



New South Wales

# Police Powers Legislation Amendment Bill 2006

## Explanatory note

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

## Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Law Enforcement (Powers and Responsibilities) Act 2002*:
  - (i) to provide more extensive search powers to police, and
  - (ii) to make further provision with respect to the establishment of crime scenes and the exercise of police powers at such crime scenes, and
  - (iii) to make further provision with respect to safeguards that apply to the exercise of police powers, including by changing the form of police warning that must be given in respect of requests by police officers, and
  - (iv) to provide for the destruction of finger-prints and palm-prints taken from persons in custody when offences are not proven and to make further provision for the taking and destruction of finger-prints and palm-prints from persons issued with penalty notices, and
  - (v) to extend the period at the end of which a review of the Act must be carried out,

- (b) to amend the *Police Powers (Drug Detection in Border Areas Trial) Act 2003*:
  - (i) to revive and extend the trial under that Act, and
  - (ii) to extend the trial so as to permit drug detection operations in all areas outside the metropolitan areas of Newcastle, Sydney and the Illawarra, and
  - (iii) to change the method by which police officers are authorised to exercise powers conferred by that Act, and
  - (iv) to make other minor modifications to the trial, and
  - (v) to provide for the monitoring of the extension of the trial by the Ombudsman,
- (c) to amend the *Terrorism (Police Powers) Act 2002*:
  - (i) to make further provision with respect to the grant of an authorisation, and
  - (ii) to authorise police officers executing a covert search warrant to take action for the purpose of concealing the search from the occupier of the premises, and
  - (iii) to extend the period for a review under that Act, and
  - (iv) to make other changes for the purposes of consistency with police powers under the *Law Enforcement (Powers and Responsibilities) Act 2002*,
- (d) to amend the *Criminal Procedure Act 1986*:
  - (i) to allow penalty notices to be served by post (as well as personally as is currently the case) and to make further provision for the withdrawal of penalty notices, and
  - (ii) to require the Ombudsman to report on certain matters relating to the issue of penalty notices,
- (e) to amend the *Criminal Procedure Regulation 2005* so that penalty notices cannot be issued for common assault offences,
- (f) to make other minor changes to the above Acts and regulation, including by providing for savings and transitional matters,
- (g) to make consequential amendments to other Acts.

## 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 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 *Police Powers (Drug Detection in Border Areas Trial) Act 2003* set out in Schedule 2.

**Clause 5** is a formal provision that gives effect to the amendments to the *Terrorism (Police Powers) Act 2002* set out in Schedule 3.

**Clause 6** is a formal provision that gives effect to the amendments to the *Crimes Act 1900*, *Crimes (Forensic Procedures) Act 2000*, *Criminal Procedure Act 1986* and *Criminal Procedure Regulation 2005* set in Schedule 4.

**Clause 7** 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**

### **Extension of police powers of search**

**Schedule 1 [2]** ensures that a police officer may, in conducting an ordinary search of a person, require the person to remove his or her socks (in addition to his or her shoes).

**Schedule 1 [3]** allows a police officer, when conducting a search of a person, to request the person to open his or her mouth or to shake or move his or her hair in connection with ascertaining whether something is concealed in the person's mouth or hair. Failure to comply with such a request will be an offence. **Schedule 1 [39]** ensures that the safeguards relating to the exercise of police powers (such as the requirement to give a warning that compliance with the request is required by law) apply in respect of the new powers.

**Schedule 1 [4]** allows a police officer who is conducting a search of a student at a school to request the student to submit to a search of any bag or other personal effect that is on or with the student. Failure to comply with such a request will be an offence.

**Schedule 1 [6]** clarifies that a police officer may, in a public place or school, take possession of and confiscate a dangerous implement that is in a person's custody without first requesting the person to produce the dangerous implement to the police officer.

### **Crime scenes**

Part 7 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (*the LEPR Act*) provides for the establishment of crime scenes by police officers and allows police officers to exercise certain powers at a crime scene for up to 3 hours before a crime scene warrant is obtained.

However, it is not necessarily the case that all crime scenes are established without warrant. Section 88 of the LEPR Act provides that a police officer may establish a crime scene on premises only if the police officer is lawfully on the premises, pursuant to a crime scene warrant or for any other lawful reason. **Schedule 1 [18], [21] and [22]** make it clear that a crime scene warrant may authorise the

establishment of a crime scene on premises. **Schedule 1 [20]** is a consequential amendment.

**Schedule 1 [19]** allows all powers that are exercised at a crime scene without warrant to be exercised by a police officer with the aid of assistants.

**Schedule 1 [19]** also allows some crime scene powers (limited to powers relating to forensic investigation) to be exercised at a crime scene by any member of NSW Police responsible for examining or maintaining a crime scene, but only with the authority of the police officer who established the crime scene or is responsible for the crime scene at the time. A similar amendment (**Schedule 1 [23]**) allows the same crime scene powers to be exercised by members of NSW Police responsible for maintaining or examining a crime scene but only with the authority of a police officer who is responsible for executing the warrant.

**Schedule 1 [17]** makes it clear that a crime scene may be established in a public place that includes any vehicle, vessel or aircraft in the public place. At present, crime scene powers may be exercised in a public place without obtaining a warrant. However, the amendment prevents a police officer from exercising any crime scene power that involves seizing, detaining or searching a vehicle, vessel or aircraft in a public place unless the police officer suspects on reasonable grounds that it is necessary to do so to preserve, or search for and gather, evidence of the commission of the offence in connection with which the crime scene was established or the police officer is authorised to do so by a crime scene warrant or other lawful authority.

