



New South Wales

Police Powers Legislation Amendment Act 2006 No 128

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New South Wales

Police Powers Legislation Amendment Act 2006 No 128

Act No 128, 2006

An Act to amend various Acts and other legislation to make further provision with respect to police powers. [Assented to 12 December 2006]

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

This Act is the *Police Powers Legislation Amendment Act 2006*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as otherwise provided by subsection (2).
- (2) The following provisions commence on the dates indicated:
 - (a) Schedule 1 [15] and [16]—the date of commencement of section 87MA of the *Law Enforcement (Powers and Responsibilities) Act 2002*, as inserted by the *Crimes Legislation Amendment (Gangs) Act 2006*, or the date of assent to this Act, whichever is the later,
 - (b) Section 4 and Schedule 2—a day or days to be appointed by proclamation.

3 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103

The *Law Enforcement (Powers and Responsibilities) Act 2002* is amended as set out in Schedule 1.

4 Amendment of Police Powers (Drug Detection in Border Areas Trial) Act 2003 No 28

The *Police Powers (Drug Detection in Border Areas Trial) Act 2003* is amended as set out in Schedule 2.

5 Amendment of Terrorism (Police Powers) Act 2002 No 115

The *Terrorism (Police Powers) Act 2002* is amended as set out in Schedule 3.

6 Amendment of other Acts and regulation

The Acts and regulation specified in Schedule 4 are amended as set out in that Schedule.

7 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002

(Section 3)

[1] Section 3 Interpretation

Omit paragraph (b) of the definition of *authorised officer* in section 3 (1).

Insert instead:

- (b) a registrar of a Local Court, or

[2] Section 3 (1), definition of “ordinary search”

Insert “, socks” after “shoes” in paragraph (a).

[3] Section 21A

Insert after section 21:

21A Ancillary power to search persons

- (1) In conducting a search of a person under section 21, a police officer may, if the police officer suspects on reasonable grounds that a thing referred to in section 21 (1) (a), (b), (c) or (d) is concealed in the person’s mouth or hair, request the person:
- (a) to open his or her mouth, or
- (b) to shake, or otherwise move, his or her hair.
- (2) Subsection (1) does not authorise a police officer to forcibly open a person’s mouth.
- (3) A person must not, without reasonable excuse, fail or refuse to comply with a request made by a police officer in accordance with this section and section 201.
- Maximum penalty: 5 penalty units.

[4] Section 26 Power to search for knives and other dangerous implements

Omit section 26 (2). Insert instead:

- (2) If the person is in a school and is a student at the school, the police officer may also request the person to do either or both of the following:
- (a) to submit to a search of any bag or other personal effect that is on or with the person,
- (b) to submit to 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.

[5] Section 26 (6)

Omit the subsection (and the note to the subsection).

[6] Section 28 Power to confiscate knives or other dangerous implements

Insert after section 28 (2):

- (3) The power conferred by subsection (1) may be exercised whether or not the police officer requests the person to produce the thing under section 26.

[7] Section 59 Application of Division

Omit “61 (7)” wherever occurring in section 59 (2) and (3).

Insert instead “61 (5)–(8)”.

[8] Section 61 Telephone warrant

Omit “in the case of a search warrant,” from section 61 (5) (c).

[9] Section 61 (6) (b)

Omit “in the case of a search warrant”. Insert instead “in a case”.

[10] Section 75 Death, absence of authorised officer who issued warrant

Omit “or 73 (4)” from section 75 (b). Insert instead “, 73 (4) or 73A”.

[11] Section 82 Entry by invitation

Omit section 82 (3). Insert instead:

- (3) A police officer may exercise a power to enter and remain in a dwelling if the invitation to enter and remain is given by a person who apparently resides in the dwelling and whom the police officer believes to be the victim of a domestic violence offence, even if another occupier of the dwelling expressly refuses authority to the police officer to do so.
- (4) For the purposes of this section, a *victim of a domestic violence offence* is any person against whom a domestic violence offence is being, or may have been recently, committed, or is imminent, or is likely to be committed.

