



New South Wales

Law Enforcement (Powers and Responsibilities) Amendment Bill 2014

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 *Law Enforcement (Powers and Responsibilities) Act 2002 (LEPRA)* to give effect to the recommendations of the statutory review of LEPRA, including the recommendations in a report to the Government on the statutory review by Mr Andrew Tink and the Hon Paul Whelan that relate to Part 9 (Investigations and questioning) and Part 15 (Safeguards relating to police powers) of LEPRA. In particular, the Bill amends LEPRA as follows:

- (a) to clarify and revise the safeguards under Part 9 relating to investigations and questioning, and in particular:
 - (i) to provide separate safeguards for persons detained after arrest (*detained persons*) and for suspects who are in the company of a police officer for the purpose of an investigation but who have been told they are free to leave (*protected suspects*), and to remove references to persons deemed to be under arrest, and
 - (ii) to provide that the safeguards under Division 2 of Part 9 apply only to detained persons and not to protected suspects (eg the time limits on the investigation period), and to provide that the safeguards under Division 3 of Part 9 apply to both detained persons and protected suspects (eg the giving of a caution that they do not have to say anything; their right to contact a friend, relative, guardian or independent person; their right to medical attention; and their right to reasonable refreshment and facilities), and
 - (iii) to extend the initial investigation period for a detained person from 4 hours to 6 hours but to retain the overall maximum investigation period of 12 hours by limiting the additional period of investigation under a detention warrant issued by an authorised officer to 6 hours instead of 8 hours, and

- (iv) to require an authorised officer to whom an application is made for a detention warrant to take into account the period before detention during which the person was a protected suspect in the company of a police officer, and
 - (v) to apply Part 9 to a detained person or protected suspect who remains at premises that are being searched under a search warrant (including provision for an independent police officer to exercise the functions of a custody manager; provision to dispense with requirements relating to contact with friends, relatives, guardians or independent persons if there is a reasonable suspicion that it may result in bodily injury to any other person; and provision to enable the custody record to be included in a video recording of the execution of the search warrant), and
 - (vi) to enable information required to be given to detained persons and protected suspects to be given in summary form prescribed by the regulations,
- (b) to clarify and simplify the provisions of Part 15 (relating to safeguards applying to the exercise of police powers) by recasting the provisions in plain language, and in particular:
- (i) to clarify the time at which police officers exercising a relevant police power must provide evidence they are a police officer (if not in uniform), provide their name and place of duty and provide the reason for exercising the power (so that it is to be provided as soon as reasonably practicable or, in the case of direction, requirement or request to a single person, before exercising the power), and
 - (ii) to consolidate the warnings to a person to whom a direction, requirement or request is given to a single warning that the person must by law comply with the direction, requirement or request (instead of a warning that the person must comply and a warning that failure to comply is an offence), and
 - (iii) to retain the requirement that a police officer provide his or her name and place of duty, but to provide that a failure to do so does not render the exercise of the power unlawful (except in the case of a direction, requirement or request to a single person), and
 - (iv) to provide that the Ombudsman is to monitor the operation of the Part relating to the provision of the name and place of duty of a police officer and provide a report for tabling in Parliament,
- (c) to make miscellaneous amendments, including:
- (i) to amalgamate existing provisions relating to ordinary and frisk searches, and
 - (ii) to remove the requirement that a strip search may be carried out at a police station or other place of detention only if the seriousness or urgency of the circumstances require the search to be carried out but to provide that such a requirement will continue to apply to strip searches carried out in any other place, and
 - (iii) to limit the circumstances in which a strip search of a child or person with impaired intellectual functioning can be carried out in the absence of a parent, guardian or support person, and
 - (iv) to allow persons while they are being searched to be asked questions that relate to issues of personal safety associated with the search, and
 - (v) to expand the powers that may be exercised at a crime scene before a crime scene warrant is obtained (including extending the period during which such powers may be exercised before obtaining a warrant), and
 - (vi) to provide that a crime scene warrant may relate to more than one set of premises.

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.

Schedule 1 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103 relating to investigations and questioning under Part 9

The Schedule amends the provisions of Part 9 of LEPRA to give effect to paragraph (a) of the Overview above.

Schedule 2 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103 relating to safeguards under Part 15

The Schedule amends the provisions of Part 15 of LEPRA to give effect to paragraph (b) of the Overview above.

Schedule 3 Miscellaneous amendments to Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Personal searches generally

Schedule 3 [14] makes it clear that, in conducting a personal search, any requirement by a police officer that the person open his or her mouth is to enable the mouth to be searched. **Schedule 3 [1]** is a consequential amendment which provides that a person's body cavities (which are not authorised to be searched under LEPRA) do not include the person's mouth.

Schedule 3 [15] and [16] make it clear that the power to search a person who is in lawful custody of the police is a power that may be exercised following the person's arrest and that the power may be exercised immediately before or during the transportation of the person after being arrested to or from a police station or other place of detention.

Schedule 3 [20] provides that the provisions of LEPRA applying to personal searches extend to searches carried out by a police officer after obtaining the person's consent to carry out the search. In such a case, the purpose for carrying out the search will be the purpose for which the police officer obtained consent to search. **Schedule 3 [29]** provides that a consensual search may only be carried out if the police officer has sought the person's consent before carrying out the search and the officer provides the person with evidence that the officer is a police officer and with the officer's name and place of duty.

Schedule 3 [21] amalgamates existing provisions relating to ordinary searches and frisk searches and continues the powers that may be exercised for the purposes of carrying out the search of a person currently set out in the definitions of "ordinary search" and "frisk search" which are being consequentially omitted. **Schedule 3 [2] and [17]** are consequential amendments.

Schedule 3 [24] restates an existing provision that requires a search to be conducted by a police officer who is of the same sex as the person to be searched. However, in the case where no such officer is available, the power to conduct the search may be delegated to a person who is of the same sex as the person to be searched and who is of a class of persons prescribed by the regulations. **Schedule 3 [3]** provides that references in LEPRA to persons of the same sex or opposite sex will cover transgender persons. **Schedule 3 [1], [23] and [26]** are consequential amendments.