### **Safeguards in relation to exercise of police powers (including warnings)**

At present, section 201 of the LEPR Act provides for certain safeguards in relation to the exercise of police powers under that Act, including by requiring police officers who make certain requests to warn the person to whom the request is made that a failure to comply with the request may be an offence. **Schedule 1 [36] and [38]** change this requirement, so that no warning is required if the person has already complied with the request or is in the process of complying with the request. If the person does fail to comply, the police officer is required to warn the person that compliance with the request is required by law. In addition, if the person fails to comply after having been given that warning, and the police officer believes the person is committing an offence, the police officer is required to warn the person that failure to comply with the request is an offence. This removes any necessity for a police officer to warn a person that non-compliance may be an offence in circumstances where the police officer does not believe an offence has been committed (for example, if the person has a reasonable excuse for not complying).

The amendments also extend these requirements to police directions, so as to ensure that the warning requirements apply in respect of such directions as those given under section 198 of the LEPR Act.

**Schedule 1 [5], [15], [16] and [35]** modify various provisions of the LEPR Act that allow the police to make requests or give directions to clarify the interaction of those provisions with section 201 of that Act and remove provisions that are made redundant by the new warning requirements.

**Schedule 1 [37] and [38]** modify the requirement that a police officer state his or her name and place of duty before exercising a power to give a direction to a person, so that, if the direction is given to a group, the police officer may comply with the requirement after the direction is given.

**Schedule 1 [40]** provides that the requirement that a police officer provide evidence that he or she is a police officer (if not in uniform), and state his or her name and place of duty, when exercising powers under the LEPR Act applies once only if several powers are exercised in relation to one person on a single occasion.

**Schedule 1 [41]** provides that if 2 or more police officers are exercising any power under the LEPR Act it is sufficient that only one of them complies with the safeguard requirements.

### **Taking and destruction of finger-prints and palm-prints**

**Schedule 1 [28]** allows any person from whom any finger-prints or palm-prints have been taken to request the Commissioner of Police to destroy them if the offence in connection with which they were taken is not proven. The Commissioner of Police is required to destroy them as soon as practicable after receiving such a request.

**Schedule 1 [47]** extends these arrangements to finger-prints and palm-prints taken before the relevant amendment commences.

Section 353AC of the *Crimes Act 1900* currently provides that a police officer who serves a penalty notice on a person under the *Criminal Procedure Act 1986* may require the person to submit to the taking of finger-prints and palm-prints and that such prints are to be destroyed on payment of the penalty under the penalty notice. That section, and related sections 353AD and 353AE, are transferred from the *Crimes Act 1900* to the *Law Enforcement (Powers and Responsibilities) Act 2002* by Schedule 4.1 [1] as sections 138A, 138B and 138C, respectively.

**Schedule 1 [30]** amends transferred section 138A to make it clear that a requirement to submit to the taking of prints may be requested before or after the penalty notice has been served.

**Schedule 1 [31]** provides that the prints are to also be destroyed if a court deals with the penalty notice offence and dismisses the relevant charge or arrives at a finding of not guilty for the charge.

**Schedule 1 [26], [27], [29] and [32]** are consequential amendments.

### **Review period**

**Schedule 1 [45]** extends the period at the end of which a review of the LEPR Act is required to be carried out. The amendment requires the principal provisions of the Act to have been in operation for 3 years before the review is required.

### **Minor amendments**

**Schedule 1 [1]** updates a reference to the position of clerk of a Local Court (now the registrar).

**Schedule 1 [8] and [9]** make it clear that the requirements relating to the preparation and provision of an occupier's notice apply to crime scene warrants when they are obtained by telephone. **Schedule 1 [7]** is a consequential amendment.

**Schedule 1 [10]** allows an authorised officer to extend a warrant where the authorised officer who initially issued the warrant has died, has ceased to be an authorised officer or is absent.

**Schedule 1 [11]** makes it clear that the power conferred on a police officer to enter and remain on premises where the apparent victim of a domestic violence offence has issued an invitation to do so applies only if the victim apparently resides on those premises.

**Schedule 1 [12]** allows a police officer of or above the rank of Superintendent to revoke an authorisation, made in connection with a public disorder, that prohibits the sale of liquor from licensed premises. Currently the police officer must be of or above the rank of Inspector.

**Schedule 1 [13] and [14]** allow a police officer who finds a person drinking in an alcohol-free zone established in connection with a public disorder to direct the person to remove the alcohol from the zone (rather than to remove the alcohol from the zone or put it away) and to require the person to obey that direction immediately. The police officer may seize the liquor if the direction is not obeyed.

**Schedule 1 [24]** amends a provision transferred from the *Crimes Act 1900* to the LEPR Act relating to arrests by a commander of an aircraft. The amendment is consequential on the transfer of the provision.

**Schedule 1 [25]** extends the provisions that allow a "time-out" for the calculation of time spent in lawful custody so that time spent in obtaining a crime scene warrant is disregarded (similar to the treatment of other types of warrants).

**Schedule 1 [33]** requires a search warrant in respect of suspected drug premises to be applied for by the police officer who is in charge of an investigation into the suspected use of the premises as drug premises (rather than any police officer of or above the rank of sergeant).

**Schedule 1 [34]** makes a minor law revision amendment.

**Schedule 1 [42]** clarifies that the provisions relating to the exercise of police powers do not apply to police powers exercised under another Act that is excluded from the operation of the LEPR Act by section 5 (1) of that Act.