[12] Section 87B Emergency prohibition on sale or supply of liquor

Omit “Inspector” from section 87B (5). Insert instead “Superintendent”.

[13] Section 87C Emergency alcohol-free zones

Omit “removed from the zone or put away” from section 87C (3).

Insert instead “immediately removed from the zone”.

[14] Section 87C (7) (a)

Omit “remove the liquor from the zone or put the liquor away”.

Insert instead “immediately remove the liquor from the zone”.

[15] Section 87MA Power to disperse groups (as inserted by the Crimes Legislation Amendment (Gangs) Act 2006)

Omit section 87MA (2) and (3). Insert instead:

- (2) For the purpose of complying with section 201 (1) (c), the police officer giving the direction must inform the person or persons to whom the direction is given that the direction is given for the purpose of preventing or controlling a public disorder.

[16] Section 87MA (6)

Omit “referred to in subsection (2)”.

Insert instead “required to be given under section 201”.

[17] Section 89 Application of Part to premises

Insert after section 89 (2):

- (3) A police officer may exercise crime scene powers in relation to a vehicle, vessel or aircraft that is within a crime scene established in a public place, without obtaining a warrant, but may exercise a crime scene power that involves seizing, detaining or searching the vehicle, vessel or aircraft only if:
 - (a) the police officer suspects on reasonable grounds that it is necessary to do so to preserve, or search for and gather, evidence of the commission of the offence in connection with which the crime scene was established, or
 - (b) the police officer is authorised to do so by a crime scene warrant or other lawful authority.

[18] Section 90 When crime scene may be established

Insert after section 90 (1):

- (1A) A crime scene may also be established on premises by a police officer pursuant to the authority conferred by a crime scene warrant.

[19] Section 92 Exercise of powers at crime scene

Omit section 92 (5). Insert instead:

- (5) A crime scene power that may be exercised by a police officer under this section (other than the powers set out in section 95 (1) (a)–(f) and (k)) may be exercised by any member of NSW Police responsible for examining or maintaining a crime scene, but only with the authority of the police officer who established the crime scene or is responsible for the crime scene at the time.
- (6) A crime scene power that may be exercised by a police officer under this section may be exercised by the police officer with the aid of such assistants as the police officer considers necessary.

[20] Section 93 Notice to senior police officer where warrant not required

Insert “(otherwise than by authority of a crime scene warrant)” after “is established for a period of 3 hours or less”.

[21] Section 94 Crime scene warrants

Omit “at a crime scene” from section 94 (1).

Insert instead “at specified premises”.

[22] Section 94 (2)

Omit “to enter premises and”.

Insert instead “to enter premises, to establish a crime scene on the premises (if a crime scene has not already been established) and to”.

[23] Section 94 (4)

Insert after section 94 (3) (before the note):

- (4) A crime scene power that may be exercised by a police officer under this section (other than the powers set out in section 95 (1) (a)–(f) and (k)) may be exercised by any member of NSW Police responsible for examining or maintaining a crime scene, but only with the authority of a police officer who is responsible for executing the warrant.

[24] Section 104A Arrest by commander of aircraft (as transferred by Schedule 4.1 [1])

Omit “a Justice or other proper authority” from section 104A (1).

Insert instead “an authorised officer”.

[25] Section 117 Certain times to be disregarded in calculating investigation period

Insert “or crime scene warrant” after “search warrant” in section 117 (1) (l).

[26] Part 10, heading

Insert “and to other offenders” after “custody”.

[27] Part 10, Division 1, heading

Insert “from persons in custody” after “particulars”.

