



New South Wales

Terrorism (Police Powers) Act 2002 No 115

Contents

| | Page |
|---|------|
| Part 1 Preliminary | |
| 1 Name of Act | 2 |
| 2 Commencement | 2 |
| 3 Definition of "terrorist act" | 2 |
| 4 Other definitions | 3 |
| Part 2 Authorisation to exercise special powers | |
| 5 Authorisation of special powers to prevent imminent terrorist acts | 5 |
| 6 Authorisation of special powers to investigate terrorist act in the immediate period after its occurrence | 5 |
| 7 Persons, vehicles or areas targeted by authorisation | 5 |
| 8 Who may give an authorisation | 6 |
| 9 Ministerial concurrence or confirmation | 6 |
| 10 Authorisation may be given orally or in writing | 6 |
| 11 Duration of authorisation | 7 |
| 12 Revocation of authorisation | 7 |

Contents

| | Page |
|---|------|
| 13 Authorisation not open to challenge | 7 |
| 14 Exercise of special powers conferred by authorisation by police officers | 8 |
| Part 3 Special powers | |
| 15 Purposes for which special powers may be exercised | 9 |
| 16 Power to obtain disclosure of identity | 9 |
| 17 Power to search persons | 9 |
| 18 Power to search vehicles | 10 |
| 19 Power to enter and search premises | 10 |
| 20 Power to seize and detain things | 11 |
| 21 Use of force generally by police officers | 11 |
| 22 Offence to obstruct or hinder search or other powers | 11 |
| 23 Supplying police officer's details and other information | 11 |
| Part 4 Recognised law enforcement officers | |
| 24 Recognition of other law enforcement officers | 13 |
| 25 Recognised law enforcement officers to have police powers | 13 |
| Part 5 Miscellaneous | |
| 26 Report to be given to Attorney General and Police Minister | 14 |
| 27 Return of seized things | 14 |
| 28 Disposal of property on application to court | 14 |
| 29 Protection of police acting in execution of authorisation | 15 |
| 30 Relationship with other Acts | 15 |
| 31 Act to bind Crown | 16 |
| 32 Regulations | 16 |
| 33 Onus of proof of reasonable excuse | 16 |
| 34 Proceedings for offences | 16 |
| 35 Amendment of State Emergency and Rescue Management Act 1989 No 165 | 16 |
| 36 Review of Act | 16 |
| Schedules | |
| 1 Conduct of personal searches | 18 |
| 2 Amendments to the State Emergency and Rescue Management Act 1989 | 23 |



New South Wales

Terrorism (Police Powers) Act 2002 No 115

Act No 115, 2002

An Act to give special powers to police officers to deal with terrorist acts; to amend the *State Emergency and Rescue Management Act 1989* to give police officers additional powers to protect people in emergencies; and for other purposes.
[Assented to 5 December 2002]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Terrorism (Police Powers) Act 2002*.

2 Commencement

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

3 Definition of “terrorist act”

(1) **General**

In this Act, *terrorist act* means an action where:

- (a) the action falls within subsection (2) and does not fall within subsection (3), and
- (b) the action is done with the intention of advancing a political, religious or ideological cause, and
- (c) the action is done with the intention of:
 - (i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country, or
 - (ii) intimidating the public or a section of the public.

(2) **Action included**

Action falls within this subsection if it:

- (a) causes serious harm that is physical harm to a person, or
- (b) causes serious damage to property, or
- (c) causes a person’s death, or
- (d) endangers a person’s life, other than the life of the person taking the action, or
- (e) creates a serious risk to the health or safety of the public or a section of the public, or
- (f) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to:

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- (i) an information system, or
 - (ii) a telecommunications system, or
 - (iii) a financial system, or
 - (iv) a system used for the delivery of essential government services, or
 - (v) a system used for, or by, an essential public utility, or
 - (vi) a system used for, or by, a transport system.

(3) **Action excluded**

Action falls within this subsection if it:

- (a) is advocacy, protest, dissent or industrial action, and
- (b) is not intended:
 - (i) to cause serious harm that is physical harm to a person, or
 - (ii) to cause a person's death, or
 - (iii) to endanger the life of a person, other than the person taking the action, or
 - (iv) to create a serious risk to the health or safety of the public or a section of the public.