**Schedule 1 [43]** removes a requirement that a person make a record of certain matters when another person has already made a record of those matters.

**Schedule 1 [44]** allows the Ombudsman to require information from a public authority in connection with the exercise of functions under the LEPR Act.

**Schedule 1 [46]** provides for the making of savings and transitional regulations as a consequence of the proposed amendments.

## **Schedule 2      Amendment of Police Powers (Drug Detection in Border Areas Trial) Act 2003**

**Schedule 2** revives, with modifications, the drug detection scheme that operated under the *Police Powers (Drug Detection in Border Areas Trial) Act 2003* (***the Drug Detection Trial Act***). The drug detection scheme that operated under that Act allowed police, under authority of a drug detection warrant issued by a Judge, to exercise certain powers in border areas for the purpose of drug detection operations. These included powers to establish check points in a search area, to stop vehicles at the check points and to use dogs to carry out general drug detection in relation to vehicles.

The principal change to the scheme, as revived by the amendments, is that it will operate under an authorisation issued by the Commissioner of Police or another designated officer (as defined by **Schedule 2 [5]**), rather than under a warrant-based system. This will make it more consistent with the schemes provided for by the *Terrorism (Police Powers) Act 2002* and the *Law Enforcement (Controlled Operations) Act 1997*.

**Schedule 2 [7]** sets out the new procedure for applying for, and granting, an authorisation to exercise powers conferred by the scheme. A police officer will be able to apply to a designated officer for an authorisation to exercise the powers conferred by the Act when the police officer suspects on reasonable grounds that an area is being, or is to be, used on a regular basis for or in connection with the supply of indictable quantities of prohibited drugs or prohibited plants. This is consistent with existing requirements. In addition to the matters that are currently required to be included in an application, the amendments will require the application to include details of past applications in relation to the area and of past operations in relation to the area. The designated officer will be able to issue an authorisation to exercise the powers conferred by the Drug Detection Trial Act on the same sort of grounds as a Judge was permitted to issue a drug detection warrant under the previous scheme. The designated officer will also be required to be satisfied that the nature and extent of the proposed drug detection operation is appropriate to the suspected criminal activity concerned.

Once issued, an authorisation will remain in force for up to 14 days, unless sooner revoked. Under the previous scheme, drug detection warrants had effect for only 72 hours. See **Schedule 2 [15]**.

Other amendments to the scheme are made to reflect the change from the search warrant-based scheme to an authorisation-based scheme. The amendments incorporate in the Drug Detection Trial Act similar requirements to the requirements that previously applied (under section 15 of the Drug Detection Trial Act) to the issue of a search warrant under that Act. See **Schedule 2 [15] and [19]**.

Another key change to the scheme is that it will extend to all parts of the State that are outside the metropolitan areas of Sydney, Newcastle and the Illawarra. Accordingly, it will be possible to obtain an authorisation to exercise the powers conferred by the Act in respect of a search area in any such non-metropolitan area (not merely in border areas). See the definition of *outer metropolitan area* in **Schedule 2 [2]** and the provisions relating to search areas in **Schedule 2 [7]**. **Schedule 2 [1] and [24]** amend the name of the Act, and the long title, consequentially. **Schedule 2 [6]** is a consequential amendment.

In addition, a search area may be comprised of an area of up to 5 square kilometres, rather than a maximum of one square kilometre under the previous scheme (see the provisions relating to search areas in **Schedule 2 [7]**).

Other modifications to the scheme include provisions that make it clear that police may establish more than one check point in a search area and may move check points at any time. The requirement that police ensure that signs are erected to indicate the presence of a check point in a search area is removed. Instead, it will be sufficient that police ensure that adequate measures are in place to ensure the safety of vehicles and persons approaching the check point. See **Schedule 2 [9] and [13]**.

The provisions of the Act that require police to issue a warning to persons who fail to comply with requests made by police in the exercise of powers under the Act are revised in a similar manner to the changes made to section 201 of the LEPR Act by Schedule 1. See **Schedule 2 [11] and [12]**.

The scheme is revived from the commencement of the relevant amendments and will have effect for 18 months. See **Schedule 2 [23]**.

The Ombudsman will be required to undertake another review of the scheme, as modified, at the end of the period of 12 months after the commencement of the relevant provisions. For that purpose, the powers of the Ombudsman are extended so as to allow the Ombudsman to inspect the records of NSW Police at any time. See **Schedule 2 [20], [21] and [22]**.

**Schedule 2 [2]–[4], [8], [10], [14], [16] and [17]** contain amendments that are consequential on the changes outlined above.

**Schedule 2 [18]** makes a minor amendment to update a cross-reference to another Act.

### **Schedule 3      Amendment of Terrorism (Police Powers) Act 2002**

The *Terrorism (Police Powers) Act 2002* (*the TPP Act*) confers special powers on police to deal with terrorist acts or suspected terrorist acts. Those powers may be exercised only under the authority of the Commissioner of Police or a Deputy Commissioner of Police, or under the authority of another senior police officer in an emergency.



**Schedule 3 [1]** requires the Commissioner of Police, when giving an authorisation, (or any other officer who gives an authorisation) to be satisfied that the nature and extent of the powers to be conferred by the authorisation are appropriate to the threatened or suspected terrorist act.

**Schedule 3 [2]** makes it clear that the special powers conferred by the TPP Act may be exercised by a police officer whether or not the police officer has been provided with a copy of the authorisation or notified of all the terms of the authorisation.