[28] Sections 137A and 137B

Insert after section 137:

137A Destruction of finger-prints and palm-prints (adults and children)

- (1) A person from whom any finger-prints or palm-prints are taken under this Division in relation to an offence may request the Commissioner to destroy the finger-prints or palm-prints if the offence is not proven.
- (2) For the purposes of this section, an offence is *not proven* if:
 - (a) the person is found not guilty or is acquitted of the offence, or
 - (b) the conviction of the person for the offence is quashed, and an acquittal is entered, on appeal, or
 - (c) at the end of the period of 12 months after the finger-prints or palm-prints were taken (or, if an extension to that period is granted under section 137B, at the end of the extended period) proceedings in respect of the offence have not been instituted against the person or have been discontinued.
- (3) A request under this section is to be made by application in writing.
- (4) If the person from whom the finger-prints or palm-prints were taken is a child, the request may be made on behalf of the child by a parent or guardian of the child.
- (5) The Commissioner must, as soon as reasonably practicable after receiving a request made in accordance with this section, destroy or cause to be destroyed the finger-prints or palm-prints taken from the person in relation to the offence that is not proven.
- (6) This section does not require the destruction of any court records.

- (7) This section does not affect the powers of the Children's Court to order the destruction of all identification particulars relating to a person under section 38 of the *Children (Criminal Proceedings) Act 1987*.
- (8) This section extends to any finger-prints or palm-prints taken under section 134 (in relation to an offence that has been proven), if the person's conviction for the offence is subsequently quashed on appeal.

137B Extension of period at the end of which finger-prints and palm-prints may be destroyed

- (1) A Magistrate may, by order made on application in accordance with this section, grant an extension to the period of 12 months referred to in section 137A (2) (c), or that period as previously extended under this section, in relation to particular finger-prints or palm-prints if satisfied that there are special reasons for doing so.
- (2) An application for an extension may be made by a police officer or the Director of Public Prosecutions.
- (3) An application for an extension may be made at any time, whether or not the period proposed to be extended has elapsed and whether or not a request for the destruction of the finger-prints or palm-prints concerned has been made to the Commissioner.
- (4) A Magistrate to whom an application is made is not to grant an extension unless:
 - (a) the applicant for the extension has taken reasonable steps to notify the person from whom the finger-prints or palm-prints were taken of the making of the application, and
 - (b) the person or his or her legal representative has been given an opportunity to speak to or make a submission to the Magistrate concerning the extension.
- (5) The Director of Public Prosecutions is to ensure that the Commissioner is notified of an application made by the Director of Public Prosecutions under this section and any extension granted as a consequence of the application.
- (6) If an extension is granted, the Commissioner may refuse a request for the destruction of the finger-prints or palm-prints concerned made before the end of the extended period (including an application made before the extension was granted).

[29] Part 10, Division 3

Insert after Division 2:

Division 3 Taking of identification particulars from other offenders

Note. Sections 138A, 138B and 138C are transferred from Part 10 of the *Crimes Act 1900*.

[30] Section 138A Taking of finger-prints and palm-prints from persons issued penalty notices (as transferred by Schedule 4.1 [1])

Insert “(whether before or after the penalty notice has been served)” before “require” in section 138A (1).

[31] Section 138A (3)

Omit the subsection. Insert instead:

- (3) The Commissioner must ensure that a finger-print or palm-print taken under this section is destroyed:
 - (a) on payment of the penalty under the penalty notice, or
 - (b) if the relevant penalty notice offence is dealt with by a court and the court dismisses the charge in relation to the penalty notice or arrives at a finding of not guilty for the charge, or
 - (c) if the penalty notice is withdrawn.

[32] Section 138C Safeguards for exercise of powers to obtain finger-prints and palm-prints without arrest (as transferred by Schedule 4.1 [1])

Omit “section 353AC or 353AD” from section 138C (1).

Insert instead “section 138A or 138B”.

[33] Section 140 Issue of search warrant—suspected drug premises

Omit section 140 (1). Insert instead:

- (1) A police officer who is in charge of an investigation into the suspected use of premises as drug premises may apply to an authorised officer for a search warrant in respect of the premises if the officer has reasonable grounds for believing that the premises are being used for the unlawful supply or manufacture of any prohibited drug or the unlawful cultivation of prohibited plants by enhanced indoor means.