Schedule 3 [25] provides that the prohibition on asking a person questions while the person is being searched will not apply to questions that relate to issues of personal safety associated with the search.

Strip searches

Schedule 3 [22] provides that a police officer may conduct a strip search at a police station or other place of detention if the police officer conducting the search reasonably suspects that the strip search is necessary for the purposes of conducting the search. A strip search may be conducted

elsewhere if the police officer conducting the search reasonably suspects that the strip search is necessary for the purposes of the search and that the seriousness and urgency of the circumstances make the strip search necessary.

Schedule 3 [27] makes it clear that the prohibition on a strip search being conducted in the presence or view of a person who is of the opposite sex to the person being searched does not prevent a parent, guardian or personal representative of the opposite sex to the person being searched from being present during the search.

Schedule 3 [28] provides that a strip search of a child or person with impaired intellectual functioning may be conducted in the absence of a parent, guardian or support person but only if a police officer reasonably suspects that delaying the search is likely to result in evidence being concealed or destroyed or an immediate search is necessary to protect the safety of a person. In such a case, the police officer conducting the strip search must record the reasons for conducting the search in the absence of a parent, guardian or support person.

Crime scene powers

Schedule 3 [32] authorises a police officer to remain in a dwelling on which a domestic violence offence is being or may have been committed and to exercise functions similar to those in relation to a crime scene (such as directing a person to leave, or not to enter, the dwelling) so that evidence of the commission of the offence can be preserved. **Schedule 3 [31] and [33]–[35]** are consequential amendments and **Schedule 3 [36]** makes it an offence to obstruct or hinder a police officer who is exercising crime scene powers in relation to a domestic violence offence.

Schedule 3 [37] provides that the prohibition on establishing a crime scene on the same premises more than once in any 24 hour period does not prevent a subsequent crime scene being established during that period on the same premises for the purposes of investigating a separate offence that is not related to the offence for which the initial crime scene was established.

Schedule 3 [38] expands the powers that may be exercised at a crime scene without a crime scene warrant to include investigative powers (including the power to search the crime scene but not powers to seize or detain things). **Schedule 3 [40]** provides that the police may, in exercising crime scene powers without a warrant, open a thing that is locked only if it is possible to do so without causing any damage.

Schedule 3 [39] extends from 3 to 4 hours the period during which crime scene powers may be exercised before a crime scene warrant is obtained (in the case of a rural area the period is extended to 6 hours). **Schedule 3 [41]** is a consequential amendment.

Schedule 3 [42] provides that a crime scene warrant may, if a crime scene relating to an offence is established on more than one set of premises, apply to each such set of premises.

Schedule 3 [43] enables the occupier of private premises in respect of which a crime scene warrant is issued to apply to an authorised officer for a review of the grounds on which the warrant is issued. Any such application does not stay the operation of the warrant.

Schedule 3 [45] provides that, in the case where crime scene powers are exercised on premises with the occupier's consent, the consent may only be given if the occupier has been informed by the police of the powers proposed to be exercised, the reasons for exercising those powers and that the occupier has the right to refuse to give consent. **Schedule 3 [44]** requires the occupier's consent to be in writing if reasonably practicable.

Miscellaneous amendments

Schedule 3 [10] makes it clear that the direction by a police officer to stop a vehicle is not given under the provisions of LEPRA that relate to the power of police officers to require drivers or passengers to disclose their identity.

Schedule 3 [4]–[9], [11]–[13] and [18] ensure that, in the case of certain police powers under LEPRA that must be complied with by the person in respect of whom the power is exercised, the power is expressed as a requirement rather than as a request by a police officer. The amendments merely bring certain provisions into line with other provisions of LEPRA that contain police powers that must be complied with.

Schedule 3 [19] rearranges the order of existing provisions that authorise the carrying out of personal searches so that the power to search for knives and other dangerous implements, which is based on a reasonable suspicion that a person has such an implement in his or her possession, will immediately follow other existing search powers that are also based on a reasonable suspicion and will precede those powers relating to the search of persons on arrest or while in custody (which involve a different test). **Schedule 3 [48]** is a consequential amendment.

Schedule 3 [30] simplifies the grounds on which a notice to an authorised deposit-taking institution to produce documents is issued.

Schedule 3 [46] repeals a provision that prevents police in-car video equipment from being used to record a conversation between a police officer and a person after the person has been arrested.

Schedule 3 [47] makes it clear that the recording of a conversation between police officers by means of police in-car video equipment does not constitute the use of a listening device for the purposes of the *Surveillance Devices Act 2007*.

Schedule 3 [49] enables the Commissioner of Police to order the destruction of any identification particulars of a person taken while the person is in custody. Such a power does not affect any existing requirement relating to destruction of identification particulars.

Schedule 3 [54] transfers the provisions of Part 12 of LEPPRA (which contains police powers relating to the regulation of traffic and vehicles, including the use of tyre deflation devices and preventing intoxicated drivers from driving) to the *Road Transport Act 2013*. **Schedule 3 [50]–[53]** are related amendments.

Schedule 3 [55] enables the regulations to prescribe a code of practice relating to the power of police to give directions under Part 14 of LEPPRA.

Schedule 4 Amendment of Law Enforcement (Powers and Responsibilities) Regulation 2005

Schedule 4 [1] provides that a receipt of the items seized during the execution of a covert search warrant must be provided to the occupier of the premises when the occupier is notified of the search unless the provision of the receipt would result in a person's safety being jeopardised or would compromise the investigation of a matter. **Schedule 4 [2]** requires a copy of any such receipt that is provided to the occupier to be kept.

Schedule 4 [3] provides that, in the case of a crime scene warrant that relates to more than one set of premises, the occupier's right to inspect the warrant is restricted only to the part that relates to the occupier's premises.

Schedule 4 [4] and [5] make consequential amendments to forms.

Schedule 5 Consequential amendment of other legislation

The Schedule makes amendments to other Acts and a regulation that refer to provisions of Part 15 of LEPPRA as a consequence of the substitution of that Part by the proposed Act.