**Schedule 3 [3] and [4]** revise police powers relating to the detention of persons and vehicles so as to clarify that police officers must not detain persons or vehicles for longer than reasonably necessary. This makes the provisions more consistent with the LEPR Act.

**Schedule 3 [5]** makes it mandatory for a police officer to provide evidence that he or she is a police officer (if not in uniform) and to provide his or her name and place of duty, and other information, to a person when he or she exercises powers under the TPP Act (whether or not the police officer is requested to do so). This is also consistent with requirements imposed on police officers by the LEPR Act.

**Schedule 3 [6]** revises the form of warning that a police officer must give to a person if the police officer makes a request of the person that the person is required to comply with by law. The changes are similar to the changes made to section 201 of the LEPR Act by Schedule 1. The changes make it unnecessary for a police officer to give any warning to a person who has already complied with a request or is in the process of complying. Consistent with the changes to the LEPR Act in Schedule 1, the amendments also:

- (a) provide that the requirement that a police officer supply evidence that he or she is a police officer (if not in uniform), and state his or her name and place of duty, when exercising powers under the TPP Act applies once only if several powers are exercised in relation to one person on a single occasion, and
- (b) provide that if 2 or more police officers are exercising any power under the TPP Act, it is sufficient that only one of the officers present complies with the requirements relating to the exercise of that power (such as the requirement to supply evidence that he or she is a police officer and state his or her name and place of duty).

**Schedule 3 [7]** makes it clear that when police execute a covert search warrant they are entitled to do anything that is reasonable for the purpose of concealing the execution of the warrant from the occupier of the premises.

**Schedule 3 [8]** requires a review of the TPP Act to be carried out by the Minister every 2 years (rather than every 12 months as is presently the case).

## **Schedule 4     Amendment of other Acts and regulation**

### **Amendment of Crimes Act 1900**

**Schedule 4.1 [1]** amends the *Crimes Act 1900* to:

- (a) transfer sections of that Act dealing with the taking of finger-prints and palm-prints from persons issued with penalty notices for certain offences under the *Criminal Procedure Act 1986* to the *Law Enforcement (Powers and Responsibilities) Act 2002*, and
- (b) renumber a section of that Act dealing with an apprehended person carrying a razor, razor blade or other cutting weapon, and
- (c) transfer a section of that Act dealing with the arrest of persons on an aircraft by the aircraft's commander to the *Law Enforcement (Powers and Responsibilities) Act 2002*.

**Schedule 4.1 [2]** is a consequential amendment.

### **Amendment of Crimes (Forensic Procedures) Act 2000**

**Schedule 4.2** amends the *Crimes (Forensic Procedures) Act 2000* consequentially on the amendments made by Schedule 4.1 [1].

### **Amendment of Criminal Procedure Act 1986**

Part 3 of Chapter 7 of the *Criminal Procedure Act 1986* enables police officers to serve penalty notices on persons for certain prescribed minor offences.

Currently, section 334 of the Act provides that such penalty notices may only be served personally. **Schedule 4.3 [1]** amends the *Criminal Procedure Act 1986* to allow for penalty notices to also be served by post.

Section 340 of the Act currently provides that a penalty notice may be withdrawn by a senior police officer before the due date for payment under the notice. **Schedule 4.3 [2]** provides, instead, that a penalty notice may be withdrawn at any time. **Schedule 4.3 [3]** provides that if a penalty notice is withdrawn then any subsequent action taken, including any enforcement action, in relation to the notice is to be reversed and that any costs in relation to that action are not payable and, if paid, are repayable.

Section 340 (3) (c) of the Act currently provides that if a penalty notice is withdrawn then further proceedings in respect of the alleged offence to which the notice relates may be taken against any person as if the notice had never been served. **Schedule 4.3 [4]** makes it clear that such proceedings may only be taken subject to any time limit within which the relevant proceedings for the offence are required to be commenced.

**Schedule 4.3 [5]** is consequential on the amendments made by Schedule 4.1 [1].

**Schedule 4.3 [6]** provides that the Ombudsman is to review and report to the Attorney General and the Minister for Police by 30 November 2008 on the operation of Part 3 of Chapter 7 of the *Criminal Procedure Act 1986* (and related provisions) penalty notices scheme in so far as the provisions impact on Aboriginal and Torres Strait Islander communities.

**Amendment of Criminal Procedure Regulation 2005**

**Schedule 4.4 [1]** extends the operation of Part 3 of the *Criminal Procedure Regulation 2005*, which establishes a trial period for a penalty notice scheme for certain offences under the *Crimes Act 1900* and the *Summary Offences Act 1988*, until 30 April 2007.

**Schedule 4.4 [2]** removes the offence of common assault (under section 61 of the *Crimes Act 1900*) from the offences prescribed for which police officers may issue penalty notices.