[34] Section 142 Search and arrest of persons pursuant to search warrant

Omit “require” from section 142 (1) (e). Insert instead “request”.

[35] Section 198 Requirements relating to direction

Omit section 198 (2).

[36] Section 201 Supplying police officer's details and giving warnings

Omit section 201 (1) (d).

[37] Section 201 (2A)

Insert “, except as otherwise provided by subsection (2B)” after “the power”.

[38] Section 201 (2B) and (2C)

Insert after section 201 (2A):

(2B) If a police officer is exercising a power to give a direction to a person (as referred to in subsection (3) (i)) by giving the direction to a group of 2 or more persons, the police officer must comply with subsection (1) in relation to the power:

- (a) if it is practicable to do so, before or at the time of exercising the power, or
- (b) if it is not practicable to do so, as soon as is reasonably practicable after exercising the power.

(2C) If a police officer exercises a power that involves the making of a request or direction that a person is required to comply with by law, the police officer must, as soon as is reasonably practicable after making the request or direction, provide the person the subject of the request or direction with:

- (a) a warning that the person is required by law to comply with the request or direction (unless the person has already complied or is in the process of complying), and
- (b) if the person does not comply with the request or direction after being given that warning, and the police officer believes that the failure to comply by the person is an offence, a warning that the failure to comply with the request or direction is an offence.

[39] Section 201 (3) (j) and (k)

Omit section 201 (3) (j). Insert instead:

- (j) a power under section 21A to request a person to open his or her mouth or shake or move his or her hair,
- (k) a power under section 26 to request a person to submit to a frisk search or to produce a dangerous implement or metallic object.

[40] Section 201 (3A)

Insert after section 201 (3):

- (3A) If a police officer is exercising more than one power to which this section applies on a single occasion, and in relation to the same person, the police officer is required to comply with subsection (1) (a) and (b) in relation to that person only once on that occasion.

[41] Section 201 (4)

Omit the subsection. Insert instead:

- (4) If 2 or more police officers are exercising a power to which this section applies, only one officer present is required to comply with this section.

[42] Section 201 (6)

Insert after section 201 (5):

- (6) This section does not apply to the exercise of a power that is conferred by an Act or regulation specified in Schedule 1.

Note. See section 5 (1), which provides that this Act does not limit the functions of a police officer under an Act or regulation specified in Schedule 1.

[43] Section 209 Records

Insert after section 209 (3):

- (4) This section does not require a person to make a record of a matter in relation to the detention or search of an intoxicated person, if another person has already made a record of that matter as required by this section.

[44] Section 242 Monitoring of operation of certain provisions of Act by Ombudsman

Insert “or any public authority” after “the Commissioner” in section 242 (2).

[45] Section 243 Review of Act

Omit section 243 (2). Insert instead:

- (2) The review is to be carried out (and is taken to have always been required to be carried out) as soon as possible after the period of 3 years from 1 December 2005.

Note. 1 December 2005 is the date on which this Act, other than Part 8A, commenced.

[46] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

Police Powers Legislation Amendment Act 2006

[47] Schedule 5, Part 4

Insert at the end of the Schedule:

**Part 4 Provisions consequent on enactment of
Police Powers Legislation Amendment Act
2006**

9 Destruction of finger-prints and palm-prints

- (1) Section 137A, as inserted by the *Police Powers Legislation Amendment Act 2006*, extends to finger-prints and palm-prints taken before the commencement of that section.
- (2) In section 138A (3), a reference to finger-prints and palm-prints taken under section 138A includes a reference to finger-prints and palm-prints taken under section 353AC of the *Crimes Act 1900* before that section was transferred to this Act.

Schedule 2 **Amendment of Police Powers (Drug Detection in Border Areas Trial) Act 2003**

(Section 4)

[1] Section 1 Name of Act

Omit “*in Border Areas*”.