New South Wales

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New South Wales

Law Enforcement (Powers and Responsibilities) Amendment Bill 2014

No. , 2014

A Bill for

An Act to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* in relation to police investigations and questioning, to safeguards relating to the exercise of police powers and to search and other police powers; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Law Enforcement (Powers and Responsibilities) Amendment Act 2014</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6

Schedule 1	Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103 relating to investigations and questioning under Part 9	1
		2
		3
[1] Section 109 Objects of Part		4
Insert at the end of section 109 (c):		5
, and		6
(d) to provide for the rights of a suspect who is in the company of a police officer in connection with an investigative procedure but who is not so detained.		7
		8
		9
[2] Section 110 Definitions		10
Insert in alphabetical order in section 110 (1):		11
<i>protected suspect</i> means a person who is in the company of a police officer for the purpose of participating in an investigative procedure in connection with an offence if:		12
		13
		14
(a) the person has been informed that he or she is entitled to leave at will, and		15
		16
(b) the police officer believes that there is sufficient evidence that the person has committed the offence.		17
		18
[3] Section 110 (2) and (3)		19
Omit the subsections.		20
[4] Section 110 (5)		21
Insert after section 110 (4):		22
(5) For the purposes of this Part, a reference to the place where a protected suspect is detained is a reference to the place where the person is participating in the relevant investigative procedure.		23
		24
		25
[5] Section 111 Persons to whom Part applies		26
Insert “or who is a protected suspect in connection with an offence” after “under arrest by a police officer for an offence” in section 111 (1).		27
		28
[6] Section 112A		29
Insert after section 112:		30
112A Application of Part in connection with execution of search warrants		31
(1) This Part applies to a person in the company of a police officer for the purpose of an investigative procedure at premises that are being searched under a search warrant issued under this Act or under a provision specified in Schedule 2 if:		32
		33
		34
		35
(a) the person has been arrested and is in custody at those premises, or		36
(b) the person is at the premises and is a protected suspect.		37
(2) For that purpose:		38
(a) the functions of the custody manager under this Part are exercisable by a police officer who is at the premises but who is not connected with the investigation concerned and who does not participate in the execution of the search warrant, and		39
		40
		41
		42

(b)	the police officer exercising the functions of the custody manager is not required to comply with any obligation under this Part relating to communication with a friend, relative, guardian or independent person if the police officer suspects on reasonable grounds that doing so may result in bodily injury to any other person, and	1 2 3 4 5
(c)	the custody record for the detained person or protected suspect may form part of a video recording of the execution of the search warrant, and	6 7 8
(d)	this Part applies with such other modifications as are prescribed by the regulations.	9 10
[7]	Section 113 Effect of Part on other powers and duties	11
	Insert “or is a protected suspect” after “who is under arrest” in section 113 (2) (b).	12
[8]	Part 9, Division 2, heading	13
	Omit the heading. Insert instead:	14
	Division 2 Investigation and questioning powers—persons under arrest	15 16
[9]	Section 115 Investigation period	17
	Omit “4 hours” from section 115 (2). Insert instead “6 hours”.	18
[10]	Section 116 Determining reasonable time	19
	Insert “(including any period during which the person was a protected suspect)” after “before and after the person is arrested” in section 116 (2) (j).	20 21
[11]	Section 118 Detention warrant to extend investigation period	22
	Omit “4 hours” from section 118 (1). Insert instead “6 hours”.	23
[12]	Section 118 (3)	24
	Omit “8 hours”. Insert instead “6 hours”.	25
[13]	Section 118 (4A)	26
	Insert after section 118 (4):	27
	(4A) When determining an application for a detention warrant, the authorised officer is to take into account any period for which the person to whom the application relates was a protected suspect in relation to the investigation.	28 29 30
[14]	Section 118 (5) (d)	31
	Omit “4-hour”. Insert instead “6-hour”.	32
[15]	Section 120 Information in application for detention warrant	33
	Insert after section 120 (1) (c):	34
	(c1) the period (if any) during which the person has been a protected suspect in relation to the investigation,	35 36

[16] Part 9, Division 3, heading	1
Omit the heading. Insert instead:	2
Division 3 Safeguards relating to persons under arrest and protected suspects	3 4
[17] Section 122 Custody manager to caution, and give summary of Part to, person under arrest or protected suspect	5 6
Insert “or after a person becomes a protected suspect” after “detention” in section 122 (1).	7
[18] Section 122 (1) (b)	8
Omit the paragraph. Insert instead:	9
(b) give the person a summary of the provisions of this Part in the form prescribed by the regulations.	10 11
[19] Sections 123, 124 (1), 125 (1), 126, 127, 128 (1), 129, 130 and 131	12
Insert “or protected suspect” and “or protected suspect’s” after “detained person” and “detained person’s”, respectively, wherever occurring.	13 14

Schedule 2	Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103 relating to safeguards under Part 15	1
		2
		3
[1] Part 15		4
	Omit the Part. Insert instead:	5
	Part 15 Safeguards relating to powers	6
	Note. For other safeguards relating to seizure or confiscation of property by police, see Part 17.	7
	For other requirements relating to personal searches, see Part 4.	8
201	Police powers to which this Part applies	9
	(1) This Part applies to the exercise of the following powers by police officers:	10
	(a) a power to stop, search or arrest a person,	11
	(b) a power to stop or search a vehicle, vessel or aircraft,	12
	(c) a power to enter or search premises,	13
	(d) a power to seize property,	14
	(e) a power to require the disclosure of the identity of a person (including a power to require the removal of a face covering for identification purposes),	15
		16
		17
	(f) a power to give or make a direction, requirement or request that a person is required to comply with by law,	18
		19
	(g) a power to establish a crime scene at premises (not being a public place).	20
	This Part applies (subject to subsection (3)) to the exercise of any such power whether or not the power is conferred by this Act.	21
		22
	Note. This Part extends to special constables exercising any such police powers—see section 82L of the <i>Police Act 1990</i> . This Part also extends to recognised law enforcement officers (with modifications)—see clause 132B of the <i>Police Regulation 2008</i> .	23
		24
		25
		26
	(2) This Part does not apply to the exercise of any of the following powers of police officers:	27
		28
	(a) a power to enter or search a public place,	29
	(b) a power conferred by a covert search warrant,	30
	(c) a power to detain an intoxicated person under Part 16.	31
	(3) This Part does not apply to the exercise of a power that is conferred by an Act or regulation specified in Schedule 1.	32
		33
202	Police officers to provide information when exercising powers	34
	(1) A police officer who exercises a power to which this Part applies must provide the following to the person subject to the exercise of the power:	35
		36
	(a) evidence that the police officer is a police officer (unless the police officer is in uniform),	37
		38
	(b) the name of the police officer and his or her place of duty,	39
	(c) the reason for the exercise of the power.	40
	(2) A police officer must comply with this section:	41
	(a) as soon as it is reasonably practicable to do so, or	42