Police Powers Legislation Amendment Bill 2006

Explanatory note

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Explanatory note page 12



New South Wales

# Police Powers Legislation Amendment Bill 2006

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103	2
4 Amendment of Police Powers (Drug Detection in Border Areas Trial) Act 2003 No 28	2
5 Amendment of Terrorism (Police Powers) Act 2002 No 115	2
6 Amendment of other Acts and regulation	2
7 Repeal of Act	2
Schedule 1 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002	3
Schedule 2 Amendment of Police Powers (Drug Detection in Border Areas Trial) Act 2003	13
Schedule 3 Amendment of Terrorism (Police Powers) Act 2002	21
Schedule 4 Amendment of other Acts and regulation	23

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Police Powers Legislation Amendment Bill 2006

Contents

---

Page

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Contents page 2



New South Wales

# Police Powers Legislation Amendment Bill 2006

No. , 2006

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## **A Bill for**

An Act to amend various Acts and other legislation to make further provision with respect to police powers.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Police Powers Legislation Amendment Act 2006</i> .	3
<b>2 Commencement</b>	4
(1) This Act commences on the date of assent to this Act, except as otherwise provided by subsection (2).	5 6
(2) The following provisions commence on the dates indicated:	7
(a) Schedule 1 [15] and [16]—the date of commencement of section 87MA of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> , as inserted by the <i>Crimes Legislation Amendment (Gangs) Act 2006</i> , or the date of assent to this Act, whichever is the later,	8 9 10 11 12
(b) Section 4 and Schedule 2—a day or days to be appointed by proclamation.	13 14
<b>3 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103</b>	15 16
The <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> is amended as set out in Schedule 1.	17 18
<b>4 Amendment of Police Powers (Drug Detection in Border Areas Trial) Act 2003 No 28</b>	19 20
The <i>Police Powers (Drug Detection in Border Areas Trial) Act 2003</i> is amended as set out in Schedule 2.	21 22
<b>5 Amendment of Terrorism (Police Powers) Act 2002 No 115</b>	23
The <i>Terrorism (Police Powers) Act 2002</i> is amended as set out in Schedule 3.	24 25
<b>6 Amendment of other Acts and regulation</b>	26
The Acts and regulation specified in Schedule 4 are amended as set out in that Schedule.	27 28
<b>7 Repeal of Act</b>	29
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	30 31
(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.	32 33



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<b>Schedule 1</b>	<b>Amendment of Law Enforcement (Powers and Responsibilities) Act 2002</b>	1 2
	(Section 3)	3
<b>[1] Section 3 Interpretation</b>		4
	Omit paragraph (b) of the definition of <i>authorised officer</i> in section 3 (1).	5
	Insert instead:	6
	(b) a registrar of a Local Court, or	7
<b>[2] Section 3 (1), definition of “ordinary search”</b>		8
	Insert “, socks” after “shoes” in paragraph (a).	9
<b>[3] Section 21A</b>		10
	Insert after section 21:	11
<b>21A Ancillary power to search persons</b>		12
(1)	In conducting a search of a person under section 21, a police officer may, if the police officer suspects on reasonable grounds that a thing referred to in section 21 (1) (a), (b), (c) or (d) is concealed in the person’s mouth or hair, request the person:	13 14 15 16
(a)	to open his or her mouth, or	17
(b)	to shake, or otherwise move, his or her hair.	18
(2)	Subsection (1) does not authorise a police officer to forcibly open a person’s mouth.	19 20
(3)	A person must not, without reasonable excuse, fail or refuse to comply with a request made by a police officer in accordance with this section and section 201.	21 22 23
	Maximum penalty: 5 penalty units.	24
<b>[4] Section 26 Power to search for knives and other dangerous implements</b>		25
	Omit section 26 (2). Insert instead:	26
(2)	If the person is in a school and is a student at the school, the police officer may also request the person to do either or both of the following:	27 28 29
(a)	to submit to a search of any bag or other personal effect that is on or with the person,	30 31
(b)	to submit to a search of the person’s locker at the school and an examination of any bag or other personal effect that is inside the locker.	32 33 34

<b>[5] Section 26 (6)</b>	1
Omit the subsection (and the note to the subsection).	2
<b>[6] Section 28 Power to confiscate knives or other dangerous implements</b>	3
Insert after section 28 (2):	4
(3) The power conferred by subsection (1) may be exercised whether or not the police officer requests the person to produce the thing under section 26.	5 6 7
<b>[7] Section 59 Application of Division</b>	8
Omit “61 (7)” wherever occurring in section 59 (2) and (3).	9
Insert instead “61 (5)–(8)”.	10
<b>[8] Section 61 Telephone warrant</b>	11
Omit “in the case of a search warrant,” from section 61 (5) (c).	12
<b>[9] Section 61 (6) (b)</b>	13
Omit “in the case of a search warrant”. Insert instead “in a case”.	14
<b>[10] Section 75 Death, absence of authorised officer who issued warrant</b>	15
Omit “or 73 (4)” from section 75 (b). Insert instead “, 73 (4) or 73A”.	16
<b>[11] Section 82 Entry by invitation</b>	17
Omit section 82 (3). Insert instead:	18
(3) A police officer may exercise a power to enter and remain in a dwelling if the invitation to enter and remain is given by a person who apparently resides in the dwelling and whom the police officer believes to be the victim of a domestic violence offence, even if another occupier of the dwelling expressly refuses authority to the police officer to do so.	19 20 21 22 23 24
(4) For the purposes of this section, a <i>victim of a domestic violence offence</i> is any person against whom a domestic violence offence is being, or may have been recently, committed, or is imminent, or is likely to be committed.	25 26 27 28
<b>[12] Section 87B Emergency prohibition on sale or supply of liquor</b>	29
Omit “Inspector” from section 87B (5). Insert instead “Superintendent”.	30

