



New South Wales

Crimes Legislation Amendment (Police and Public Safety) Act 1998 No 38

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Crimes Legislation Amendment (Police and Public Safety) Act 1998 No 38

Act No 38, 1998

An Act to amend the *Summary Offences Act 1988* to make further provision with respect to knives carried in public places or schools, police powers to search for and confiscate dangerous implements in public places or schools, and police powers to give directions to persons in public places; to amend the *Crimes Act 1900* to make further provision with respect to police powers to request names and addresses; to make other consequential amendments; and for other purposes. [Assented to 18 June 1998]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Crimes Legislation Amendment (Police and Public Safety) Act 1998*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Summary Offences Act 1988 No 25

The *Summary Offences Act 1988* is amended as set out in Schedule 1.

4 Amendment of Crimes Act 1900 No 40

The *Crimes Act 1900* is amended as set out in Schedule 2.

5 Consequential amendment of Fines Act 1996 No 99

The *Fines Act 1996* is amended as set out in Schedule 3.

6 Monitoring of operation of Act by Ombudsman

- (1) For the period of 12 months from the commencement of this section, the Ombudsman is to keep under scrutiny the exercise of the powers conferred on police officers by the amendments made to the *Summary Offences Act 1988* and the *Crimes Act 1900* by this Act.
- (2) For that purpose, the Ombudsman may require the Commissioner of Police to provide information about the exercise of those powers.
- (3) The Ombudsman must, as soon as practicable after the expiration of that 12-month period, prepare a report of the Ombudsman's work and activities under this section and furnish a copy of the report to the Minister for Police and the Commissioner of Police.

7 Review of Act

- (1) The Minister for Police is to review this Act to determine whether the policy objectives of this Act remain valid and whether the amendments made by this Act remain appropriate for securing those objectives.

- (2) The review is to be undertaken as soon as possible after the period of one year from the commencement of this section.
- (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 of one year.
- (4) The report under this section is to include a copy of a report received by the Minister for Police from the Ombudsman under section 6.

Schedule 1 Amendment of Summary Offences Act 1988

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

knife includes:

- (a) a knife blade, or
- (b) a razor blade, or
- (c) any other blade,

but does not include anything that is of a class or description declared by the regulations to be excluded from this definition.

[2] Part 2

Insert after the heading to Part 2:

Division 1 Offensive behaviour

[3] Part 2, Division 2

Insert after section 11:

Division 2 Dangerous behaviour

11C Custody of knife in public place or school

- (1) A person must not, without reasonable excuse (proof of which lies on the person), have in his or her custody a knife in a public place or a school.

Maximum penalty: 5 penalty units or, in the case of a person dealt with previously for a knife-related offence, 10 penalty units or imprisonment for 12 months, or both.

- (2) Without limitation, it is a reasonable excuse for the purposes of this section for a person to have custody of a knife, if:
- (a) the custody is reasonably necessary in all the circumstances for any of the following:
 - (i) the lawful pursuit of the person's occupation,
 - (ii) the preparation or consumption of food or drink,
 - (iii) participation in a lawful entertainment, recreation or sport,
 - (iv) the exhibition of knives for retail or other trade purposes,
 - (v) an organised exhibition by knife collectors,
 - (vi) the wearing of an official uniform,
 - (vii) genuine religious purposes, or
 - (b) the custody is reasonably necessary in all the circumstances during travel to or from or incidental to an activity referred to in paragraph (a), or
 - (c) the custody is of a kind prescribed by the regulations.
- (3) However, it is not a reasonable excuse for the purposes of this section for a person to have custody of a knife solely for the purpose of self defence or the defence of another person.
- (4) For the purposes of subsection (1), a person is taken to have been dealt with previously for a knife-related offence if the person:
- (a) has been issued with a notice under section 29A in respect of the offence and the person has paid the amount specified in the notice or the amount specified in any process issued subsequent to such a notice, or

- (b) has been convicted of the offence, or
 - (c) has been charged with the offence and the court hearing the charge has made an order in relation to the offence under section 556A of the *Crimes Act 1900*.
- (5) In this section, knife-related offence means:
- (a) an offence under this section or section 11B or 11E, or
 - (b) any other offence that is punishable on conviction by penal servitude or imprisonment for 2 years or more if a knife was used in the commission of the offence, or
 - (c) an offence under a law of the Commonwealth or of another State or of a Territory that is punishable on conviction by penal servitude or imprisonment for 2 years or more if a knife was used in the commission of the offence.
- (6) The regulations may provide that this section does not apply to or in relation to any specified class or description of knife.

