

[Act 2002 No 37]



New South Wales

## Summary Offences Amendment (Places of Detention) Bill 2002

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.\*

This Bill is cognate with the *Crimes (Administration of Sentences) Amendment Bill 2002*.

### Overview of Bill

The object of this Bill is to enable a correctional officer to stop, detain and search a person or a vehicle in or in the immediate vicinity of a place of detention if the correctional officer has reasonable grounds to suspect that the person may be committing, may have committed or intends to commit an offence under Part 4A (Offences relating to places of detention) of the *Summary Offences Act 1988*.

The offences in Part 4A of that Act relate to the following matters:

- (a) bringing liquor, prohibited drugs, prohibited plants or other specified substances into a place of detention,

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\* Amended in committee—see table at end of volume.

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Explanatory note

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- (b) bringing syringes into a place of detention or supplying syringes to an inmate in lawful custody,
- (c) unlawfully possessing an offensive weapon or instrument in a place of detention,
- (d) unlawfully loitering about a place of detention, or entering a place of detention, or communicating with an inmate,
- (e) unlawfully delivering anything to an inmate, or bringing anything into a place of detention, or conveying anything out of a place of detention, or receiving anything for conveyance out of a place of detention, or secreting or leaving anything for the purpose of its being found by an inmate.

A correctional officer must not detain a person in the exercise of the power to detain and search the person any longer than is reasonably necessary for the purpose, and in any event for no longer than 4 hours. A correctional officer may detain a person reasonably suspected of committing an offence under Part 4A until the arrival of a police officer to conduct a search of the person.

A correctional officer must conduct a search with due regard to dignity and self-respect and in as seemly a manner as is consistent with the conduct of an effective search. In particular, a correctional officer must not direct a person to remove any item of clothing (other than a hat, gloves, coat, jacket or shoes) and must not search the person by running the officer's hands over the person's clothing.

A search must, if practicable, be conducted by a person of the same sex as the person being searched. If the person being searched is a minor or is mentally incapacitated, the person is to be searched in the presence of an adult who accompanied the person to the place of detention. If there is no such adult, the person is to be searched in the presence of a member of staff who is not a correctional officer.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Summary Offences Act 1988* set out in Schedule 1.

## **Schedule 1 Amendments**

**Schedule 1 [7]** inserts proposed sections 27F–27N. Proposed section 27F contains the powers described in the Overview above, and proposed section 27G deals with the conduct of a search. Proposed section 27H provides for the use of dogs to conduct searches. Proposed section 27I authorises correctional officers to use reasonable force in the exercise of a function under the proposed sections.

Proposed section 27J stipulates that a person may not be detained in the exercise of a power to search for any longer than is reasonably necessary, and in any case for no longer than 4 hours. In addition, a correctional officer who detains, searches or arrests a person under proposed section 27F must, before or as soon as practicable after exercising the power, provide the person with specified information about the officer and the exercise of the power, and a warning that it is an offence to fail to comply with a request or direction of the officer.

Proposed section 27K creates offences of failing to comply with a request or a direction of a correctional officer under Part 4A, failing or refusing to produce on request anything detected by a search, and resisting or impeding a search.

Proposed section 27L provides that the powers conferred on correctional officers and police officers by the proposed Act do not limit any other powers of correctional officers, police officers or other persons to conduct searches.

Proposed section 27M deals with the admissibility of evidence discovered during a search. Proposed section 27N exempts a person who conducts a search under the direction of a correctional officer from personal liability in respect of the search.

**Schedule 1 [1]** inserts definitions used in the proposed sections. **Schedule 1 [2]–[5]** make amendments consequential on the consolidation of the existing arrest powers of correctional officers in the proposed section 27F (7).

**Schedule 1 [6]** renumbers a provision consequential on the insertion of proposed sections 27F–27N.