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<b>[13] Section 87C Emergency alcohol-free zones</b>	1
Omit “removed from the zone or put away” from section 87C (3).	2
Insert instead “immediately removed from the zone”.	3
<b>[14] Section 87C (7) (a)</b>	4
Omit “remove the liquor from the zone or put the liquor away”.	5
Insert instead “immediately remove the liquor from the zone”.	6
<b>[15] Section 87MA Power to disperse groups (as inserted by the Crimes Legislation Amendment (Gangs) Act 2006)</b>	7
Omit section 87MA (2) and (3). Insert instead:	8
(2) For the purpose of complying with section 201 (1) (c), the police officer giving the direction must inform the person or persons to whom the direction is given that the direction is given for the purpose of preventing or controlling a public disorder.	9
	10
	11
	12
	13
<b>[16] Section 87MA (6)</b>	14
Omit “referred to in subsection (2)”.	15
Insert instead “required to be given under section 201”.	16
<b>[17] Section 89 Application of Part to premises</b>	17
Insert after section 89 (2):	18
(3) A police officer may exercise crime scene powers in relation to a vehicle, vessel or aircraft that is within a crime scene established in a public place, without obtaining a warrant, but may exercise a crime scene power that involves seizing, detaining or searching the vehicle, vessel or aircraft only if:	19
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(a) the police officer suspects on reasonable grounds that it is necessary to do so to preserve, or search for and gather, evidence of the commission of the offence in connection with which the crime scene was established, or	24
	25
	26
	27
(b) the police officer is authorised to do so by a crime scene warrant or other lawful authority.	28
	29
<b>[18] Section 90 When crime scene may be established</b>	30
Insert after section 90 (1):	31
(1A) A crime scene may also be established on premises by a police officer pursuant to the authority conferred by a crime scene warrant.	32
	33
	34

<b>[19] Section 92 Exercise of powers at crime scene</b>	1
Omit section 92 (5). Insert instead:	2
(5) A crime scene power that may be exercised by a police officer under this section (other than the powers set out in section 95 (1) (a)–(f) and (k)) may be exercised by any member of NSW Police responsible for examining or maintaining a crime scene, but only with the authority of the police officer who established the crime scene or is responsible for the crime scene at the time.	3 4 5 6 7 8
(6) A crime scene power that may be exercised by a police officer under this section may be exercised by the police officer with the aid of such assistants as the police officer considers necessary.	9 10 11
<b>[20] Section 93 Notice to senior police officer where warrant not required</b>	12
Insert “(otherwise than by authority of a crime scene warrant)” after “is established for a period of 3 hours or less”.	13 14
<b>[21] Section 94 Crime scene warrants</b>	15
Omit “at a crime scene” from section 94 (1).	16
Insert instead “at specified premises”.	17
<b>[22] Section 94 (2)</b>	18
Omit “to enter premises and”.	19
Insert instead “to enter premises, to establish a crime scene on the premises (if a crime scene has not already been established) and to”.	20 21
<b>[23] Section 94 (4)</b>	22
Insert after section 94 (3) (before the note):	23
(4) A crime scene power that may be exercised by a police officer under this section (other than the powers set out in section 95 (1) (a)–(f) and (k)) may be exercised by any member of NSW Police responsible for examining or maintaining a crime scene, but only with the authority of a police officer who is responsible for executing the warrant.	24 25 26 27 28 29
<b>[24] Section 104A Arrest by commander of aircraft (as transferred by Schedule 4.1 [1])</b>	30 31
Omit “a Justice or other proper authority” from section 104A (1).	32
Insert instead “an authorised officer”.	33

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<b>[25] Section 117 Certain times to be disregarded in calculating investigation period</b>	1
Insert “or crime scene warrant” after “search warrant” in section 117 (1) (l).	2
<b>[26] Part 10, heading</b>	3
Insert “and to other offenders” after “custody”.	4
<b>[27] Part 10, Division 1, heading</b>	5
Insert “from persons in custody” after “particulars”.	6
<b>[28] Sections 137A and 137B</b>	7
Insert after section 137:	8
<b>137A Destruction of finger-prints and palm-prints (adults and children)</b>	9
(1) A person from whom any finger-prints or palm-prints are taken under this Division in relation to an offence may request the Commissioner to destroy the finger-prints or palm-prints if the offence is not proven.	10
(2) For the purposes of this section, an offence is <i>not proven</i> if:	11
(a) the person is found not guilty or is acquitted of the offence, or	12
(b) the conviction of the person for the offence is quashed, and an acquittal is entered, on appeal, or	13
(c) at the end of the period of 12 months after the finger-prints or palm-prints were taken (or, if an extension to that period is granted under section 137B, at the end of the extended period) proceedings in respect of the offence have not been instituted against the person or have been discontinued.	14
(3) A request under this section is to be made by application in writing.	15
(4) If the person from whom the finger-prints or palm-prints were taken is a child, the request may be made on behalf of the child by a parent or guardian of the child.	16
(5) The Commissioner must, as soon as reasonably practicable after receiving a request made in accordance with this section, destroy or cause to be destroyed the finger-prints or palm-prints taken from the person in relation to the offence that is not proven.	17
(6) This section does not require the destruction of any court records.	18