	(b) in the case of a direction, requirement or request to a single person— before giving or making the direction, requirement or request.	1 2
(3)	A direction, requirement or request to a group of persons is not required to be repeated to each person in the group.	3 4
(4)	If 2 or more police officers are exercising a power to which this Part applies, only one officer present is required to comply with this section.	5 6
(5)	If a person subject to the exercise of a power to which this Part applies asks a police officer present for information as to the name of the police officer and his or her place of duty, the police officer must give to the person the information requested.	7 8 9 10
(6)	A police officer who is exercising more than one power to which this Part applies on a single occasion and in relation to the same person is required to comply with subsection (1) (a) and (b) only once on that occasion.	11 12 13
203	Police officers to give warnings when giving or making directions, requirements or requests that must be complied with	14 15
(1)	A police officer who exercises a power to which this Part applies that consists of a direction, requirement or request must give a warning to the person subject to the exercise of the power that the person is required by law to comply with the direction, requirement or request. Note. A failure to comply with the direction, requirement or request does not constitute an offence unless a warning under this section has been given—see section 204B.	16 17 18 19 20 21
(2)	A warning is not required if the person has already complied with or is in the process of complying with the direction, requirement or request.	22 23
(3)	A police officer must comply with this section as soon as is reasonably practicable after the direction, requirement or request is given or made.	24 25
(4)	If 2 or more police officers are exercising a power to which this Part applies, only one officer present is required to comply with this section.	26 27
204	Detention period for search of vehicles etc limited	28
	A police officer who detains a vehicle, vessel or aircraft for a search must not detain the vehicle, vessel or aircraft any longer than is reasonably necessary for the purpose of the search.	29 30 31
204A	Validity of exercise of powers	32
(1)	A failure by a police officer to comply with an obligation under this Part to provide the name of the police officer or his or her place of duty when exercising a power to which this Part applies does not render the exercise of the power unlawful or otherwise affect the validity of anything resulting from the exercise of that power.	33 34 35 36 37
(2)	Subsection (1) does not apply if the failure to comply occurs after the police officer was asked for information as to the name of the police officer or his or her place of duty (as referred to in section 202 (5)).	38 39 40
(3)	Subsection (1) does not apply to the exercise of a power that consists of a direction, requirement or request to a single person.	41 42
204B	Commission of offence in relation to exercise of powers where failure by police officer to comply with this Part	43 44
(1)	A person does not commit an offence under this Act of failing to comply with a direction, requirement or request given or made by a police officer under or	45 46

	in connection with a power to which this Part applies unless the obligations under this Part are complied with when exercising the power.	1 2
(2)	Subsection (1) does not apply to a failure by a police officer to comply with an obligation under this Part that does not render the exercise of the power by the officer unlawful because of section 204A.	3 4 5
[2]	Sections 11 and 14 (1)	6
	Omit notes wherever occurring. Insert instead:	7
	Note. Safeguards relating to the exercise of power under this section are set out in Part 15.	8 9
[3]	Section 12 Failure to disclose identity	10
	Omit “sections 11 and 201”. Insert instead “section 11”.	11
[4]	Sections 15–17	12
	Omit “sections 14 and 201” wherever occurring. Insert instead “section 14”.	13
[5]	Sections 15–17	14
	Omit notes wherever occurring. Insert instead:	15
	Note. Safeguards relating to the exercise of power under section 14 are set out in Part 15.	16 17
[6]	Section 19A Power of police officer to require removal of face coverings for identification purposes	18 19
	Omit the note after section 19A (1). Insert instead:	20
	Note. Safeguards relating to the exercise of power under this section are set out in Part 15 and subsection (3).	21 22
[7]	Section 19B Failure to remove face covering	23
	Omit “sections 19A and 201” from section 19B (1). Insert instead “section 19A”.	24
[8]	Sections 21A (3), 23A (3) and 143 (2)	25
	Omit “and section 201” wherever occurring.	26
[9]	Section 27 Failure to comply with requirements relating to search and dangerous implements	27 28
	Omit “sections 26 and 201” wherever occurring. Insert instead “section 26”.	29
[10]	Section 87MA Power to disperse groups	30
	Omit “section 201 (1) (c)” from section 87MA (2). Insert instead “Part 15”.	31
[11]	Section 87MA (6)	32
	Omit “section 201”. Insert instead “Part 15”.	33
[12]	Section 198 Move on directions to intoxicated persons in public places	34
	Insert after section 198 (5):	35
(6)	A police officer must give to a person to whom the officer gives a direction under this section (being a direction on the grounds that the person is intoxicated and disorderly in a public place) a warning that it is an offence to be intoxicated and disorderly in that or any other public place at any time	36 37 38 39

