

[Act 1998 No 38]



# Crimes Legislation Amendment (Police and Public Safety) Bill 1998

## Explanatory note

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

### Overview of Bill

The object of this Bill is to amend the *Summary Offences Act 1988*:

- (a) to create an offence of having custody of a knife in a public place or a school without a reasonable excuse, and
- (b) to enable a police officer to conduct a search of a person in a public place or a school if the police officer suspects on reasonable grounds that the person has unlawful custody of a dangerous implement, and
- (c) to enable a police officer to confiscate a dangerous implement found in a person's custody in a public place or a school if the police officer suspects on reasonable grounds that it is unlawfully in the person's custody, and
- (d) to enable a police officer to give reasonable directions to a person in a public place if the police officer has reasonable grounds to believe that the person's behaviour or presence is obstructing another person or traffic, constitutes harassment or intimidation of another person or is likely to frighten another person.

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

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The Bill also amends the *Crimes Act 1900* to enable a police officer to demand a person's name and residential address if the officer believes on reasonable grounds that the person will be able to assist in the investigation of an alleged indictable offence.

The Bill contains a consequential amendment to the *Fines Act 1996*.

## 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.

**Clause 4** is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 2.

**Clause 5** is a formal provision giving effect to a consequential amendment to the *Fines Act 1996* contained in Schedule 3.

**Clause 6** provides for the Ombudsman to monitor for a period of 12 months the exercise of police powers conferred by the proposed amendments.

**Clause 7** requires the Minister for Police to review the proposed Act after one year to determine whether its policy objectives remain valid and to report to Parliament on the review. The report will contain a report from the Ombudsman under clause 6 on the work and activities of the Ombudsman under that clause.

## Schedule 1 Amendment of Summary Offences Act 1988

### Offences relating to knives and other dangerous implements

**Schedule 1 [3]** inserts a new section 11C in the *Summary Offences Act 1988* (the Principal Act) which makes it an offence for a person to have custody of a knife in a public place or a school without a reasonable excuse. The onus of proving that there is a reasonable excuse lies on the person having custody as is the case for similar offences in the Principal Act. The offence carries a maximum penalty of 5 penalty units (currently \$550). The proposed section specifies a number of situations in which a person is taken to have a

reasonable excuse for having custody of a knife (for example, for the person's occupation or for the preparation of food) but does not limit any other reasonable excuse that a person might have. However, self defence or defence of another person is not taken to be a reasonable excuse for having custody of a knife. The regulations may exclude classes of knives from the operation of the proposed section.

**Schedule 1 [1]** contains a definition of *knife*.

**Schedule 1 [2], [4]–[7] and [9]** contain consequential amendments, amendments separating Part 2 of the Principal Act into Divisions and amendments relocating existing sections of the Principal Act into those new Divisions.

### **Police powers for public protection in public places and schools**

**Schedule 1 [8]** inserts a new Part 5 in the Principal Act containing proposed sections 28–28I.

#### **Division 1 Interpretation**

**Proposed section 28** defines certain terms used in the proposed Part. In particular, the term *dangerous implement* is defined and includes, among other things, knives, firearms and prohibited weapons.

#### **Division 2 Search powers**

**Proposed section 28A** enables a police officer to conduct an electronic or frisk search of a person and an examination of any bag or other personal effect that the person has with him or her if the officer suspects on reasonable grounds that the person has unlawful custody of a dangerous implement. A police officer must first provide evidence that he or she is a police officer, must provide his or her name and place of duty, must give the reason for the search and must warn the person that failure to submit to the search may be an offence. A person who refuses to submit to the search may be warned and requested again. A person who refuses to submit to such a search after the second warning and request, or refuses to produce things detected in the search after having been requested, is guilty of an offence with a maximum penalty of 5 penalty units (currently \$550) unless the person has a reasonable excuse for not doing so. The onus of proving that there is a reasonable excuse lies on the person.

### **Division 3      Confiscation powers**

**Proposed sections 28B–28E** enable a police officer to confiscate any thing that the police officer reasonably suspects is a dangerous implement that is unlawfully in a person's custody in a public place or a school. Unless the confiscation of the thing is dealt with under other legislation or other provisions of the Principal Act, the thing is to be dealt with in accordance with the new provisions. If an application for the thing's return is made within 28 days of the confiscation to the relevant Local Area Commander of Police and return of the thing is refused, an appeal may be made to a Local Court, which has power to determine how the thing is to be dealt with, including, for example, ordering that the thing be returned or that it be forfeited to the Crown.

A thing is forfeited to the Crown if application is not made for its return to the relevant Local Area Commander of Police within 28 days of its confiscation or if a Local Court makes an order to that effect on an appeal against a decision not to return the thing. A forfeited thing may be disposed of in accordance with the directions of the Commissioner of Police.

### **Division 4      Powers to give directions**

**Proposed section 28F** enables a police officer to give reasonable directions to a person in a public place whose behaviour or presence is obstructing another person or traffic, constitutes harassment or intimidation of another person or frightens or is likely to frighten another person (so long as it would be likely to frighten a person of reasonable firmness). The other person need not be in the same public place but must be near it at the relevant time. A police officer must first provide evidence that he or she is a police officer, must provide his or her name and place of duty, must state the reason for the direction and must warn the person that failure to comply with the direction may be an offence. A person who refuses to comply with the direction may be warned and requested again. A person who refuses to comply with the direction after the second warning and request is guilty of an offence with a maximum penalty of 2 penalty units (currently \$220) unless the person ceases to engage in the conduct that gave rise to the direction or the person has a reasonable excuse for not complying with the direction. The onus of proving that there is a reasonable excuse lies on the person.

**Proposed section 28G** provides that the powers conferred on police officers by proposed section 28F cannot be used in relation to industrial disputes or organised assemblies, protests or processions.

## **Division 5     General**

**Proposed section 28H** provides that evidence of a thing found during a search under proposed section 28A is not inadmissible in proceedings merely because it is a different type of thing to that for which the search was conducted.

**Proposed section 28I** makes it clear that the new provisions do not limit any other powers, authorities, duties or functions of police officers.

**Schedule 1 [10]** inserts a new section 29A in the Principal Act that enables penalty notices to be issued for offences under proposed sections 11C (Custody of knife in public place or school) and 28F (Power to give reasonable directions in public places).

## **Schedule 2     Amendment of Crimes Act 1900**

### **Power to demand name and address**

**Schedule 2** inserts a new section 563 in the *Crimes Act 1900* that enables a police officer to request a person's name and address if the police 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 around the time that the alleged offence occurred. The police officer must first provide evidence that he or she is a police officer, must provide his or her name and place of duty, must give the reason for the request and must warn the person that failure to comply with the request may be an offence.

## **Schedule 3     Amendment of Fines Act 1996**

**Schedule 3** contains a consequential amendment to the *Fines Act 1996*.