



New South Wales

Law Enforcement (Powers and Responsibilities) Amendment (Drug Detection Dogs and Strip Searches) Bill 2020

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* as follows—

- (a) to prohibit strip searches of children who are under 16 years old and to permit strip searches of children aged 16 and 17 years only in exceptional circumstances,
- (b) to limit the circumstances in which personal searches may be carried out,
- (c) to provide that a person cannot consent to a strip search and to require that a police officer seeking the consent of a person to a personal search, other than a strip search, must inform the person that no unfavourable inference may be drawn if the person refuses to consent to a search,
- (d) to prohibit the imposition of quotas or targets relating to the number of personal searches carried out by police officers,
- (e) to prohibit a police officer from using a dog to search a person for the purpose of detecting a drug offence,
- (f) to require a warrant for the use of a dog to carry out general drug detection in a public place,
- (g) to set out the matters that an authorised officer must consider in determining whether there are reasonable grounds to issue a warrant to carry out general drug detection in a public place using dogs,
- (h) to further provide for the information that must be included in an application for a warrant,

- (i) to require the Commissioner of Police to record information relating to, and report annually to Parliament on, the number of searches, including strip searches, carried out by police while using dogs to carry out general drug detection under a warrant,
- (j) to make other minor and consequential amendments.

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 the date of assent to the proposed Act.

Schedule 1 amends the *Law Enforcement (Powers and Responsibilities) Act 2002* as set out in the overview above.



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New South Wales

Law Enforcement (Powers and Responsibilities) Amendment (Drug Detection Dogs and Strip Searches) Bill 2020

No. _____, 2020

A Bill for

An Act to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* to prohibit the use of drug detection dogs in carrying out drug detection without a warrant; to limit the circumstances in which strip searches may be carried out; to prohibit strip searches of children who are less than 16 years old; and for related purposes.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Law Enforcement (Powers and Responsibilities) Amendment (Drug Detection Dogs and Strip Searches) Act 2020*.

3

4

2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103	1
		2
[1] Section 3 Interpretation		3
	Omit the definition of <i>strip search</i> from section 3(1). Insert in alphabetical order—	4
	<i>non-binary person</i> means a person who does not identify exclusively as a female or a male.	5
	<i>strip search</i> —see section 29A.	6
		7
[2] Section 3(2A)(a)		8
	Omit “, a member of the opposite sex to the sex with which the transgender person identifies”.	9
		10
	Insert instead “or a non-binary person, a member of the sex nominated by the transgender person or non-binary person”.	11
		12
[3] Section 3(2A)(b)		13
	Omit “, a member of the same sex as the sex with which the transgender person identifies”.	14
		15
	Insert instead “or a non-binary person, a member of the sex nominated by the transgender person or non-binary person”.	16
		17
[4] Section 29A		17
	Insert before section 29—	18
29A Definitions		19
	In this Division—	20
	<i>remove</i> a person’s clothes includes moving or otherwise adjusting the clothes.	21
	<i>strip search</i> means a search of a person or of articles in the possession of a person that involves—	22
		23
	(a) requiring the person to remove any of the person’s clothes other than clothes specified in section 30(1)(b), and	24
		25
	(b) an examination of the person’s body, not including body cavities, and the person’s clothes.	26
		27
[5] Section 29 Application of Division		28
	Omit “any search of a person” from section 29(2).	29
		30
	Insert instead “a search of a person, other than a strip search,”	30
[6] Section 29(2)(b)		31
	Omit the paragraph.	32
[7] Section 30 Searches generally		33
	Omit “his or her” from section 30(a). Insert instead “the police officer’s”.	34
[8] Section 30(b)		35
	Omit “his or her”. Insert instead “the person’s”.	36
[9] Section 30(b)		37
	Omit “all”. Insert instead “any other”.	38

[10] Section 30(2)	1
Insert at the end of section 30—	2
(2) In determining whether to conduct a search of a person who is 16 or 17 years of age, and in determining the manner in which the search is carried out, the safety, welfare and well-being of the person is to be the paramount consideration.	3 4 5 6
[11] Section 31 Strip searches	7
Omit section 31(b). Insert instead—	8
(b) in the case where the search is carried out in another place—	9
(i) the police officer believes on reasonable grounds that the strip search is necessary for the purposes of the search, and	10 11
(ii) the police officer believes on reasonable grounds that there is an immediate risk of significant harm to a person’s life or safety unless the strip search is carried out, and	12 13 14
(iii) a senior police officer authorises the carrying out of the strip search, having regard to the matters set out in subparagraphs (i) and (ii).	15 16 17
[12] Section 31(2)	18
Insert at the end of section 31—	19
(2) For the purposes of subsection (1)(b)(ii), the fact that a person may be in possession of a small quantity, within the meaning of the <i>Drug Misuse and Trafficking Act 1985</i> , of a prohibited drug or prohibited plant does not of itself constitute an immediate risk of significant harm to a person’s life or safety.	20 21 22 23
[13] Section 32 Preservation of privacy and dignity during search	24
Omit “female or a transgender person who identifies as a female” from section 32(6).	25
Insert instead “a female, transgender person or non-binary person”.	26
[14] Section 33 Rules for conduct of strip searches	27
Insert before section 33(1)—	28
(1A) Before carrying out a strip search of a person, the police officer must—	29
(a) inform the person that the person may nominate a support person to be present during the strip search, and	30 31
(b) ensure the support person is present during the strip search.	32
[15] Section 33(1)	33
Omit “, as far as is reasonably practicable in the circumstances,”.	34
[16] Section 33(1)(a)	35
Insert “to ensure the privacy and dignity of the person being searched” after “area”.	36
[17] Section 33(1)(b)	37
Insert “except as provided by this section,” before “the strip search”.	38
[18] Section 33(2)	39
Omit “A parent”. Insert instead “In addition to a support person, a parent”.	40