	within 6 hours after the direction is given. The warning is in addition to any other warning required under Part 15.	1 2
	Note. See relevant offence under section 9 of the <i>Summary Offences Act 1988</i> .	3
[13]	Section 198A Giving of directions to groups of persons	4
	Omit “section 201” from section 198A (2). Insert instead “Part 15”.	5
[14]	Schedule 5 Savings, transitional and other provisions	6
	Insert at the end of clause 1 (1):	7
	any other Act that amends this Act	8
[15]	Schedule 5	9
	Insert at the end of the Schedule:	10
Part 8	Provisions consequent on enactment of Law Enforcement (Powers and Responsibilities) Amendment Act 2014	11 12 13
17	Monitoring of operation of safeguard provisions relating to giving name and place of duty of police officer exercising functions	14 15
(1)	For the period of 12 months after the commencement of section 204A of this Act (as inserted by the <i>Law Enforcement (Powers and Responsibilities) Amendment Act 2014</i>), the Ombudsman is to keep under scrutiny compliance by police officers with the obligation under Part 15 of this Act to provide information about the name and place of duty of a police officer when exercising a power to which that Part applies.	16 17 18 19 20 21
(2)	For that purpose, the Ombudsman may require the Commissioner of Police to provide information about the exercise of relevant functions by police officers.	22 23
(3)	The Ombudsman must, as soon as practicable after the expiration of that 12-month period, prepare a report of the Ombudsman’s work and activities under this clause and furnish a copy of the report to the Attorney General, the Minister for Police and Emergency Services and the Commissioner of Police.	24 25 26 27
(4)	The Ombudsman may in the report identify, and include recommendations for consideration by the Government about, amendments that might appropriately be made to Part 15 of this Act to secure compliance by police officers with the obligations under that Part.	28 29 30 31
(5)	A copy of a report furnished by the Ombudsman under this clause is to be tabled in each House of Parliament as soon as practicable after it is so furnished.	32 33 34
(6)	If a House of Parliament is not sitting when the Attorney General or another Minister seeks to table a copy of the report, the Attorney General or other Minister may present a copy of the report to the Clerk of the House concerned.	35 36 37
(7)	A copy of a report presented to the Clerk of a House:	38
(a)	is, on presentation and for all purposes, taken to have been laid before the House, and	39 40
(b)	may be printed by authority of the Clerk of the House, and	41
(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	42 43

- (d) is to be recorded: 1
 - (i) in the case of the Legislative Council—in the Minutes of the 2
Proceedings of the Legislative Council, and 3
 - (ii) in the case of the Legislative Assembly—in the Votes and 4
Proceedings of the Legislative Assembly, 5
on the first sitting day of the House after receipt of the report by the 6
Clerk. 7

Schedule 3	Miscellaneous amendments to Law Enforcement (Powers and Responsibilities) Act 2002 No 103	1 2
[1] Section 3 Interpretation		3
Insert in alphabetical order in section 3 (1):		4
<i>body cavities</i> of a person do not include the person’s mouth.		5
<i>transgender person</i> means a person (whether or not the person is a person whose sex is altered under Part 5A of the <i>Births, Deaths and Marriages Registration Act 1995</i> or under the corresponding provisions of a law of another Australian jurisdiction):		6 7 8 9
(a) who identifies as a member of the opposite sex, by living, or seeking to live, as a member of the opposite sex, or		10 11
(b) who has identified as a member of the opposite sex by living as a member of the opposite sex, or		12 13
(c) who, being of indeterminate sex, identifies as a member of a particular sex by living as a member of that sex,		14 15
and includes a reference to the person being thought of as a transgender person, whether the person is, or was, in fact a transgender person.		16 17
[2] Section 3 (1), definitions of “frisk search” and “ordinary search”		18
Omit the definitions.		19
[3] Section 3 (2A)		20
Insert after section 3 (2):		21
(2A) In this Act, a reference:		22
(a) to a member of the opposite sex of a person means, if the person is a transgender person, a member of the opposite sex to the sex with which the transgender person identifies, and		23 24 25
(b) to a member of the same sex as a person means, if the person is a transgender person, a member of the same sex as the sex with which the transgender person identifies.		26 27 28
[4] Sections 11, 13A, 21A (1), 23A (1), 26, 87L (1) and 142 (1) (e)		29
Omit “request” wherever occurring. Insert instead “require”.		30
[5] Sections 12, 13B, 15, 16, 17 (1), 19, 27 (a), 87L (2) and (4) and 143 (2)		31
Omit “requested” wherever occurring. Insert instead “required”.		32
[6] Sections 12, 13, 13B, 13C, 15 (1), 16 (1), 18, 21A (3), 23A (3), 27 (b), 87L (2) and (3), 96 (2) and 143 (2) and (3)		33 34
Omit “request” wherever occurring. Insert instead “requirement”.		35
[7] Section 14 Power of police officer to require disclosure of driver or passenger identity		36 37
Omit “make any one or more of the following requests” from section 14 (1).		38
Insert instead “do any one or more of the following”.		39

[8] Section 14 (1) (a)	1
Omit “a request that the driver of the vehicle”.	2
Insert instead “require the driver of the vehicle to”.	3
[9] Section 14 (1)	4
Omit “the request” wherever occurring. Insert instead “the requirement”.	5
[10] Section 14 (1)	6
Omit “under this Division” wherever occurring.	7
[11] Section 14 (1) (b)	8
Omit “a request that any passenger in or on the vehicle”.	9
Insert instead “require any passenger in or on the vehicle to”.	10
[12] Section 14 (1) (c)	11
Omit “a request that any owner of the vehicle (who was or was not the driver or a passenger)”.	12
Insert instead “require any owner of the vehicle (who was or was not the driver or a passenger) to”.	14
[13] Section 19B Failure to remove face covering	16
Omit “a request made to the person under section 14 (Power of police officer to request disclosure of driver or passenger identity)” from paragraph (a) of the penalty in section 19B (1).	17
Insert instead “a requirement under section 14”.	20
[14] Sections 21A (1) (a) and 23A (1) (a)	21
Insert “to enable it to be searched” after “mouth” wherever occurring.	22
[15] Section 24 Power to carry out search of person in lawful custody after arrest	23
Omit “(whether at a police station or at any other place)”.	24
Insert instead “after arrest”.	25
[16] Section 24 (2)	26
Insert at the end of section 24:	27
(2) Any such search may be carried out at a police station or other place of detention or immediately before or during transportation of the person to or from a police station or other place of detention.	28
	29
	30
[17] Section 26 Power to search for knives and other dangerous implements	31
Omit “frisk search” from section 26 (1) and (1A) wherever occurring.	32
Insert instead “search of the person”.	33
[18] Section 28 Power to confiscate knives and other dangerous implements	34
Omit “requests” from section 28 (3). Insert instead “requires”.	35