[2] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

authorisation means an authorisation granted and in force under Part 2.

designated officer has the meaning given by section 4.

outer metropolitan area means any land within this State that is located outside the metropolitan area of the State (with the metropolitan area of the State being the area to the east of the State bounded by, and including, the local government areas of Newcastle City, Lake Macquarie City, Wyong, Gosford City, Hawkesbury City, Blue Mountains City, Penrith City, Liverpool City, Camden, Campbelltown City, Wollongong City and Shellharbour City).

[3] Section 3 (1), definitions of “border area”, “drug detection warrant”, “eligible Judge” and “Judge”

Omit the definitions.

[4] Section 3 (1), definition of “search area”

Omit “a drug detection warrant”. Insert instead “an authorisation”.

[5] Section 4

Omit the section. Insert instead:

4 Designated officer

(1) For the purposes of this Act, a ***designated officer*** means:

- (a) the Commissioner of Police, or
- (b) a Deputy Commissioner of Police, or
- (c) an Assistant Commissioner of Police, or
- (d) a police officer authorised by the Commissioner of Police to exercise the functions of a designated officer under this Act.

- (2) No more than 2 police officers may be authorised by the Commissioner of Police at any one time to exercise the functions of a designated officer under this Act.
- (3) Any police officer so authorised must be a police officer of or above the rank of Superintendent.

[6] Part 2, heading

Omit “in border areas”.

[7] Sections 5–8

Omit the sections. Insert instead:

5 Authorisation to exercise powers conferred by Act

- (1) A designated officer may, on application made by a police officer in accordance with this Act, grant an authorisation that authorises the exercise of the powers conferred by this Act in connection with a drug detection operation.
- (2) In this section, a *drug detection operation* means an operation carried out for the purposes of obtaining evidence of, or frustrating, any criminal activity involving the supply of prohibited drugs or prohibited plants, or for the purposes of arresting any person involved in any such criminal activity, or for any combination of those purposes.

6 Application for authorisation

- (1) A police officer who suspects on reasonable grounds that any part or all of an area is being, or is to be, used on a regular basis for or in connection with the supply of indictable quantities of prohibited drugs or prohibited plants may apply to a designated officer for an authorisation.
- (2) An application for an authorisation is to be made in writing and contain the following particulars:
 - (a) a statement identifying the search area for the proposed authorisation,
 - (b) the grounds on which the authorisation is sought,
 - (c) a plan of the operation proposed to be carried out, including the number of officers and dogs proposed to be used,
 - (d) a statement setting out the consultation that has taken place with the Roads and Traffic Authority,

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- (e) a statement as to whether the proposed search area has been the subject of any other application for an authorisation within the last 12 months and, if so, whether the application was granted,
 - (f) a statement outlining the results of any operation carried out pursuant to an authorisation in the proposed search area within the last 12 months,
 - (g) the proposed expiry date for the authorisation,
 - (h) any other particulars prescribed by the regulations.
- (3) The designated officer to whom the application is made may require the applicant to provide such additional information concerning the application as is necessary for the designated officer's proper consideration of the application.

7 Restrictions on search areas

The search area for which an authorisation is granted must consist of not more than 3 areas, each of which must:

- (a) be located in an outer metropolitan area, and
- (b) be not more than 5 square kilometres in area.

8 Grant of authorisation

- (1) A designated officer to whom an application for an authorisation is made may grant the authorisation only if satisfied that:
- (a) there are reasonable grounds for suspecting that any part or all of the search area proposed for the authorisation is being, or is to be, used on a regular basis for or in connection with the supply of indictable quantities of prohibited drugs or prohibited plants, and
 - (b) the nature and extent of the operation proposed to be carried out is appropriate to the suspected criminal activity, and
 - (c) the application has been made in accordance with this Part, and
 - (d) the proposed search area complies with this Part.
- (2) In considering the matters referred to in subsection (1) (a) and (b), the designated officer is to have regard to the following:
- (a) the reliability of any information on which the application is based,