[19] Section 33(3)	1
Omit “at least 10 years of age but under 18”. Insert instead “16 or 17”.	2
[20] Section 33(3A)	3
Omit “Subsection (3) does”. Insert instead “Subsections (1A) and (3) do”.	4
[21] Section 33(3A)	5
Insert “the support person nominated by the person being searched or” after “presence of”.	6
[22] Section 33(4)	7
Omit the subsection. Insert instead—	8
(4) A strip search of a person must not—	9
(a) involve an examination of the person’s body by touch, or	10
(b) require the person—	11
(i) to squat, cough or bend over, or	12
(ii) to lift, move or position a part of the person’s body for the purposes of a search of the person’s genital or anal area or, in the case of a female, transgender person or non-binary person, the person’s breasts.	13
	14
	15
	16
[23] Section 34	17
Omit the section. Insert instead—	18
34 Strip searches of children	19
(1) A strip search must not be carried out on a person who is under the age of 16 years.	20
	21
(2) A strip search must not be carried out on a person who is 16 or 17 years of age unless there are exceptional circumstances that justify a strip search to protect the person or another person from immediate significant harm.	22
	23
	24
[24] Section 34A Searches carried out with consent	25
Insert after section 34A(1)—	26
(1A) A police officer seeking the consent of a person to a search must inform the person that—	27
	28
(a) the person is entitled to refuse to consent to the search, and	29
(b) no unfavourable inference may be drawn if the person refuses to consent to the search.	30
	31
[25] Section 34A(3)	32
Insert after section 34A(2)—	33
(3) This section does not apply to a strip search of a person.	34
[26] Section 34B	35
Insert after section 34A—	36
34B Search quotas prohibited	37
A quota or target for the number of searches to be carried out by police officers must not be imposed, including in relation to—	38
	39

	(a) particular branches or parts of the NSW Police Force, or	1
	(b) particular areas of the State.	2
[27]	Part 11, Division 2, heading	3
	Insert “with warrant” after “dogs”.	4
[28]	Section 145 Meaning of “general drug detection”	5
	Omit “, except during a search of a person that is carried out after a police officer reasonably suspects that the person is committing a drug offence” from the definition of <i>general drug detection</i> .	6 7 8
[29]	Sections 146–148	9
	Omit the sections.	10
[30]	Section 149 General drug detection with dogs by warrant	11
	Insert after section 149(3)—	12
	(3A) In determining whether there are reasonable grounds to issue a warrant under this section, an authorised officer must, without limiting the matters that may be considered, consider the following matters—	13 14 15
	(a) whether the execution of the warrant is, having regard to the nature and size of the public place specified in the application, likely to cause unreasonable disruption to persons within the public place,	16 17 18
	(b) whether the area of the public place specified in the application is appropriate in the circumstances and whether a smaller area would be sufficient for the purposes of carrying out general drug detection,	19 20 21
	(c) whether the execution of the warrant is likely to have an unreasonable or disproportionate impact on certain persons or classes of persons,	22 23
	(d) whether the execution of the warrant is likely to cause harm to persons within the public place,	24 25
	(e) whether the execution of the warrant is likely to negatively affect harm reduction measures being taken in the public place,	26 27
	(f) whether the use of dogs to carry out general drug detection is necessary, taking into account other ways in which a police officer may find reasonable grounds to search a person suspected of committing a drug offence.	28 29 30 31
[31]	Section 149(5)	32
	Insert after section 149(4)—	33
	(5) An application for a warrant under this section must include—	34
	(a) the proportion of searches in the previous 12 months resulting from the carrying out of general drug detection using a dog that did not find prohibited drugs or prohibited plants in the possession or control of the persons searched, and	35 36 37 38
	(b) general information about the extent to which the use of dogs under a warrant under this section to carry out general drug detection results in the detection of prohibited drugs or prohibited plants in the possession or control of persons in a public place.	39 40 41 42
[32]	Section 150 Provisions relating to general drug detection	43
	Omit “, but only if it is authorised by a warrant under this Division” from section 150(3).	44

[33] Section 150A	1
Insert after section 150—	2
150A Commissioner required to keep records	3
(1) The Commissioner must record the following information about warrants issued under section 149—	4 5
(a) the number of searches, including strip searches, carried out by police officers while using dogs for general drug detection under the warrants,	6 7
(b) the number of searches that resulted in the detection of prohibited drugs or prohibited plants in the possession or control of the person searched,	8 9
(c) other information prescribed by the regulations.	10
(2) The Commissioner is to prepare, within the period of 4 months after 30 June in each year, a report that summarises the information recorded under subsection (1) during the year ended on that 30 June.	11 12 13
(3) The report is to be tabled in each House of Parliament as soon as practicable after the report is prepared.	14 15