in subsection (1) orally and in writing, the person is to be requested to sign an acknowledgment that the information has been so given.

356N Right to communicate with friend, relative, guardian or independent person and legal practitioner

- (1) Before any investigative procedure in which a person who is detained under this Part is to participate starts, the custody manager for the person must inform the person orally and in writing that he or she may:
 - (a) communicate, or attempt to communicate, with a friend, relative, guardian or independent person:
 - (i) to inform that person of the detained person's whereabouts, and
 - (ii) if the detained person wishes to do so, to ask the person communicated with to attend at the place where the person is being detained to enable the detained person to consult with the person communicated with, and
 - (b) communicate, or attempt to communicate, with a legal practitioner of the person's choice and ask that legal practitioner to do either or both of the following:
 - (i) attend at the place where the person is being detained to enable the person to consult with the legal practitioner,
 - (ii) be present during any such investigative procedure.

- (2) If the person wishes to make any communication referred to in subsection (1), the custody manager must, as soon as practicable:
 - (a) give the person reasonable facilities to enable the person to do so, and
 - (b) allow the person to do so in circumstances in which, so far as is practicable, the communication will not be overheard.
- (3) The custody manager must defer for a reasonable period any investigative procedure in which the person is to participate:
 - (a) to allow the person to make, or attempt to make, a communication referred to in subsection (1), and
 - (b) if the person has asked any person so communicated with to attend at the place where the person is being detained:
 - (i) to allow the person communicated with to arrive at that place, and
 - (ii) to allow the person to consult with the person communicated with at that place.
- (4) If the person has asked a friend, relative, guardian or independent person communicated with to attend at the place where the person is being detained, the custody manager must allow the person to consult with the friend, relative, guardian or independent person in private and must provide reasonable facilities for that consultation.
- (5) If the person has asked a legal practitioner communicated with to attend at the place where the person is being detained, the custody manager must:
 - (a) allow the person to consult with the legal practitioner in private and must provide reasonable facilities for that consultation, and
 - (b) if the person has so requested, allow the legal practitioner to be present during any such investigative procedure and to give advice to the person.

- (6) Anything said by the legal practitioner during any such investigative procedure is to be recorded and form part of the formal record of the investigation.
- (7) An investigative procedure is not required to be deferred under subsection (3) (b) (i) for more than 2 hours to allow a friend, relative, guardian, independent person or legal practitioner that the person has communicated with to arrive at the place where the person is being detained.
- (8) An investigative procedure is not required to be deferred to allow the person to consult with a friend, relative, guardian, independent person or legal practitioner who does not arrive at the place where the person is being detained within 2 hours after the person communicated with the friend, relative, guardian, independent person or legal practitioner. This does not affect the requirement to allow a legal practitioner to be present during an investigative procedure and to give advice to the person.
- (9) The duties of a custody manager under this section owed to a person who is detained under this Part and who is not an Australian citizen or a permanent Australian resident are in addition to the duties of the custody manager owed to the person under section 356O.
- (10) After being informed orally and in writing of his or her rights under this section, the person is to be requested to sign an acknowledgment that he or she has been so informed.

356O Right of foreign national to communicate with consular official

- (1) This section applies to a person who is detained under this Part and who is not an Australian citizen or a permanent Australian resident.
- (2) Before any investigative procedure in which a person to whom this section applies is to participate starts, the custody manager for the person must inform the person orally and in writing that he or she may:

- (a) communicate, or attempt to communicate, with a consular official of the country of which the person is a citizen, and
 - (b) ask the consular official to attend at the place where the person is being detained to enable the person to consult with the consular official.
- (3) If the person wishes to communicate with such a consular official, the custody manager must, as soon as practicable:
 - (a) give the person reasonable facilities to enable the person to do so, and
 - (b) allow the person to do so in circumstances in which, so far as is practicable, the communication will not be overheard.
- (4) The custody manager must defer for a reasonable period any investigative procedure in which the person is to participate:
 - (a) to allow the person to make, or attempt to make, the communication referred to in subsection (2), and
 - (b) if the person has asked any consular official so communicated with to attend at the place where the person is being detained:
 - (i) to allow the consular official to arrive at that place, and
 - (ii) to allow the person to consult with the consular official.
- (5) If the person has asked a consular official communicated with to attend at the place where the person is being detained, the custody manager must allow the person to consult with the consular official in private and must provide reasonable facilities for that consultation.
- (6) An investigative procedure is not required to be deferred under subsection (4) (b) (i) for more than 2 hours to allow a consular official that the person has communicated with to arrive at the place where the person is being detained.