[19] Part 4, Divisions 2 and 3 (as amended by this Schedule)	1
Renumber Division 2 as Division 3 and Division 3 as Division 2.	2
Renumber sections 23, 23A and 24 as sections 27, 28 and 28A, respectively, and amend any cross-references in transferred Division 2 accordingly.	3 4
Renumber sections 25–28 as sections 23–26, respectively, and amend any cross-references in transferred Division 3 accordingly.	5 6
[20] Section 29	7
Omit the section. Insert instead:	8
29 Application of Division	9
(1) This Division applies to any search of a person carried out by a police officer under this Act, except as otherwise provided by this Act or the regulations.	10 11
(2) This Division also applies to any search of a person that is carried out by a police officer after obtaining the person’s consent to carry out the search. In that case:	12 13 14
(a) the purpose of the search is the purpose for which the police officer obtained consent to search, and	15 16
(b) a general consent to the carrying out of a search is not consent to carry out a strip search unless the person consents to the carrying out of a strip search.	17 18 19
[21] Section 30	20
Omit the section. Insert instead:	21
30 Searches generally	22
In conducting the search of a person, a police officer may:	23
(a) quickly run his or her hands over the person’s outer clothing, and	24
(b) require the person to remove his or her coat or jacket or similar article of clothing and any gloves, shoes, socks and hat (but not, except in the case of a strip search, all of the person’s clothes), and	25 26 27
(c) examine anything in the possession of the person, and	28
(d) pass an electronic metal detection device over or in close proximity to the person’s outer clothing or anything removed from the person, and	29 30
(e) do any other thing authorised by this Act for the purposes of the search.	31
[22] Section 31	32
Omit the section. Insert instead:	33
31 Strip searches	34
A police officer may carry out a strip search of a person if:	35
(a) in the case where the search is carried out at a police station or other place of detention—the police officer suspects on reasonable grounds that the strip search is necessary for the purposes of the search, or	36 37 38
(b) in the case where the search is carried out in any other place—the police officer suspects on reasonable grounds that the strip search is necessary for the purposes of the search and that the seriousness and urgency of the circumstances make the strip search necessary.	39 40 41 42

[23]	Sections 32 (1)–(6) and (10) and 33 (1)	1
	Omit “or other person” and “or person” wherever occurring.	2
[24]	Section 32 Preservation of privacy and dignity during search	3
	Omit section 32 (7). Insert instead:	4
	(7) A search must be conducted by a police officer of the same sex as the person searched.	5 6
	(7A) However, if a police officer of the same sex as the person who is to be searched is not immediately available, a police officer may delegate the power to conduct the search to another person who is:	7 8 9
	(a) of the same sex as the person to be searched, and	10
	(b) of a class of persons prescribed by the regulations for the purposes of this subsection.	11 12
	The search by that other person is to be conducted under the direction of the police officer and in accordance with provisions of this Act applying to searches conducted by police officers.	13 14 15
[25]	Section 32 (8A)	16
	Insert after section 32 (8):	17
	(8A) Subsection (8) does not prevent the asking of questions that only relate to issues of personal safety associated with the search.	18 19
[26]	Section 32 (11), definition of “transgender person”	20
	Omit the definition.	21
[27]	Section 33 Rules for conduct of strip searches	22
	Insert “Subsection (1) (b) does not prevent any such person who is of the opposite sex to the person being searched from being present during the search.” after “being present.” in section 33 (2).	23 24 25
[28]	Section 33 (3) and (3A)	26
	Omit section 33 (3). Insert instead:	27
	(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 be conducted:	28 29 30
	(a) in the presence of a parent or guardian of the person being searched, or	31
	(b) if that is not acceptable to the person, in the presence of another person who is not a police officer and who is capable of representing the interests of the person being searched and whose presence is acceptable to that person.	32 33 34 35
	(3A) Subsection (3) does not apply if a police officer suspects on reasonable grounds that:	36 37
	(a) delaying the search is likely to result in evidence being concealed or destroyed, or	38 39
	(b) an immediate search is necessary to protect the safety of a person.	40
	In such a case, the police officer must make a record of the reasons for not conducting the search in the presence of a parent or guardian, or other person capable of representing the interests, of the person being searched.	41 42 43

[29] Section 34A	1
Insert after section 34:	2
34A Searches carried out with consent	3
(1) A police officer may search a person with the person’s consent but only if the police officer has sought the person’s consent before carrying out the search.	4 5
(2) A police officer must, before carrying out any such consensual search, provide the person with:	6 7
(a) evidence that the police officer is a police officer (unless the police officer is in uniform), and	8 9
(b) the name of the police officer and his or her place of duty.	10
[30] Section 54 Issue of notice to produce documents	11
Omit section 54 (1). Insert instead:	12
(1) An eligible issuing officer to whom an application for a notice to produce documents is made may, if satisfied that there are reasonable grounds for doing so, issue the notice to produce documents.	13 14 15
[31] Section 82 Entry by invitation	16
Insert “or (3A)” after “subsection (3)” in section 82 (2) (b).	17
[32] Section 82 (3A)–(3C)	18
Insert after section 82 (3):	19
(3A) A police officer who has entered a dwelling in accordance with subsection (1) may remain in the dwelling and exercise any of the following powers until such time as a warrant is issued under section 83 in relation to the dwelling:	20 21 22
(a) direct a person to leave, or not to enter, the dwelling,	23
(b) remove from the dwelling a person who fails to comply with a direction to leave the dwelling,	24 25
(c) prevent a person from entering the dwelling,	26
(d) prevent a person from removing evidence from or otherwise interfering with the dwelling or anything in it and, for that purpose, detain and search the person.	27 28 29
(3B) Such a power may be exercised only if the police officer suspects on reasonable grounds that:	30 31
(a) a domestic violence offence is being, or may have been recently, committed in the dwelling, and	32 33
(b) the exercise of the power is necessary to preserve evidence of the commission of the offence.	34 35
(3C) A police officer may exercise a power under subsection (3A) even though an occupier of the dwelling expressly refuses authority to the police officer to remain in the dwelling.	36 37 38
[33] Section 83 Warrant where entry denied or authority to remain refused	39
Insert “or is expressly refused authority to remain in a specified dwelling by an occupier of the dwelling” after “dwelling” in section 83 (1) (a).	40 41