- (b) the likelihood of success of the proposed operation compared with the likelihood of success of any other law enforcement operation that it would be reasonably practicable to conduct for the same purposes.
- (3) The authorisation may be granted unconditionally or subject to conditions.
- (4) An authorisation is to be in the form (if any) prescribed by the regulations.
- (5) If a designated officer grants an authorisation, the designated officer is to make a record of the reasons for which the designated officer was satisfied of the matters referred to subsection (1) (a) and (b).
- (6) If an application for an authorisation is refused by a designated officer, the police officer who made the application (and any other police officer who is aware of the application) may not make a further application for the same authorisation to that designated officer or any other designated officer unless the further application provides additional information that justifies the making of a further application.

[8] Section 9 Functions under authorisation

Omit “A police officer who is executing a drug detection warrant may” from section 9 (1).

Insert instead “A police officer may, in accordance with an authorisation,”.

[9] Section 9 (1) (a)

Omit the paragraph. Insert instead:

- (a) establish one or more check points,

[10] Section 9 (2)

Omit “the drug detection warrant”. Insert instead “the authorisation”.

[11] Section 9 (3) (d)

Omit the paragraph.

[12] Section 9 (4)

Insert after section 9 (3):

- (4) If a police officer exercises a function under this Act that involves making a request that a person is required to comply with by law, the police officer must, as soon as is reasonably practicable after making the request, provide the person the subject of the request with:
 - (a) a warning that the person is required by law to comply with the request (unless the person has already complied or is in the process of complying), and
 - (b) if the person does not comply with the request after being given that warning, and the police officer believes that the failure to comply by the person is an offence, a warning that the failure to comply with the request is an offence.

[13] Section 10

Omit the section. Insert instead:

10 Check points

- (1) A police officer may, at any time during the period in which an authorisation remains in force, remove a check point from one location and re-establish it at any other location in the search area.
- (2) A police officer who establishes a check point must ensure that adequate measures are taken to ensure the safety of persons and vehicles approaching the check point.

[14] Sections 11 (2) and (3), 12 (1) and 13

Omit “a drug detection warrant” wherever occurring.

Insert instead “an authorisation”.

[15] Sections 14, 15, 15A and 15B

Omit sections 14 and 15. Insert instead:

14 Duration of authorisation

- (1) An authorisation has effect, unless sooner revoked, during the period beginning at the time it is given and ending at a time specified in the authorisation by the designated officer who grants the authorisation.
- (2) The period during which an authorisation has effect must not exceed 14 days, beginning with the day on which it is granted.

- (3) An authorisation cannot be extended but a further authorisation may be granted for the same or part of the same area.

15 Revocation of authorisation

- (1) The police officer who gives an authorisation, or a designated officer of a more senior rank, may revoke an authorisation at any time.
- (2) A revocation of an authorisation does not affect anything lawfully done in reliance on the authorisation before it ceased to have effect.

15A Defects in authorisations

An application for an authorisation, and any authorisation granted on the basis of such an application, is not invalidated by any procedural defect, other than a defect that affects the substance of the application or authorisation in a material particular.

15B Report on conduct of operation

Within 14 days after the expiry of an authorisation, the police officer to whom the authorisation was granted must cause a report to be given to the designated officer who granted the authorisation:

- (a) stating whether or not the operation proposed to be carried out under the authorisation was carried out, and
- (b) if the operation was carried out—setting out briefly the result of the operation (including a brief description of anything seized), and
- (c) if the operation was not carried out—setting out briefly the reasons why the operation was not carried out, and
- (d) containing such other particulars as may be prescribed by the regulations.

[16] Section 16 Offences relating to authorisations

Omit “a person executing or assisting in the execution of a drug detection warrant” from section 16 (1).

Insert instead “a person exercising functions under an authorisation”.

[17] Section 17 Search records to be kept

Omit “drug detection warrants obtained” and “such warrant” from section 17 (1).