- (7) An investigative procedure is not required to be deferred to allow the person to consult with a consular official who does not arrive at the place where the person is being detained within 2 hours after the person communicated with the consular official.
- (8) After being informed orally and in writing of his or her rights under this section, the person is to be requested to sign an acknowledgment that he or she has been so informed.
- (9) This section does not apply if the custody manager did not know, and could not reasonably be expected to have known, that the person is not an Australian citizen or a permanent Australian resident.

356P Circumstances in which certain requirements need not be complied with

- (1) A requirement imposed on a custody manager under section 356N relating to a friend, relative, guardian or independent person need not be complied with if the custody manager believes on reasonable grounds that doing so is likely to result in:
 - (a) an accomplice of the person who is detained under this Part avoiding arrest, or
 - (b) the concealment, fabrication, destruction or loss of evidence or the intimidation of a witness, or
 - (c) hindering the recovery of any person or property concerned in the offence under investigation, or
 - (d) bodily injury being caused to any other person.
- (2) Further, in the case of a requirement that relates to the deferral of an investigative procedure, a requirement imposed on a custody manager under section 356N relating to a friend, relative, guardian or independent person need not be complied with if the custody manager believes on reasonable grounds that the investigation is so urgent, having regard to the safety of other persons, that the investigative procedure should not be deferred.

356Q Provision of information to friend, relative or guardian

- (1) The custody manager for a person who is detained under this Part must inform the person orally of any request for information as to the whereabouts of the person made by a person who claims to be a friend, relative or guardian of the detained person.
- (2) The custody manager must provide, or arrange for the provision of, that information to the person who made the request unless:
 - (a) the detained person does not agree to that information being provided, or
 - (b) the custody manager believes on reasonable grounds that the person requesting the information is not a friend, relative or guardian of the detained person, or
 - (c) the custody manager believes on reasonable grounds that doing so is likely to result in:
 - (i) an accomplice of the detained person avoiding arrest, or
 - (ii) the concealment, fabrication, destruction or loss of evidence or the intimidation of a witness, or
 - (iii) hindering the recovery of any person or property concerned in the offence under investigation, or
 - (iv) bodily injury being caused to any other person.

356R Provision of information to certain other persons

- (1) The custody manager for a person who is detained under this Part must inform the person orally of any request for information as to the whereabouts of the person made by a person who claims to be:
 - (a) a legal practitioner representing the detained person, or

- (b) in the case of a detained person who is not an Australian citizen or a permanent Australian resident, a consular official of the country of which the detained person is a citizen, or
 - (c) a person (other than a friend, relative or guardian of the detained person) who is in his or her professional capacity concerned with the welfare of the detained person.
- (2) The custody manager must provide, or arrange for the provision of, that information to the person who made the request unless:
- (a) the detained person does not agree to that information being provided, or
 - (b) the custody manager believes on reasonable grounds that the person requesting the information is not the person who he or she claims to be.

356S Provision of interpreter

- (1) The custody manager for a person who is detained under this Part must arrange for an interpreter to be present for the person in connection with any investigative procedure in which the person is to participate if the custody manager has reasonable grounds for believing that the person is unable:
- (a) because of inadequate knowledge of the English language, to communicate with reasonable fluency in English, or
 - (b) because of any disability, to communicate with reasonable fluency.
- (2) The custody manager must ensure that any such investigative procedure is deferred until the interpreter arrives.
- (3) However, the custody manager need not:
- (a) arrange for an interpreter to be present if the custody manager believes on reasonable grounds that the difficulty of obtaining an interpreter makes compliance with the requirement not reasonably practicable, or

- (b) defer any such investigative procedure if the custody manager believes on reasonable grounds that the urgency of the investigation, having regard to the safety of other persons, makes such deferral unreasonable.
- (4) If an interpreter is not available to be present for the person in connection with any investigative procedure in which the person is to participate, the custody manager must instead arrange for a telephone interpreter for the person.
- (5) The custody manager must ensure that any such investigative procedure is deferred until a telephone interpreter is available.
- (6) However, the custody manager need not:
 - (a) arrange for a telephone interpreter if the custody manager believes on reasonable grounds that the difficulty of obtaining such an interpreter makes compliance with the requirement not reasonably practicable, or
 - (b) defer any such investigative procedure if the custody manager believes on reasonable grounds that the urgency of the investigation, having regard to the safety of other persons, makes such deferral unreasonable.