[34]	Section 83 (1) (b) (ii)	1
	Insert “, or to remain in the dwelling,” after “immediately”.	2
[35]	Section 83 (2) (a)	3
	Insert “or remain in” after “enter”.	4
[36]	Section 84 Obstruction or hindrance of person executing warrant or exercising power under this Part	5
	Insert “or a police officer who is exercising a power under this Part” after “this Part”.	6
[37]	Section 91 Establishment of crime scene	7
	Insert after section 91 (3):	8
	(4) Subsection (3) does not prevent a subsequent crime scene being established on the same premises in a 24 hour period for the purposes of investigating a separate offence that is not related to the offence in respect of which the initial crime scene was established.	9
		10
		11
		12
		13
[38]	Section 92 Exercise of powers at crime scene	14
	Omit “(a)–(f)” from section 92 (1). Insert instead “(a)–(l)”.	15
[39]	Section 92 (3)	16
	Omit “3 hours”.	17
	Insert instead “4 hours (or not more than 6 hours in the case of a crime scene established in a rural area prescribed by the regulations)”.	18
		19
[40]	Section 92 (5A)	20
	Insert after section 92 (5):	21
	(5A) A police officer may, in exercising crime scene powers conferred by subsection (1) at a crime scene, open a thing that is locked only if it is possible to do so without causing any damage to the thing or the lock.	22
		23
		24
[41]	Section 93 Notice to senior police officer where warrant not required	25
	Omit “3 hours or less”.	26
	Insert instead “4 hours or less or for a period of 6 hours or less in the case of a rural area referred to in section 92 (3)”.	27
		28
[42]	Section 94 Crime scene warrants	29
	Insert after section 94 (2):	30
	(2A) A crime scene warrant may, if a crime scene in relation to an offence is established on more than one set of premises, apply to each of those sets of premises.	31
		32
		33
[43]	Section 94A	34
	Insert after section 94:	35
	94A Application by occupier for review by authorised officer of crime scene warrant	36
		37
	(1) This section applies to crime scene warrants issued in relation to premises that are not a public place.	38
		39

(2)	The occupier of premises in respect of which a crime scene warrant is issued may apply to an authorised officer for a review of the grounds on which the warrant was issued.	1 2 3
(3)	Any such application for a review of a crime scene warrant does not stay the operation of the warrant.	4 5
(4)	After reviewing the grounds on which the crime scene warrant was issued, the authorised officer to whom an application for review is made may:	6 7
(a)	by order in writing, revoke the crime scene warrant, or	8
(b)	refuse to revoke the warrant.	9
[44]	Section 95 Crime scene powers	10
	Insert “Any such consent must, as far as is reasonably practicable, be in writing.” after “consents.” in section 95 (3).	11 12
[45]	Section 95 (4)	13
	Insert after section 95 (3) (before the note):	14
(4)	The occupier of premises may consent to the exercise of crime scene powers on the premises only if the occupier is, before giving consent, informed by a police officer of the following:	15 16 17
(a)	the crime scene powers proposed to be exercised on the premises,	18
(b)	the reasons for exercising those powers,	19
(c)	the right of the occupier to refuse consent.	20
[46]	Section 108E Recording not authorised after arrest	21
	Omit the section.	22
[47]	Section 108F Operation of Surveillance Devices Act 2007	23
	Insert “(including the recording of a conversation between police officers by means of ICV equipment)” after “ICV equipment”.	24 25
[48]	Part 10, note	26
	Omit “Division 2” from the note to the Part. Insert instead “Division 3”.	27
[49]	Section 137C	28
	Insert after section 137B:	29
137C	Commissioner may order destruction of identification particulars	30
(1)	The Commissioner may, in such cases as the Commissioner considers it to be appropriate, order the destruction of any photograph, finger-prints or palm-prints of a person that have been taken under this Division in relation to an offence.	31 32 33 34
(2)	This section does not affect any requirement under this Division relating to the destruction of a person’s photograph, finger-prints or palm-prints.	35 36

[50]	Part 12, heading and note	1
	Omit the heading and the note to the Part. Insert instead:	2
	Part 12 Miscellaneous police powers relating to vehicles and traffic	3 4
[51]	Sections 187 (1) and 188 (1)	5
	Insert “of Police” after “Commissioner” wherever occurring.	6
[52]	Sections 189B (3) and 189C (3)	7
	Omit “to the <i>Road Transport Act 2013</i> ” from the definition of <i>oral fluid test</i> wherever occurring.	8 9
[53]	Sections 189B (3) and 189C (3)	10
	Omit the definition of <i>prescribed illicit drug</i> wherever occurring.	11
[54]	Part 12 (as amended by this Schedule)	12
	Omit the Part.	13
	Transfer the Part to the <i>Road Transport Act 2013</i> as Part 5.5, renumber sections 185–192 of the transferred Part as sections 148A–148K and amend any cross-references in the transferred Part accordingly.	14 15 16
[55]	Section 200A	17
	Insert after section 200:	18
	200A Code of practice	19
	(1) The regulations may prescribe a code of practice relating to the exercise of powers by police officers under this Part and the rights of persons to whom directions are given under this Part.	20 21 22
	(2) The exercise of powers by police officers under this Part is subject to any such code of practice.	23 24