(4) **Application**

In this section:

- (a) a reference to any person or property is a reference to any person or property wherever situated, within or outside the State (including within or outside Australia), and
- (b) a reference to the public includes a reference to the public of another State or Territory or of a country other than Australia.

Note. The above definition is in the same terms as those used in Part 5.3 of the Commonwealth Criminal Code (as inserted by the *Security Legislation Amendment (Terrorism) Act 2002* of the Commonwealth), except that threats of terrorist acts are excluded since it is not necessary to refer to threats in the context in which the expression is used in this Act.

4 Other definitions

(1) In this Act:

authorisation means an authorisation under this Act given in accordance with Part 2.

Police Minister means the Minister administering the *Police Act 1990*.

premises includes a building, structure or place, whether built on or not.

recognised law enforcement officer means a person appointed under Part 4.

serious indictable offence means an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more.

target of an authorisation—see section 7 (2).

vehicle includes a vessel or an aircraft.

- (2) For the purposes of this Act:
- (a) a person in an area that is the target of an authorisation includes a person who is about to enter the area or who has recently left the area, and
 - (b) a vehicle in an area that is the target of an authorisation includes a vehicle that is about to enter the area or that has recently left the area.
- (3) Notes included in this Act do not form part of this Act.

Part 2 Authorisation to exercise special powers

5 Authorisation of special powers to prevent imminent terrorist acts

An authorisation for the exercise of the special powers conferred by this Act may be given in accordance with this Part if the police officer giving the authorisation:

- (a) is satisfied that there are reasonable grounds for believing that there is an imminent threat of a terrorist act, and
- (b) is satisfied that the exercise of those powers will substantially assist in preventing the terrorist act.

6 Authorisation of special powers to investigate terrorist act in the immediate period after its occurrence

An authorisation for the exercise of the special powers conferred by this Act may also be given in accordance with this Part if the police officer giving the authorisation:

- (a) is satisfied that there are reasonable grounds for believing that a terrorist act has been committed, and
- (b) is satisfied that the exercise of those powers will substantially assist in apprehending the persons responsible for committing the terrorist act.

7 Persons, vehicles or areas targeted by authorisation

- (1) An authorisation may authorise the exercise of the special powers conferred by this Act:
 - (a) for the purpose of finding a particular person named or described in the authorisation, or
 - (b) for the purpose of finding a particular vehicle, or a vehicle of a particular kind, described in the authorisation, or
 - (c) for the purpose of preventing a terrorist act in a particular area described in the authorisation (or apprehending in any such area the persons responsible for committing a terrorist act),or for any combination of those purposes.
- (2) The person, vehicle or area is referred to in this Act as the *target* of the authorisation.

- (3) Without limiting subsection (1) (a), a person may be described by the use of a photograph or drawing.

8 Who may give an authorisation

- (1) An authorisation may be given by the Commissioner of Police or by a Deputy Commissioner of Police.
- (2) If the Commissioner of Police or a Deputy Commissioner of Police is not able to be contacted when an authorisation is sought as a matter of urgency, a police officer above the rank of superintendent who is able to be contacted may give an authorisation in accordance with this Part.

9 Ministerial concurrence or confirmation

- (1) An authorisation may only be given with the concurrence of the Police Minister, except as provided by subsection (2).
- (2) An authorisation may be given without the concurrence of the Police Minister if he or she is not able to be contacted at the time it is given.
- (3) If the authorisation is given without the concurrence of the Police Minister:
- (a) the Police Minister is to be notified of the authorisation as soon as the Police Minister is available to be notified, and
 - (b) in the case of an authorisation under section 5—the authorisation ceases to have effect if the Police Minister has not confirmed the authorisation within 48 hours after the authorisation was given.

Note. The Police Minister may at any time direct that an authorisation be revoked—see section 12 (1).

10 Authorisation may be given orally or in writing

- (1) An authorisation may be given orally or by instrument in writing.
- (2) If the authorisation is given orally, it must be confirmed by instrument in writing as soon as it is reasonably practicable to do so.
- (3) An authorisation must:
- (a) state that it is given under this Act, and
 - (b) describe the general nature of the threatened terrorist act or suspected terrorist act to which it applies, and
 - (c) name or describe the person, vehicle or area targeted by the authorisation, and

- (d) specify the time it ceases to have effect.