356T Right to medical assistance

The custody manager for a person who is detained under this Part must arrange immediately for the person to receive medical attention if it appears to the custody manager that the person requires medical attention or the person requests it on grounds that appear reasonable to the custody manager.

356U Right to reasonable refreshments and facilities

- (1) The custody manager for a person who is detained under this Part must ensure that the person is provided with reasonable refreshments and reasonable access to toilet facilities.

- (2) The custody manager for a person who is detained under this Part must ensure that the person is provided with facilities to wash, shower or bathe and (if appropriate) to shave if:
 - (a) it is reasonably practicable to provide access to such facilities, and
 - (b) the custody manager is satisfied that the investigation will not be hindered by providing the person with such facilities.

356V Custody records to be maintained

- (1) The custody manager for a person who is detained under this Part must open a custody record in the form prescribed by the regulations for the person.
- (2) The custody manager must record the following particulars in the custody record for the person:
 - (a) the date and time:
 - (i) the person arrived at the police station or other place where the custody manager is located, and
 - (ii) the person came into the custody manager's custody,
 - (b) the name and rank of the arresting officer and any accompanying officers,
 - (c) the grounds for the person's detention,
 - (d) details of any property taken from the person,
 - (e) if the person participates in any investigative procedure, the time the investigative procedure started and ended,
 - (f) details of any period of time that is not to be taken into account under section 356F (Certain times to be disregarded in calculating investigation period),

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- (g) if the person is denied any rights under this Part, the reason for the denial of those rights and the time when the person was denied those rights,
 - (h) the date and time of, and reason for, the transfer of the person to the custody of another police officer,
 - (i) details of any application for a detention warrant and the result of any such application,
 - (j) if a detention warrant is issued in respect of the person, the date and time a copy of the warrant was given to the person and the person was informed of the nature of the warrant and its effect,
 - (k) the date and time the person is released from detention,
 - (l) any other particulars prescribed by the regulations.
- (3) The custody manager is responsible for the accuracy and completeness of the custody record for the person and must ensure that the custody record (or a copy of it) accompanies the person if the person is transferred to another location for detention.
 - (4) The recording of any matters referred in this section must be made contemporaneously with the matter recorded in so far as it is practicable to do so.
 - (5) As soon as practicable after the person is released or taken before a justice, Magistrate or court, the custody manager must ensure that a copy of the person's custody record is given to the person.

356W Detention after arrest for purposes of investigation may count towards sentence

In passing sentence on a person convicted of an offence, a court may take into account any period during which the person was detained under this Part in respect of the offence and may reduce the sentence it would otherwise have passed.

356X Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that is required or permitted to be prescribed by this Part or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) In particular, the regulations may make provision for or with respect to the following:
 - (a) guidelines to be observed by police officers regarding the exercise or performance of powers, authorities, duties or functions conferred or imposed on police officers (including custody managers) by this Part,
 - (b) police officers who may act as custody managers,
 - (c) the keeping of records relating to persons who are detained under this Part, including the formal record of the conduct of investigative procedures in which such persons participate.

356Y Review of Part

- (1) The Minister is to review this Part to determine whether the policy objectives of the Part remain valid and whether the terms of the Part remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 12 months from the commencement of this Part.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period referred to in subsection (2).

[5] Part 10B, heading

Insert “**Part 10B Powers of search, powers of entry and discharge of persons in custody**” before the heading “**Powers of search**” appearing before section 357.

[6] Eleventh Schedule Savings and transitional provisions

Insert at the end of the Schedule (inserting the appropriate Part and clause numbers):

**Part Crimes Amendment (Detention after Arrest)
Act 1997**

Application of Act

Part 10A does not apply in respect of the arrest of a person before the commencement of that Part.

Schedule 2 Amendment of Children (Criminal Proceedings) Act 1987

(Section 4)

Section 9 Expedition where child in custody

Insert after section 9 (2):

- (3) If a child is detained under Part 10A of the *Crimes Act 1900*, the arrest of the child for the purposes of this section is taken to have occurred at the time the investigation period (within the meaning of that Part) ends.

[Minister's second reading speech made in—
Legislative Council on 26 June 1997
Legislative Assembly on 27 June 1997 p.m.]