- (7) This section does not affect the powers of the Children’s Court to order the destruction of all identification particulars relating to a person under section 38 of the *Children (Criminal Proceedings) Act 1987*. 1  
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- (8) This section extends to any finger-prints or palm-prints taken under section 134 (in relation to an offence that has been proven), if the person’s conviction for the offence is subsequently quashed on appeal. 5  
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- 137B Extension of period at the end of which finger-prints and palm-prints may be destroyed** 9  
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- (1) A Magistrate may, by order made on application in accordance with this section, grant an extension to the period of 12 months referred to in section 137A (2) (c), or that period as previously extended under this section, in relation to particular finger-prints or palm-prints if satisfied that there are special reasons for doing so. 11  
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- (2) An application for an extension may be made by a police officer or the Director of Public Prosecutions. 17  
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- (3) An application for an extension may be made at any time, whether or not the period proposed to be extended has elapsed and whether or not a request for the destruction of the finger-prints or palm-prints concerned has been made to the Commissioner. 19  
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- (4) A Magistrate to whom an application is made is not to grant an extension unless: 24  
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- (a) the applicant for the extension has taken reasonable steps to notify the person from whom the finger-prints or palm-prints were taken of the making of the application, and 26  
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- (b) the person or his or her legal representative has been given an opportunity to speak to or make a submission to the Magistrate concerning the extension. 30  
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- (5) The Director of Public Prosecutions is to ensure that the Commissioner is notified of an application made by the Director of Public Prosecutions under this section and any extension granted as a consequence of the application. 33  
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- (6) If an extension is granted, the Commissioner may refuse a request for the destruction of the finger-prints or palm-prints concerned made before the end of the extended period (including an application made before the extension was granted). 37  
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<b>[29] Part 10, Division 3</b>	1
Insert after Division 2:	2
<b>Division 3 Taking of identification particulars from other offenders</b>	3
	4
<b>Note.</b> Sections 138A, 138B and 138C are transferred from Part 10 of the <i>Crimes Act 1900</i> .	5
	6
<b>[30] Section 138A Taking of finger-prints and palm-prints from persons issued penalty notices (as transferred by Schedule 4.1 [1])</b>	7
	8
Insert “(whether before or after the penalty notice has been served)” before “require” in section 138A (1).	9
	10
<b>[31] Section 138A (3)</b>	11
Omit the subsection. Insert instead:	12
(3) The Commissioner must ensure that a finger-print or palm-print taken under this section is destroyed:	13
(a) on payment of the penalty under the penalty notice, or	14
(b) if the relevant penalty notice offence is dealt with by a court and the court dismisses the charge in relation to the penalty notice or arrives at a finding of not guilty for the charge, or	15
(c) if the penalty notice is withdrawn.	16
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<b>[32] Section 138C Safeguards for exercise of powers to obtain finger-prints and palm-prints without arrest (as transferred by Schedule 4.1 [1])</b>	21
	22
Omit “section 353AC or 353AD” from section 138C (1).	23
Insert instead “section 138A or 138B”.	24
<b>[33] Section 140 Issue of search warrant—suspected drug premises</b>	25
Omit section 140 (1). Insert instead:	26
(1) A police officer who is in charge of an investigation into the suspected use of premises as drug premises may apply to an authorised officer for a search warrant in respect of the premises if the officer has reasonable grounds for believing that the premises are being used for the unlawful supply or manufacture of any prohibited drug or the unlawful cultivation of prohibited plants by enhanced indoor means.	27
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<b>[34] Section 142 Search and arrest of persons pursuant to search warrant</b>	34
Omit “require” from section 142 (1) (e). Insert instead “request”.	35

<b>[35] Section 198 Requirements relating to direction</b>	1
Omit section 198 (2).	2
<b>[36] Section 201 Supplying police officer's details and giving warnings</b>	3
Omit section 201 (1) (d).	4
<b>[37] Section 201 (2A)</b>	5
Insert “, except as otherwise provided by subsection (2B)” after “the power”.	6
<b>[38] Section 201 (2B) and (2C)</b>	7
Insert after section 201 (2A):	8
(2B) If a police officer is exercising a power to give a direction to a person (as referred to in subsection (3) (i)) by giving the direction to a group of 2 or more persons, the police officer must comply with subsection (1) in relation to the power:	9
(a) if it is practicable to do so, before or at the time of exercising the power, or	10
(b) if it is not practicable to do so, as soon as is reasonably practicable after exercising the power.	11
(2C) If a police officer exercises a power that involves the making of a request or direction that a person is required to comply with by law, the police officer must, as soon as is reasonably practicable after making the request or direction, provide the person the subject of the request or direction with:	12
(a) a warning that the person is required by law to comply with the request or direction (unless the person has already complied or is in the process of complying), and	13
(b) if the person does not comply with the request or direction after being given that warning, and the police officer believes that the failure to comply by the person is an offence, a warning that the failure to comply with the request or direction is an offence.	14
<b>[39] Section 201 (3) (j) and (k)</b>	15
Omit section 201 (3) (j). Insert instead:	16
(j) a power under section 21A to request a person to open his or her mouth or shake or move his or her hair,	17
(k) a power under section 26 to request a person to submit to a frisk search or to produce a dangerous implement or metallic object.	18
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<b>[40] Section 201 (3A)</b>	1
Insert after section 201 (3):	2
(3A) If a police officer is exercising more than one power to which this section applies on a single occasion, and in relation to the same person, the police officer is required to comply with subsection (1) (a) and (b) in relation to that person only once on that occasion.	3 4 5 6 7
<b>[41] Section 201 (4)</b>	8
Omit the subsection. Insert instead:	9
(4) If 2 or more police officers are exercising a power to which this section applies, only one officer present is required to comply with this section.	10 11 12
<b>[42] Section 201 (6)</b>	13
Insert after section 201 (5):	14
(6) This section does not apply to the exercise of a power that is conferred by an Act or regulation specified in Schedule 1.	15 16
<b>Note.</b> See section 5 (1), which provides that this Act does not limit the functions of a police officer under an Act or regulation specified in Schedule 1.	17 18 19
<b>[43] Section 209 Records</b>	20
Insert after section 209 (3):	21
(4) This section does not require a person to make a record of a matter in relation to the detention or search of an intoxicated person, if another person has already made a record of that matter as required by this section.	22 23 24 25
<b>[44] Section 242 Monitoring of operation of certain provisions of Act by Ombudsman</b>	26 27
Insert “or any public authority” after “the Commissioner” in section 242 (2).	28
<b>[45] Section 243 Review of Act</b>	29
Omit section 243 (2). Insert instead:	30
(2) The review is to be carried out (and is taken to have always been required to be carried out) as soon as possible after the period of 3 years from 1 December 2005.	31 32 33
<b>Note.</b> 1 December 2005 is the date on which this Act, other than Part 8A, commenced.	34 35