11D Parents who allow children to carry knives

- (1) The parent of a child, being a child:
- (a) who is under the age of 18 years, and
 - (b) who commits an offence against section 11C,
- is guilty of an offence if the parent knowingly authorised or permitted the child to commit the offence.
- Maximum penalty: 5 penalty units.
- (2) The parent of a child may be proceeded against and dealt with under this section whether or not the child has been proceeded against or dealt with under section 11C.

- (3) Nothing in this section affects the liability of the parent's child for an offence committed by the child against section 11C.
- (4) If an act or omission constitutes an offence:
- (a) under this section, and
 - (b) under section 11 of the *Children (Protection and Parental Responsibility) Act 1997*,
- the offender is not liable to be punished twice in respect of the act or omission.
- (5) In this section, *parent* of a child has the same meaning it has in the *Children (Protection and Parental Responsibility) Act 1997*.

[4] Sections 10 and 10AA

Renumber section 10 and section 10AA as section 11B and section 11E, respectively, and insert them in appropriate order in Division 2 of Part 2.

[5] Section 10AB (as inserted by Summary Offences Amendment Act 1997 No 148)

Renumber the section as section 11F and insert it in appropriate order in Division 2 of Part 2.

[6] Section 11F (as renumbered by item [5])

Omit "or knife blade" wherever occurring.

[7] Part 2

Insert before section 12:

Division 3 Miscellaneous

[8] Part 5

Omit the heading to Part 5. Insert instead:

Part 5 Police powers for public protection in public places and schools

Division 1 Interpretation

28 Definitions

In this Part:

confiscated thing means any thing that is confiscated under Division 3.

dangerous implement includes:

- (a) a knife, or
- (b) a firearm (within the meaning of the *Firearms Act 1996*), or
- (c) a prohibited weapon or prohibited article (within the meaning of the *Prohibited Weapons Act 1989*), or
- (d) an offensive implement within the meaning of section 11B,

but does not include anything that is of a class or description declared by the regulations to be excluded from this definition.

electronic metal detection device means an electronic device that is capable of detecting the presence of metallic objects.

initial confiscation period, in relation to a confiscated thing, means the period of 28 days after the thing is confiscated.

Division 2 Search powers

28A Power to search for knives and other dangerous implements

- (1) If a police officer suspects on reasonable grounds that a person who is in a public place or a school has a dangerous implement in his or her custody, the police

officer may request the person to submit to a search comprising any or all of the following procedures:

- (a) a search of the person conducted by passing an electronic metal detection device over or in close proximity to the person's outer garments and to any bag or other personal effect that the person has with him or her and is within view,
 - (b) a search of the person conducted by quickly running the hands over the person's outer garments,
 - (c) an examination of any bag or other personal effect that the person has with him or her and is within view, *so* long as it can be examined with reasonable convenience to the person,
 - (d) in the case of a person who is in a school and is a student at the school, a search of the person's locker at the school and an examination of any bag or other personal effect that is inside the locker.
- (2) In conducting a search of a person under subsection (1), a police officer:
- (a) must not request the person to remove any item of clothing being worn by the person, other than a hat, gloves, coat or jacket, and
 - (b) may, if the police officer has asked the person to remove a coat or jacket, treat the person's outer garments as being the person's outer garments after the coat or jacket has been removed, and
 - (c) if reasonably possible to do so, should carry out any examination of a bag that the person has with him or her by allowing the person to hold the bag open and move the contents so that they can be more easily viewed by the police officer, and
 - (d) must, in the case of a search of a student in a school and if reasonably possible to do so, allow the student to nominate an adult who is on the school premises to be present during the search.

- (3) For the purposes of this section, the fact that a person is present in a location with a high incidence of violent crime may be taken into account in determining whether there are reasonable grounds to suspect that the person has a dangerous implement in his or her custody.
- (4) A police officer may request a person to submit to a search under subsection (1) only if the police officer:
- (a) provides evidence to the person that he or she is a police officer (unless the police officer is in uniform), and
 - (b) provides his or her name and place of duty, and
 - (c) informs the person of the reason for the search, and
 - (d) warns the person that failure to submit to the search may be an offence.
- (5) If a police officer has complied with subsection (4) in requesting that a person submit to a search and the person initially refuses to submit to the search, the police officer may again request the person to submit to the search and, in that case, must again warn the person that failure to submit to the search may be an offence.
- (6) In conducting a search of a person under this section, a police officer may request that the person produce either or both of the following:
- (a) any thing that the police officer has detected or seen on or with the person during the search and has reasonable grounds to suspect is a dangerous implement,
 - (b) any thing detected during the search by an electronic detection device that the device indicates is of a metallic nature,
- but only if the police officer has warned the person that failure to produce any thing detected or seen by the police officer during the search may be an offence.