Insert instead “authorisations granted” and “such authorisation” respectively.

[18] Section 18 Search warrants and other powers not affected

Omit “*Search Warrants Act 1985*” from section 18 (1) (a).

Insert instead “*Law Enforcement (Powers and Responsibilities) Act 2002*”.

[19] Section 18A

Insert after section 18:

18A Use of assistants

The functions conferred on a police officer under this Act may be exercised by the police officer with the aid of such assistants as the police officer considers necessary, subject to any conditions of the relevant authorisation.

[20] Section 22 Monitoring of operation of Act by Ombudsman

Omit “9 months from the date of commencement of this section” from section 22 (1).

Insert instead “12 months from the date of commencement of Schedule 2 [1] to the *Police Powers Legislation Amendment Act 2006*”.

[21] Section 22 (2)

Omit the subsection. Insert instead:

- (2) For that purpose, the Ombudsman may:
 - (a) require the Commissioner of Police or any public authority to provide information about the exercise of those functions, and
 - (b) inspect the records of NSW Police at any time.

[22] Section 22 (3) and (4)

Omit “9-month period” wherever occurring. Insert instead “12-month period”.

[23] Section 23

Omit the section. Insert instead:

23 Revival and expiry of Act

- (1) On the commencement of Schedule 2 [23] to the *Police Powers Legislation Amendment Act 2006* this Act is revived.
- (2) This Act expires on the day that is 18 months after the revival of this Act.

[24] Long title

Omit “border areas”. Insert instead “outer metropolitan areas”.

Schedule 3 Amendment of Terrorism (Police Powers) Act 2002

(Section 5)

[1] Section 8 Who may give an authorisation

Insert after section 8 (2):

- (3) In giving an authorisation, the Commissioner of Police, Deputy Commissioner of Police or other police officer is to be satisfied that the nature and extent of the powers to be conferred by the authorisation are appropriate to the threatened or suspected terrorist act.

[2] Section 14 Exercise of special powers conferred by authorisation by police officers

Omit section 14 (2). Insert instead:

- (2) A police officer may exercise those powers whether or not the officer has been provided with a copy of the authorisation or notified of all the terms of the authorisation.

[3] Section 17 Power to search persons

Omit section 17 (3). Insert instead:

- (3) A police officer must not detain a person for any longer than is reasonably necessary for the purpose of conducting a search under this section.

[4] Section 18 Power to search vehicles

Omit section 18 (2). Insert instead:

- (2) A police officer must not detain a vehicle for any longer than is reasonably necessary for the purpose of conducting a search under this section.

[5] Section 23 Supplying police officer's details and other information

Omit "if requested to do so" from section 23 (1).

[6] Section 23 (3)–(5)

Insert after section 23 (2):

- (3) If a police officer exercises a power that involves the making of a request that a person is required to comply with by law, the police officer must, as soon as is reasonably practicable after making the request, provide the person the subject of the request with:
 - (a) a warning that the person is required by law to comply with the request (unless the person has already complied or is in the process of complying), and
 - (b) if the person does not comply with the request after being given that warning, and the police officer believes that the failure to comply by the person is an offence, a warning that the failure to comply with the request is an offence.
- (4) If a police officer is exercising more than one power to which this section applies on a single occasion, and in relation to the same person, the police officer is required to comply with subsection (1) (a) and (b) in relation to that person only once on that occasion.
- (5) If 2 or more police officers are exercising a power to which this section applies, only one officer present is required to comply with this section.

[7] Section 27O Powers conferred by covert search warrant

Insert at the end of section 27O (1) (l):

- , and
- (m) to do anything else that is reasonable for the purpose of concealing anything done in the execution of the warrant from the occupier of the premises.

[8] Section 36 Review of Act

Omit “every 12 months thereafter” from section 36 (2).

Insert instead “every 24 months thereafter”.