11 Duration of authorisation

- (1) An authorisation given has effect, unless sooner revoked, during the period beginning at the time it is given and ending at the time specified in the authorisation.
- (2) The period an authorisation has effect must not exceed:
 - (a) in the case of an authorisation under section 5—7 days beginning with the day on which it is given, or
 - (b) in the case of an authorisation under section 6—24 hours beginning with the time at which it is given.
- (3) The period an authorisation has effect may be extended by the giving of a further authorisation, with the concurrence of the Police Minister, in accordance with this Part so long as the combined period does not exceed:
 - (a) in the case of an authorisation under section 5—14 days beginning with the day on which it was first given, or
 - (b) in the case of an authorisation under section 6—48 hours beginning with the time at which it was first given.

12 Revocation of authorisation

- (1) The police officer who gives an authorisation, or a police officer of a more senior rank, may revoke it at any time, and must revoke it if directed to do so by the Police Minister.
- (2) The cessation of an authorisation (by revocation or otherwise) does not affect anything lawfully done in reliance on the authorisation before it ceased to have effect.

13 Authorisation not open to challenge

- (1) An authorisation (and any decision of the Police Minister under this Part with respect to the authorisation) may not be challenged, reviewed, quashed or called into question on any grounds whatsoever before any court, tribunal, body or person in any legal proceedings, or restrained, removed or otherwise affected by proceedings in the nature of prohibition or mandamus.

- (2) For the purposes of subsection (1), *legal proceedings* includes an investigation into police or other conduct under any Act (other than the *Police Integrity Commission Act 1996*).

14 Exercise of special powers conferred by authorisation by police officers

- (1) The special powers conferred by this Act may be exercised by any police officer.
- (2) A police officer may exercise those powers whether or not the officer has been provided with or notified of the terms of the authorisation.

Note. The special powers of a police officer under this Act may also be exercised by a recognised law enforcement officer as referred to in Part 4.

Part 3 Special powers

15 Purposes for which special powers may be exercised

The special powers under this Part may be exercised for the purposes for which an authorisation is given under this Act.

Note. See section 7 for purposes of an authorisation.

16 Power to obtain disclosure of identity

(1) A police officer may request a person whose identity is unknown to the officer to disclose his or her identity if:

- (a) the officer suspects on reasonable grounds that the person is the target of an authorisation (or the person is found in suspicious circumstances in the company of the target of the authorisation), or
- (b) the person is in or on a vehicle that the officer suspects on reasonable grounds is the target of an authorisation, or
- (c) the person is in an area that is the target of an authorisation.

(2) A person who is so requested to disclose his or her identity must not, without reasonable excuse, fail or refuse to comply with the request.

Maximum penalty: 50 penalty units or 12 months imprisonment, or both.

(3) A person must not, without reasonable excuse, in response to any such request:

- (a) give a name that is false in a material particular, or
- (b) give an address other than the person's full and correct address.

Maximum penalty: 50 penalty units or 12 months imprisonment, or both.

(4) A police officer may request a person who is requested under this section to disclose his or her identity to provide proof of his or her identity.

17 Power to search persons

(1) A police officer may, without a warrant, stop and search a person, and anything in the possession of or under the control of the person, if:

- (a) the officer suspects on reasonable grounds that the person is the target of an authorisation (or the person is found in suspicious circumstances in the company of the target of the authorisation), or
 - (b) the person is in or on a vehicle that the officer suspects on reasonable grounds is the target of an authorisation, or
 - (c) the person is in an area that is the target of an authorisation.
- (2) Schedule 1 applies to the search of a person conducted under this section.
- Note.** Schedule 1 provides for the carrying out of ordinary searches, frisk searches and strip searches. A strip search may not be carried out unless the person is suspected of being the target of an authorisation.
- (3) A police officer may detain a person for so long as is reasonably necessary to conduct a search under this section.

18 Power to search vehicles

- (1) A police officer may, without a warrant, stop and search a vehicle, and anything in or on the vehicle, if:
- (a) the officer suspects on reasonable grounds that the vehicle is the target of an authorisation, or
 - (b) the officer suspects on reasonable grounds that a person in or on the vehicle is the target of an authorisation, or
 - (c) the vehicle is in an area that is the target of an authorisation.
- (2) A police officer may detain a vehicle for so long as is reasonably necessary to conduct a search under this section.