- (7) A person must not, without reasonable excuse (proof of which lies on the person):
- (a) fail or refuse to comply with a request made by a police officer in accordance with subsection (5) for the person to submit to a search, or
 - (b) fail or refuse to produce any thing detected or seen on or with the person in such a search when requested to do so by a police officer in accordance with subsection (6).

Maximum penalty: 5 penalty units.

- (8) Regulations may be made for or with respect to the manner in which police officers are to conduct searches under this section.
- (9) In this section, *locker* means a facility for the storage of a student's personal effects at a school.

Division 3 Confiscation powers

28B Confiscated knives and other dangerous implements

- (1) A police officer may, in a public place or a school:
- (a) take possession of any thing that the police officer has reasonable grounds to suspect is a dangerous implement that is unlawfully in a person's custody, and
 - (b) confiscate the thing.
- (2) Any confiscated thing is to be dealt with as follows:
- (a) if provision is also made by or under this Act (other than this Division) or by or under any other Act for the confiscation of the thing—the thing is to be dealt with as so provided and the provisions of sections 28C–28E of this Act do not apply to the confiscation,
 - (b) in any other case—the thing is to be dealt with in accordance with this Division.

28C Applications for return of confiscated things

- (1) The person from whom a thing is confiscated under this Division or its owner may, within the initial confiscation period, apply to the Local Area Commander of Police in the area where the thing was confiscated for its return.
- (2) An application for the return of the confiscated thing must be in writing and state why the thing should in all the circumstances be returned.
- (3) If the person seeking the return of the confiscated thing is under the age of 18 years, the application for its return may be made only by a parent or guardian of the person, or a person who has lawful care or custody of the person, on his or her behalf.

28D Appeals to Local Court against refusals to return confiscated things

- (1) If the Local Area Commander of Police fails or refuses to return a confiscated thing at the expiration of the initial confiscation period to a person who has made an application for its return under section 28C, the person may appeal against the failure or refusal to a Local Court within 28 days of the expiration of the initial confiscation period.
- (2) On hearing such an appeal, a Local Court may order that the confiscated thing:
 - (a) be forfeited to the Crown, or
 - (b) be returned to the applicant or some other appropriate person.
- (3) A Local Court hearing an appeal under this section is to be constituted by a Magistrate sitting alone.

28E Forfeiture of confiscated things

- (1) A confiscated thing is forfeited to the Crown:
 - (a) if an application for the return of the thing is not made within the initial confiscation period—at the expiration of that period, or

- (b) in a case where such an application is made within the initial confiscation period and the thing is not returned within that period:
 - (i) if an appeal under section 28D is not made within 28 days after the expiration of the initial confiscation period—at the expiration of that period, or
 - (ii) if an appeal under section 28D is made within 28 days after the expiration of the initial confiscation period—when an order made under section 28D (2) (a) in respect of the thing takes effect.
- (2) The Local Area Commander of Police (or such other person as the Commissioner of Police may direct) may dispose of a confiscated thing forfeited to the Crown under this section in accordance with the directions of the Commissioner of Police.
- (3) In this section, a reference to the disposal of a confiscated thing includes a reference to the destruction of the thing.

Division 4 Powers to give directions

28F Power to give reasonable directions in public places

- (1) A police officer may give a direction to a person in a public place if the police officer has reasonable grounds to believe that the person's behaviour or presence in the place (referred to in this section as relevant conduct):
 - (a) is obstructing another person or persons or traffic, or
 - (b) constitutes harassment or intimidation of another person or persons, or
 - (c) is causing or likely to cause fear to another person or persons, so long as the relevant conduct would be such as to cause fear to a person of reasonable firmness.

