

[Act 1997 No 48]



New South Wales

# Crimes Amendment (Detention after Arrest) Bill 1997

## Explanatory note

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

### Overview of Bill

The objects of this Bill are:

- (a) to provide for the maximum period of time that a person who is under arrest may be detained by police for the purposes of investigating the person's involvement in the commission of an offence, and
- (b) to provide for the rights of a person so detained.

Currently the police have no power to detain a person after arrest merely for the purposes of investigation. The Law Reform Commission in its report *Police Powers of Detention and Investigation after Arrest* (LRC 66, 1990) found that this area of the law required reform.

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

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## 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.

**Clause 3** is a formal provision that gives effect to the Schedule of amendments to the *Crimes Act 1900*.

**Clause 4** is a formal provision that gives effect to the Schedule containing a consequential amendment to the *Children (Criminal Proceedings) Act 1987*.

## **Schedule 1      Amendment of Crimes Act 1900**

### **Power to detain persons after arrest for the purposes of investigation**

A new Part is to be inserted into the *Crimes Act 1900* containing police powers to detain a person after arrest for the purposes of investigation (proposed Part 10A, inserted by Schedule 1 [4]).

The objects of the Part are set out in proposed section 354. Proposed section 355 (1) defines terms for the purposes of the Part.

The Part provides a new power for police to detain a person who is under arrest for a reasonable period of up to 4 hours (with provision for the extension of the period for up to an additional 8 hours in certain circumstances) to enable the person's involvement in the offence for which the person was arrested to be investigated. If, while the person is so detained, police form a reasonable suspicion as to the person's involvement in any other offence, they may also investigate the person's involvement in that other offence during the investigation period for the arrest (proposed sections 356C, 356D and 356E).

A list of criteria for determining what is a reasonable period is set out (proposed section 356E). Certain times, being times during which any investigative procedure in which the person is to participate is reasonably suspended or deferred, are to be disregarded in calculating the initial 4-hour period or any period of time by which that 4-hour period is extended by a detention warrant (proposed section 356F). For example, time spent in arranging communication with a legal practitioner or waiting for an interpreter or any time in which the person is receiving medical attention is to be disregarded.

Application for a detention warrant to extend the initial 4-hour period may be made in person or by telephone to an authorised justice and must be made before the expiry of that period. Proposed sections 356G–356L set out the procedures for obtaining an extension and make it an offence to provide false or misleading information in connection with applications for extensions punishable by a fine of up to 100 penalty units (currently \$10,000) or imprisonment for 2 years, or both.

The Part will apply:

- (a) to persons, including children, who are under arrest by a police officer for an offence (proposed section 356 (1)), and
- (b) to a person who has not been formally arrested but who is in the company of the police for the purpose of participating in an investigation if the police:
  - (i) believe that there is sufficient evidence to establish that the person has committed an offence that is or is to be the subject of the investigation, or
  - (ii) would arrest the person if the person attempted to leave, or
  - (iii) have given the person reasonable grounds for believing that the person would not be allowed to leave if the person wished to do so (proposed section 355 (2)).

The Part will apply whether the offence concerned was committed before or after the commencement of the Part or within or outside the State (proposed section 356 (1)).

The Part will not apply to a person who is detained under the *Intoxicated Persons Act 1979* (proposed section 356 (2)) or in respect of the arrest of a person before the commencement of the Part (Schedule 1 [6]).

Regulations may be made for the modification of the application of the Part to persons who are detained under the Part and who are children, Aboriginal persons, Torres Strait Islanders or from non-English speaking backgrounds or have a disability (whether physical, intellectual or otherwise) (proposed section 356A).

### **Effect of proposed Part on existing powers and rights, and rules of evidence**

Proposed section 356B makes it clear that the Part does not confer any power to arrest a person, or to detain a person who has not been lawfully arrested,

prevent a police officer from asking or causing a person to do a particular thing that the police officer is authorised by law to ask or cause the person to do or independently confer power to carry out an investigative procedure.

The Part will not affect certain existing rights of persons (eg the right to remain silent) or the rules of evidence.

### **Rights of persons detained under the proposed Part**

The Part provides for the custody manager for the detained person to caution the person and give the person a summary of the provisions of the Part (proposed section 356M).

The Part also provides that, before any investigative procedure in which the person is to participate starts (eg questioning the person), the custody manager must advise the person of his or her right to communicate with a friend, relative, guardian or independent person to inform that person of the detained person's whereabouts and to consult with that person at the place where the person is being detained. The custody manager must also advise the person of his or her right to communicate with a legal practitioner, to consult with the legal practitioner at the place where the person is being detained and to have legal representation during any such investigative procedure.

The custody manager must defer any such investigative procedure for a reasonable time to allow the person to exercise his or her right to communicate with those persons and, if the person has asked to do so, to allow the person to consult with the friend, relative, guardian, independent person or legal practitioner and to allow the legal practitioner to be present, and to give advice to the person, during any such investigative procedure. The police are not required however to wait for more than 2 hours for the persons communicated with to arrive (proposed section 356N).

If the detained person is not an Australian citizen or a permanent Australian resident, the custody manager must also advise the person of his or her right to communicate with a consular official and to consult with the consular official at the place where the person is being detained. The custody manager must defer any such investigative procedure for a reasonable time to allow the person to exercise his or her right to communicate with a consular official and, if the person has asked to do so, to allow the person to consult with the consular official. The police are not required however to wait for more than 2 hours for the consular official to arrive (proposed section 356O).

The provisions relating to rights in relation to friends, relatives, guardians and independent persons will not apply in certain circumstances (eg if the custody manager believes on reasonable grounds that complying with a provision is likely to result in an accomplice avoiding arrest, interference with evidence or the intimidation of a witness) (proposed section 356P).

Friends, relatives, guardians, legal practitioners and certain other persons are entitled to information from the custody manager about the whereabouts of persons who are detained under the Part, except in certain circumstances (eg if the detained person does not agree to the information being provided) (proposed sections 356Q and 356R). Provision is made for obtaining interpreters in certain circumstances (proposed section 356S).

Rights to medical assistance and to reasonable refreshments and other facilities (eg toilet facilities) are provided for (proposed sections 356T and 356U).

### **Other provisions of the proposed Part**

The custody manager for a detained person must maintain a custody record in respect of the person (proposed section 356V).

A court may take into account in passing sentence on a person any period during which the person was detained under the Part in respect of the offence concerned and may reduce the sentence it would otherwise have passed (proposed section 356W).

Regulations may be made for the purposes of the Part (proposed section 356X).

Provision is made for the Minister to review the Part and to table a report on the outcome of the review in Parliament within one year after the Part commences (proposed section 356Y).

The Part will apply to all offences by the operation of section 3 and the Second Schedule to the *Crimes Act 1900*.

### **Consequential amendments**

**Schedule** [1]–[3] and [5] make consequential amendments.

### **Schedule 2 Amendment of Children (Criminal Proceedings) Act 1987**

Schedule 2 amends the *Children (Criminal Proceedings) Act 1987* as a consequence of the proposed amendments to the *Crimes Act 1900*.