Schedule 4 Amendment of other Acts and regulation

(Section 6)

4.1 Crimes Act 1900 No 40

[1] Part 10 Arrest of offenders

Omit the Part.

Transfer sections 353AC, 353AD and 353AE to the *Law Enforcement (Powers and Responsibilities) Act 2002* as sections 138A, 138B and 138C, respectively, in Division 3 of Part 10 of that Act (as inserted by this Act).

Renumber section 353B as section 547D in Division 2 of Part 14A.

Transfer section 353C to the *Law Enforcement (Powers and Responsibilities) Act 2002* as section 104A of that Act.

[2] Section 547D (as renumbered by Schedule 4.1 [1])

Omit “justice before whom the person is brought”. Insert instead “court”.

4.2 Crimes (Forensic Procedures) Act 2000 No 59

Section 112 Relationship with Part 10 of the Law Enforcement (Powers and Responsibilities) Act 2002 and other Acts

Omit “section 353AC or 353AD of the *Crimes Act 1900*” from section 112 (d).

Insert instead “section 138A or 138B of the *Law Enforcement (Powers and Responsibilities) Act 2002*.”

4.3 Criminal Procedure Act 1986 No 209

[1] Section 334 Penalty notices

Omit “must be served personally” from section 334 (2).

Insert instead “may be served personally or by post”.

[2] Section 340 Withdrawal of penalty notice

Omit section 340 (1). Insert instead:

- (1) A senior police officer may at any time withdraw a penalty notice issued by a police officer under this Part.

[3] Section 340 (3) (b1) and (b2)

Insert after section 340 (3) (b):

- (b1) Any subsequent action already taken in relation to the notice, including any enforcement action, is to be reversed.
- (b2) Any costs relating to that subsequent action are not payable and, if paid, are repayable.

[4] Section 340 (3) (c)

Insert “, subject to any time limit within which such proceedings are required to be commenced,” after “may”.

[5] Section 344 Monitoring of Part by Ombudsman

Omit “sections 353AC and 353AE (in so far as it relates to the exercise of powers under section 353AC) of the *Crimes Act 1900*” from section 344 (1).

Insert instead “sections 138A and 138C (in so far as it relates to the exercise of powers under section 138A) of the *Law Enforcement (Powers and Responsibilities) Act 2002*”.

[6] Section 344A

Insert after section 344:

344A Further review by Ombudsman—Aboriginal and Torres Strait Islander communities

- (1) The Ombudsman is to review the operation of the provisions of:
 - (a) this Part, and
 - (b) the regulations made under this Part, and
 - (c) sections 138A and 138C (in so far as it relates to the exercise of powers under section 138A) of the *Law Enforcement (Powers and Responsibilities) Act 2002*,
in so far as those provisions impact on Aboriginal and Torres Strait Islander communities.
- (2) For the purposes of carrying out any such review, the Ombudsman may require the Commissioner of Police or any public authority to provide information about police or the public authority’s participation in the operations of the provisions referred to in subsection (1).
- (3) A report in relation to the review is to be provided to the Minister and the Minister for Police by 30 November 2008.

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- (4) The Minister is to lay (or cause to be laid) a copy of the report provided to the Minister under this section before both Houses of Parliament as soon as practicable after the Minister receives the report.
- (5) If a House of Parliament is not sitting when the Minister seeks to lay a report before it, the Minister may present copies of the report to the Clerk of the House concerned.
- (6) The report:
- (a) on presentation and for all purposes is taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and
 - (d) is to be recorded:
 - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
 - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

4.4 Criminal Procedure Regulation 2005

[1] Clauses 11 and 12

Omit “31 December 2006” wherever occurring.

Insert instead “30 April 2007”.

[2] Schedule 2 Penalty notice offences

Omit the matter relating to section 61 of the *Crimes Act 1900* in the table to the Schedule.

[Second reading speech made in—

Legislative Assembly on 15 November 2006am

Legislative Council on 16 November 2006]

BY AUTHORITY