Schedule 4	Amendment of Law Enforcement (Powers and Responsibilities) Regulation 2005	1
		2
[1] Clause 8A		3
Insert after clause 8:		4
8A Receipts for things seized under covert search warrant		5
(1)	A person who seizes a thing while executing a covert search warrant must, at the time the occupier's notice under section 67 of the Act is served (the <i>time of notification</i>) on the person who was the occupier of the subject premises at the time the warrant was executed, provide the occupier of the premises with a receipt acknowledging seizure of the thing.	6 7 8 9 10
(2)	However, any such receipt is not required to be provided at the time of notification if an eligible issuing officer issues a certificate to the effect that:	11 12
(a)	the receipt contains matter:	13
(i)	that could disclose a person's identity, and	14
(ii)	that, if disclosed, is likely to jeopardise that or any other person's safety, or	15 16
(b)	the receipt contains matter that, if disclosed, may seriously compromise the investigation of any matter.	17 18
[2] Clause 10 Keeping and inspection of records		19
Insert "or 8A" after "clause 8" in clause 10 (1) (d).		20
[3] Clause 10 (7)		21
Insert after clause 10 (6):		22
(7)	In the case of a crime scene warrant under Part 7 of the Act that relates to more than one set of premises, subclause (6) (a) authorises the occupier of premises, or a person acting on behalf of the occupier, to inspect only so much of the documents as relate to the premises of the occupier.	23 24 25 26
[4] Schedule 1 Forms		27
Insert in Form 19 at the end of the matter appearing under the heading " Challenging the issue or execution of the warrant ":		28 29
	Under section 94A of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> you have, if you are the occupier of private premises, the right to apply to an authorised officer to have the warrant reviewed.	30 31 32
[5] Schedule 1, Form 20		33
Insert after item 4:		34
*4A	[To be completed in the case of a crime scene warrant.] The warrant was executed in relation to [Specify address of premises in relation to which crime scene warrant was executed.]	35 36 37

Schedule 5	Consequential amendment of other legislation	1
5.1	Child Protection (Offenders Registration) Act 2000 No 42	2
	Section 16C Entry by police officers to verify residence	3
	Omit the note after section 16C (1). Insert instead:	4
	Note. Safeguards relating to the exercise of power under this section are set out in Part 15 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> .	5 6
5.2	Coastal Protection Act 1979 No 13	7
	Section 8 Identification cards	8
	Omit the note after section 8 (3). Insert instead:	9
	Note. See Part 15 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> in relation to a police officer's obligation to produce evidence that the police officer is a police officer (unless the police officer is in uniform).	10 11 12
5.3	Crimes (Criminal Organisations Control) Act 2012 No 9	13
	Section 35A Failure of person to disclose identity on request	14
	Omit the note at the end of the section. Insert instead:	15
	Note. Safeguards relating to the exercise of power under sections 16 (6) and 26 (7A) are set out in Part 15 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> .	16 17
5.4	Crimes (Forensic Procedures) Act 2000 No 59	18
	Section 3 Interpretation	19
	Omit section 3 (2).	20
5.5	Dangerous Goods (Road and Rail Transport) Act 2008 No 95	21
	Section 18 Identification cards	22
	Omit the note at the end of the section.	23
5.6	Intoxicated Persons (Sobering Up Centres Trial) Act 2013 No 15	24
[1]	Section 10 Supplying police officer's details and giving warnings	25
	Omit "Section 201". Insert instead "Part 15".	26
[2]	Section 10	27
	Omit the note at the end of the section. Insert instead:	28
	Note. Part 15 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> sets out safeguards relating to the exercise of certain police powers.	29 30
5.7	Local Government Act 1993 No 30	31
[1]	Section 680A Authorised person may give directions relating to public places (as inserted by the Police Legislation Amendment (Special Constables) Act 2013)	32 33
	Omit "Section 201 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (Supplying police officer's details and giving warnings)" from section 680A (6).	34 35
	Insert instead "Part 15 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (Safeguards relating to powers)".	36 37

[2] Section 680A (6)	1
Omit “that section”. Insert instead “that Part”.	2
5.8 Major Events Act 2009 No 73	3
[1] Section 22 Relationship with road transport legislation	4
Omit “section 201 (Supplying police officer’s details and giving warnings)” from section 22 (5).	5
Insert instead “Part 15”.	6
[2] Section 70 Identification cards	7
Omit the note at the end of the section. Insert instead:	9
Note. See Part 15 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> in relation to a police officer’s obligation to produce evidence that the police officer is a police officer (unless the police officer is in uniform).	10
	11
	12
5.9 Motor Sports (World Rally Championship) Act 2009 No 55	13
Section 9 Directions by police officers	14
Omit “section 201” from section 9 (3). Insert instead “Part 15”.	15
5.10 Police Act 1990 No 47	16
[1] Section 82L Appointment of special constables (as inserted by the Police Legislation Amendment (Special Constables) Act 2013)	17
	18
Omit “Section 201 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (Supplying police officer’s details and giving warnings)” from section 82L (5).	19
Insert instead “Part 15 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (Safeguards relating to powers)”.	20
	21
	22
[2] Section 82L (5)	23
Omit “that section”. Insert instead “that Part”.	24
5.11 Police Regulation 2008	25
[1] Clause 132B Supplying officer’s details and giving warnings	26
Omit “section 201” from clause 132B (1). Insert instead “Part 15”.	27
[2] Clause 132B (2)	28
Omit “Section 201 (1)”. Insert instead “Section 202 (1)”.	29
5.12 Summary Offences Act 1988 No 25	30
Section 9 Continuation of intoxicated and disorderly behaviour following move on direction	31
	32
Omit the note after section 9 (2). Insert instead:	33
Note. The maximum period for which a person can be directed not to return to a public place is 6 hours.	34
	35
It is a requirement under section 198 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> that the police officer warn a person given a move on direction for being intoxicated and disorderly in a public place that it is an offence to be	36
	37
	38

intoxicated and disorderly in that or any other public place at any time within 6 hours
after the move on direction is given. 1
2

5.13 Terrorism (Police Powers) Act 2002 No 115 3

Section 26T Power to require disclosure of identity 4

Omit the note at the end of the section. Insert instead: 5

Note. Part 15 of the *Law Enforcement (Powers and Responsibilities) Act 2002* sets out
safeguards relating to the exercise of power under this section. 6
7