



New South Wales

Law Enforcement (Powers and Responsibilities) Amendment (Detained Person's Property) Bill 2008

Explanatory note

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

Overview of Bill

The object of this Bill is to implement a time saving proposal identified in an ongoing review aimed at streamlining the police charging process.

At present, section 131 (2) (d) of the *Law Enforcement (Powers and Responsibilities) Act 2002* requires the custody manager for a detained person to record details of any property taken from the person in the custody record for the person. The Bill amends that Act to remove this requirement to itemise the property in detail and enables the making of regulations to provide instead for the property to be dealt with by being placed in clear tamper-proof bags.

The Bill also amends the *Law Enforcement (Powers and Responsibilities) Regulation 2005* to require property taken from a detained person to be placed in a tamper-proof bag and for the placement of property in the bag to be verified by the detained person by signing the bag. The custody record will then simply record the facts relating to placement of the property in the bag and the detained person's verification of the placement.

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 to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Law Enforcement (Powers and Responsibilities) Regulation 2005* set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

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

Schedule 1 contains the amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002* described in the Overview above.

Schedule 2 Amendment of Law Enforcement (Powers and Responsibilities) Regulation 2005

Schedule 2 contains the amendments to the *Law Enforcement (Powers and Responsibilities) Regulation 2005* described in the Overview above.



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No. , 2008

A Bill for

An Act to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* to make further provision with respect to custody of a detained person's property; and to make related amendments.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Law Enforcement (Powers and Responsibilities) Amendment (Detained Person's Property) Act 2008</i> .	3 4
2 Commencement	5
This Act commences on a day to be appointed by proclamation.	6
3 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103	7 8
The <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> is amended as set out in Schedule 1.	9 10
4 Amendment of Law Enforcement (Powers and Responsibilities) Regulation 2005	11 12
The <i>Law Enforcement (Powers and Responsibilities) Regulation 2005</i> is amended as set out in Schedule 2.	13 14
5 Repeal of Act	15
(1) This Act is repealed on the day following the day on which this Act commences.	16 17
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	18 19

Schedule 1	Amendment of Law Enforcement (Powers and Responsibilities) Act 2002	1
		2
	(Section 3)	3
[1]	Section 131 Custody records to be maintained	4
	Omit section 131 (2) (d).	5
[2]	Section 131A	6
	Insert after section 131:	7
131A	Dealing with property taken from detained person	8
	The custody manager for a detained person must ensure that any property taken from that person is dealt with in accordance with the regulations.	9
		10
		11

Schedule 2	Amendment of Law Enforcement (Powers and Responsibilities) Regulation 2005	1
		2
		3
	(Section 4)	4
[1] Clause 17A		5
Insert after clause 17:		6
17A Dealing with detained person's property		7
(1) The custody manager for a detained person must ascertain what property the person has with the person when he or she comes into the police station or other place of detention concerned, or had taken from him or her on arrest, and must arrange for safekeeping of the property if it remains at the police station or other place of detention.		8 9 10 11 12 13
(2) The custody manager must ensure that all property taken from the detained person is placed in a clear tamper-proof bag of a kind approved by the Commissioner for the purposes of this clause.		14 15 16
(3) The property must be placed in the bag under camera surveillance in so far as it is practicable to do so.		17 18
(4) Unless the detained person is intoxicated or there are other circumstances that make it impossible to do so, the custody manager must ask the detained person to verify that all property taken from the person has been placed in the bag by signing and dating the bag in the manner approved by the Commissioner for the purposes of this clause.		19 20 21 22 23 24
(5) The Commissioner may enter into a memorandum of understanding with the Commissioner of Corrective Services with respect to the use of tamper-proof bags under this clause.		25 26 27
[2] Clause 21 Additional matters to be recorded in custody record		28
Insert after clause 21 (1) (i):		29
(j) if any property was taken from the person—the date and time that the property was placed in a tamper-proof bag in accordance with clause 17A,		30 31 32
(k) the date and time the person verified placement of his or her property in the tamper-proof bag when requested to do so under clause 17A (4) or, if the person refused to verify placement, the fact that the person refused to do so and the reasons (if any) that the person gave for refusing,		33 34 35 36 37

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Amendment of Law Enforcement (Powers and Responsibilities) Regulation Schedule 2
2005

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|---|--|-------------|
| | (l) if circumstances made it impossible to request the person to verify placement of property in the tamper-proof bag—the reasons for not asking the person to verify placement. | 1
2
3 |
| [3] Clause 21 (2) | | 4 |
| | Omit “matters referred to in section 131 (2) (d) of the Act and”. | 5 |
| | Insert instead “matter referred to in”. | 6 |
| [4] Schedule 2 Guidelines for custody managers and other police officers | | 7 |
| | Omit clause 2. | 8 |