19 Power to enter and search premises

- (1) A police officer may, without a warrant, enter and search any premises, if:
- (a) the officer suspects on reasonable grounds that a person who is the target of an authorisation may be in the premises, or
 - (b) the officer suspects on reasonable grounds that a vehicle that is the target of an authorisation may be in the premises, or
 - (c) the premises are in an area that is the target of an authorisation.
- (2) The police officer must do as little damage as possible.

20 Power to seize and detain things

- (1) A police officer may, in connection with a search under this Part, seize and detain:
 - (a) all or part of a thing (including a vehicle) that the officer suspects on reasonable grounds may be used, or may have been used, to commit a terrorist act, or
 - (b) all or part of a thing (including a vehicle) that the officer suspects on reasonable grounds may provide evidence of the commission of a serious indictable offence (whether or not related to a terrorist act).
- (2) A power conferred by this section to seize and detain a thing includes:
 - (a) a power to remove a thing from the place where it is found, and
 - (b) a power to guard the thing in or on the place where it is found.

21 Use of force generally by police officers

It is lawful for a police officer exercising a power under this Part in relation to a person or a thing, and anyone helping the police officer, to use such force as is reasonably necessary to exercise the power.

22 Offence to obstruct or hinder search or other powers

A person must not, without reasonable excuse, obstruct or hinder a police officer in the exercise of a power under this Part to stop and search a person or vehicle, to enter and search premises or to seize and detain a thing.

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

23 Supplying police officer's details and other information

- (1) A police officer must, before or at the time of exercising a power under this Part, or as soon as is reasonably practicable after exercising the power, provide the person subject to the exercise of the power with the following if requested to do so:
 - (a) evidence that the police officer is a police officer (unless the police officer is in uniform),
 - (b) the name of the police officer and his or her place of duty,
 - (c) the reason for the exercise of the power.

Section 23 Terrorism (Police Powers) Act 2002 No 115

Part 3 Special powers

- (2) The Commissioner of Police is to arrange for a written statement to be provided, on request made within 12 months of the search, to a person who was searched, or whose vehicle or premises were searched, under this Act stating that the search was conducted in pursuance of this Act.

Part 4 Recognised law enforcement officers

24 Recognition of other law enforcement officers

- (1) The Commissioner of Police or a Deputy Commissioner of Police may, by instrument in writing, appoint any of the following as recognised law enforcement officers for the purposes of this Act if of the opinion it is necessary for the more effective exercise of powers under this Act with respect to terrorist acts:
 - (a) members of the Australian Federal Police,
 - (b) members of the police force of another State or a Territory.
- (2) An appointment as a recognised law enforcement officer may be made subject to conditions.
- (3) If an individual is appointed as a recognised law enforcement officer, the instrument of appointment must specify the term of the appointment (not exceeding 14 days).
- (4) The Commissioner of Police or a Deputy Commissioner of Police may, at any time, revoke the appointment of a person or persons as recognised law enforcement officers.
- (5) Recognised law enforcement officers remain under the command and control of the police force to which they belong during the term of their appointment under this Part.

25 Recognised law enforcement officers to have police powers

- (1) A recognised law enforcement officer has and may exercise all the functions (including powers, immunities, liabilities and responsibilities) that a police officer of the rank of constable duly appointed under the *Police Act 1990* has and may exercise under this Act or, in any matter arising under this Act, under any law of the State (including the common law).
- (2) Those functions extend to functions conferred after the commencement of this section.
- (3) The conferral of functions by this section on a recognised law enforcement officer is subject to any applicable conditions of the officer's appointment as a recognised law enforcement officer.

Part 5 Miscellaneous

26 Report to be given to Attorney General and Police Minister

As soon as practicable after an authorisation given under this Act ceases to have effect, the Commissioner of Police is to furnish a report, in writing, to the Attorney General and the Police Minister:

- (a) setting out the terms of the authorisation and the period during which it had effect, and
- (b) identifying as far as reasonably practicable the matters that were relied on for giving the authorisation, and
- (c) describing generally the powers exercised pursuant to the authorisation and the manner in which they were exercised, and
- (d) specifying the result of the exercise of those powers.

27 Return of seized things

(1) A police officer who, in exercising a special power conferred by or under this Act, seizes a thing, must return the thing to the owner or person who had lawful possession of the thing before it was seized or came into custody if the officer is satisfied that:

- (a) its retention as evidence is not required, and
- (b) it is lawful for the person to have possession of the thing.

(2) This section is subject to any order made under section 28.