- (2) The other person or persons referred to in subsection (1) need not be in the public place but must be near that place at the time the relevant conduct is being engaged in.
- (3) Such a direction must be reasonable in the circumstances for the purpose of reducing or eliminating the obstruction, harassment, intimidation or fear.
- (4) A police officer may give a direction under subsection (1) only if before giving the direction the police officer:
 - (a) provides evidence to the person that he or she is a police officer (unless the police officer is in uniform), and
 - (b) provides his or her name and place of duty, and
 - (c) informs the person of the reason for the direction, and
 - (d) warns the person that failure to comply with the direction may be an offence.
- (5) If a police officer has complied with subsection (4) in giving a direction to a person and the person initially refuses to comply with the direction, the police officer may again give the direction and, in that case, must again warn the person that failure to comply with the direction may be an offence.
- (6) A person must not, without reasonable excuse (proof of which lies on the person), fail or refuse to comply with a direction given in accordance with subsection (5).

Maximum penalty: 2 penalty units.
- (7) A person is not guilty of an offence under subsection (6) unless it is established that the person persisted, after the direction concerned was made, to engage in the relevant conduct.
- (8) For the purposes of subsection (1) (c), no person of reasonable firmness need actually be, or be likely to be, present at the scene.

28G Limitation on exercise of police powers

This Division does not authorise a police officer to give directions in relation to:

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

Division 5 General

28H Admissibility of evidence of searches

Evidence of a thing discovered during or as a result of a search carried out in accordance with this Part is not inadmissible merely because the thing is a dangerous implement of a different nature from that referred to in the reason given under section 28A (4) (c).

28I Part does not derogate from other police powers

- (1) Nothing in this Part limits any powers, authorities, duties or functions that police officers may have apart from this Part.
- (2) In particular, the fact that a police officer conducts a search of a person under this Part does not prevent the police officer from exercising, whether during or after the search, any other powers of search or seizure that the police officer may have.

[9] Section 28 Violent disorder

Re-number existing section 28 as section 11A and insert it in appropriate order in Division 1 of Part 2.

[10] Section 29A

Insert after section 29:

29A Penalty notices: custody of knives in public place or school and failure to comply with police directions

- (1) A police officer to whom it appears that a person has committed an offence under section 11C or 28F may serve on the apparent offender a notice to the effect that, if it is not desired to have the matter determined by a court, the person served may, within a time specified in the notice, pay an amount prescribed by the regulations to an officer so specified.
- (2) A notice under this section may be served personally or by post.
- (3) If the amount prescribed for an alleged offence under section 11C or 28F is paid under this section, no person is liable for any further proceedings for the alleged offence.
- (4) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affects or prejudices, any civil claim, action or proceeding arising out of the same occurrence.
- (5) This section is to be read as supplementing, and not as derogating from:
 - (a) any other provision of this Act or the regulations, or
 - (b) a provision of any other Act or statutory rule,in relation to proceedings which may be taken in respect of offences.
- (6) A notice may be issued under this section to a person only if the person has not previously been dealt with for a knife-related offence as referred to in section 11C (4) and (5).

Schedule 2 Amendment of Crimes Act 1900

(Section 4)

Section 563

Insert before section 564:

563 Bower to demand name and address

- (1) A police officer may request a person whose name or address is, or whose name and address are, unknown to the officer to state his or her name or residential address (or both) if the officer believes on reasonable grounds that the person may be able to assist in the investigation of an alleged indictable offence because the person was at or near the place where the alleged offence occurred, whether before, when, or soon after it occurred.
- (2) A police officer may make a request under subsection (1) only if before making the request the police officer:
 - (a) provides evidence to the person that he or she is a police officer (unless the police officer is in uniform), and
 - (b) provides his or her name and place of duty, and
 - (c) informs the person of the reason for the request, and
 - (d) warns the person that failure to comply with the request may be an offence.
- (3) A person must not, without reasonable excuse (proof of which lies on the person), in response to a request made by a police officer in accordance with this section:
 - (a) fail or refuse to comply with the request, or
 - (b) state a name that is false in a material particular, or
 - (c) state an address other than the full and correct address of his or her residence.

Maximum penalty: 2 penalty units.

- (4) A police officer may request a person to provide proof of the person's name and address.
- (5) Proceedings for an offence under this section are to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.
- (6) Nothing in this section limits any powers, authorities, duties or functions that police officers may have apart from this section.

Schedule 3 Amendment of Fines Act 1996

(Section 5)

Schedule 1 Statutory provisions under which penalty notices issued

Insert “or 29A” after “section 29” in the matter relating to the *Summary Offences Act 1988*.

[Minister’s second reading speech made in—
Legislative Assembly on 28 April 1998
Legislative Council on 5 May 1998]