28 Disposal of property on application to court

(1) A court may, on application by any person, make an order that property seized by a police officer exercising a special power conferred by or under this Act:

- (a) be delivered to the person who appears to be lawfully entitled to the property, or
- (b) if that person cannot be ascertained, be dealt with as the court thinks fit.

- (2) In determining an application the court may do any one or more of the following things:
- (a) adjust rights to property as between people who appear to be lawfully entitled to the same property or the same or different parts of property,
 - (b) make a finding or order as to the ownership and delivery of property,
 - (c) make a finding or order as to the liability for and payment of expenses incurred in keeping property in police custody,
 - (d) order, if the person who is lawfully entitled to the property cannot be ascertained, that the property be forfeited to the State,
 - (e) make any necessary incidental or ancillary orders.
- (3) Property ordered to be forfeited to the State:
- (a) in the case of money, is to be paid to the Treasurer for payment into the Consolidated Fund, or
 - (b) in any other case, may be sold by or on behalf of the Commissioner of Police at public auction and the proceeds of sale are to be paid to the Treasurer for payment into the Consolidated Fund.
- (4) If the property is not money or is not fit or suitable for sale, or fails to sell at public auction, it is to be disposed of in accordance with the directions of the Commissioner of Police.

29 Protection of police acting in execution of authorisation

If any proceedings (whether criminal or not) are brought against any police officer for anything done or purportedly done by the police officer in pursuance of an authorisation under this Act, the police officer is not to be convicted or held liable merely because:

- (a) there was an irregularity or defect in the giving of the authorisation, or
- (b) the person who gave the authorisation lacked the jurisdiction to do so.

30 Relationship with other Acts

- (1) Nothing in any other Act limits any powers, or prevents a police officer from exercising any powers, that the police officer has under this Act.

- (2) Nothing in this Act limits any powers, or prevents a police officer from exercising any powers, that the police officer has under any other Act.

31 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

32 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may create offences punishable by a penalty not exceeding 100 penalty units.

33 Onus of proof of reasonable excuse

The onus of proof of reasonable excuse in proceedings for an offence against this Act or the regulations lies on the person accused of the offence.

34 Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be dealt with summarily by a Local Court.

35 Amendment of State Emergency and Rescue Management Act 1989 No 165

The *State Emergency and Rescue Management Act 1989* is amended as set out in Schedule 2.

36 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act 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 date of assent to this Act and every 12 months thereafter.

- (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 each period referred to in subsection (2).

Schedule 1 Conduct of personal searches

(Section 17)

1 Application of Schedule

This Schedule applies to any search of a person carried out, or authorised to be carried out, by a police officer under this Act, except as otherwise provided by this Act or the regulations.

2 Definitions

In this Schedule:

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

frisk search means:

- (a) a search of a person conducted by quickly running the hands over the person's outer clothing or by passing an electronic metal detection device over or in close proximity to the person's outer clothing, and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person, including an examination conducted by passing an electronic metal detection device over or in close proximity to that thing.

ordinary search means a search of a person or of things in the possession of a person that may include:

- (a) requiring the person to remove only his or her overcoat, coat or jacket or similar article of clothing and any gloves, shoes and hat, and
- (b) an examination of those items.

strip search means a search of a person or of things in the possession of a person that may include:

- (a) requiring the person to remove all of his or her clothes, and
- (b) an examination of the person's body (but not of the person's body cavities) and of those clothes.

3 Frisk searches and ordinary searches

- (1) A police officer who is authorised to search a person may carry out a frisk search or an ordinary search of the person for any purpose for which the search may be conducted.
- (2) In conducting a frisk search, a police officer may, if the police officer has asked the person to remove a coat or jacket, treat the person's outer clothing as being the person's outer clothing after the coat or jacket has been removed.

4 Strip searches

A police officer who is authorised to search a person may conduct a strip search of the person:

- (a) if the person is suspected of being the target of an authorisation, and
- (b) if the police officer suspects on reasonable grounds that it is necessary to conduct a strip search of the person for the purposes of the search and that the seriousness and urgency of the circumstances require the strip search to be carried out.

5 Preservation of privacy and dignity during search

- (1) A police officer who searches a person must, as far as is reasonably practicable in the circumstances, comply with this clause.
- (2) The police officer must inform the person to be searched of the following matters:
 - (a) whether the person will be required to remove clothing during the search,
 - (b) why it is necessary to remove the clothing.
- (3) The police officer must ask for the person's co-operation.
- (4) The police officer must conduct the search:
 - (a) in a way that provides reasonable privacy for the person searched, and
 - (b) as quickly as is reasonably practicable.
- (5) The police officer must conduct the least invasive kind of search practicable in the circumstances.

- (6) The police officer must not search the genital area of the person searched, or in the case of female or a transgender person who identifies as a female, the person's breasts unless the police officer suspects on reasonable grounds that it is necessary to do so for the purposes of the search.
- (7) A search must be conducted by a police officer of the same sex as the person searched or by a person of the same sex under the direction of the police officer.
- (8) A search of a person must not be carried out while the person is being questioned. If questioning has not been completed before a search is carried out, it must be suspended while the search is carried out.
- (9) A person must be allowed to dress as soon as a search is finished.
- (10) If clothing is seized because of the search, the police officer must ensure the person searched is left with or given reasonably appropriate clothing.
- (11) In this clause:
 - questioning** of a person means questioning the person, or carrying out an investigation (in which the person participates).
 - transgender person** means a person, whether or not the person is a recognised transgender person:
 - (a) who identifies as a member of the opposite sex, by living, or seeking to live, as a member of the opposite sex, or
 - (b) who has identified as a member of the opposite sex by living as a member of the opposite sex, or
 - (c) who, being of indeterminate sex, identifies as a member of a particular sex by living as a member of that sex,and includes a reference to the person being thought of as a transgender person, whether or not the person is, or was, in fact a transgender person.

6 Rules for conduct of strip searches

- (1) A police officer who strip searches a person must, as far as is reasonably practicable in the circumstances, comply with the following:
 - (a) the strip search must be conducted in a private area,

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- (b) the strip search must not be conducted in the presence or view of a person who is of the opposite sex to the person being searched,
- (c) except as provided by this clause, the strip search must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search.
- (2) A parent, guardian or personal representative of the person being searched may, if it is reasonably practicable in the circumstances, be present during a search if the person being searched has no objection to that person being present.
- (3) A strip search of a child who is at least 10 years of age but under 18 years of age, or of a person who has impaired intellectual functioning, must, unless it is not reasonably practicable in the circumstances, be conducted in the presence of a parent or guardian of the person being searched or, if that is not acceptable to the child or person, in the presence of another person (other than a police officer) who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person.
- (4) A strip search must not involve a search of a person's body cavities or an examination of the body by touch.
- (5) A strip search must not involve the removal of more clothes than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.
- (6) A strip search must not involve more visual inspection than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.
- (7) A strip search may be conducted in the presence of a medical practitioner of the opposite sex to the person searched if the person being searched has no objection to that person being present.
- (8) This clause is in addition to the other requirements of this Act relating to searches.
- (9) In this clause:
- impaired intellectual functioning*** means:
- (a) total or partial loss of a person's mental functions, or
- (b) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction, or

- (c) a disorder, illness or disease that affects a person's thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour.

Note. Procedures for searches of a more invasive nature are dealt with under the *Crimes (Forensic Procedures) Act 2000*.

7 No strip searches of children under 10 years

A strip search must not be conducted on a person who is under the age of 10 years.

Schedule 2 Amendments to the State Emergency and Rescue Management Act 1989

(Section 35)

[1] Section 60L Power of police to evacuate or to take other steps concerning persons

Insert after section 60L (1):

(1A) A senior police officer may, if satisfied that there are reasonable grounds for doing so for the purpose of protecting persons from chemical, biological or radiological contamination, direct or authorise another police officer to direct, a person who may have been subjected to such contamination to do any or all of the following:

- (a) to remain in a particular area,
- (b) to remain quarantined from other persons,
- (c) to submit to decontamination procedures.

[2] Section 60L (2)

Omit “If the person does not comply with the direction”.

Insert instead “If a person does not comply with a direction given under this section”.

[3] Section 61 Power of police to take other safety measures

Insert after section 61 (1) (a):

- (a1) the removal of vehicles in a danger area or any part of a danger area,

[4] Section 61 (1) (g)

Insert after section 61 (1) (f):

- (g) the protection or isolation of any material or thing in a danger area by preventing a person from removing or otherwise interfering with the material or thing.

[Second reading speech made in—

Legislative Assembly on 19 November 2002

Legislative Council on 3 December 2002]