<b>[46]    Schedule 5 Savings and transitional provisions</b>	1
Insert at the end of clause 1 (1):	2
<i>Police Powers Legislation Amendment Act 2006</i>	3
<b>[47]    Schedule 5, Part 4</b>	4
Insert at the end of the Schedule:	5
<b>Part 4    Provisions consequent on enactment of</b>	6
<b>Police Powers Legislation Amendment Act</b>	7
<b>2006</b>	8
<b>9    Destruction of finger-prints and palm-prints</b>	9
(1) Section 137A, as inserted by the <i>Police Powers Legislation</i>	10
<i>Amendment Act 2006</i> , extends to finger-prints and palm-prints	11
taken before the commencement of that section.	12
(2) In section 138A (3), a reference to finger-prints and palm-prints	13
taken under section 138A includes a reference to finger-prints	14
and palm-prints taken under section 353AC of the <i>Crimes Act</i>	15
1900 before that section was transferred to this Act.	16

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**Schedule 2      Amendment of Police Powers (Drug  
Detection in Border Areas Trial) Act 2003**

	(Section 4)	3
<b>[1] Section 1 Name of Act</b>		4
Omit “ <i>in Border Areas</i> ”.		5
<b>[2] Section 3 Definitions</b>		6
Insert in alphabetical order in section 3 (1):		7
<i>authorisation</i> means an authorisation granted and in force under Part 2.		8 9
<i>designated officer</i> has the meaning given by section 4.		10
<i>outer metropolitan area</i> means any land within this State that is located outside the metropolitan area of the State (with the metropolitan area of the State being the area to the east of the State bounded by, and including, the local government areas of Newcastle City, Lake Macquarie City, Wyong, Gosford City, Hawkesbury City, Blue Mountains City, Penrith City, Liverpool City, Camden, Campbelltown City, Wollongong City and Shellharbour City).		11 12 13 14 15 16 17 18
<b>[3] Section 3 (1), definitions of “border area”, “drug detection warrant”, “eligible Judge” and “Judge”</b>		19 20
Omit the definitions.		21
<b>[4] Section 3 (1), definition of “search area”</b>		22
Omit “a drug detection warrant”. Insert instead “an authorisation”.		23
<b>[5] Section 4</b>		24
Omit the section. Insert instead:		25
<b>4 Designated officer</b>		26
(1) For the purposes of this Act, a <i>designated officer</i> means:		27
(a) the Commissioner of Police, or		28
(b) a Deputy Commissioner of Police, or		29
(c) an Assistant Commissioner of Police, or		30
(d) a police officer authorised by the Commissioner of Police to exercise the functions of a designated officer under this Act.		31 32 33

(2)	No more than 2 police officers may be authorised by the Commissioner of Police at any one time to exercise the functions of a designated officer under this Act.	1 2 3
(3)	Any police officer so authorised must be a police officer of or above the rank of Superintendent.	4 5
<b>[6]</b>	<b>Part 2, heading</b>	6
	Omit “in border areas”.	7
<b>[7]</b>	<b>Sections 5–8</b>	8
	Omit the sections. Insert instead:	9
	<b>5 Authorisation to exercise powers conferred by Act</b>	10
(1)	A designated officer may, on application made by a police officer in accordance with this Act, grant an authorisation that authorises the exercise of the powers conferred by this Act in connection with a drug detection operation.	11 12 13 14
(2)	In this section, a <i>drug detection operation</i> means an operation carried out for the purposes of obtaining evidence of, or frustrating, any criminal activity involving the supply of prohibited drugs or prohibited plants, or for the purposes of arresting any person involved in any such criminal activity, or for any combination of those purposes.	15 16 17 18 19 20
	<b>6 Application for authorisation</b>	21
(1)	A police officer who suspects on reasonable grounds that any part or all of an area is being, or is to be, used on a regular basis for or in connection with the supply of indictable quantities of prohibited drugs or prohibited plants may apply to a designated officer for an authorisation.	22 23 24 25 26
(2)	An application for an authorisation is to be made in writing and contain the following particulars:	27 28
(a)	a statement identifying the search area for the proposed authorisation,	29 30
(b)	the grounds on which the authorisation is sought,	31
(c)	a plan of the operation proposed to be carried out, including the number of officers and dogs proposed to be used,	32 33 34
(d)	a statement setting out the consultation that has taken place with the Roads and Traffic Authority,	35 36

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(e)	a statement as to whether the proposed search area has been the subject of any other application for an authorisation within the last 12 months and, if so, whether the application was granted,	1 2 3 4
(f)	a statement outlining the results of any operation carried out pursuant to an authorisation in the proposed search area within the last 12 months,	5 6 7
(g)	the proposed expiry date for the authorisation,	8
(h)	any other particulars prescribed by the regulations.	9
(3)	The designated officer to whom the application is made may require the applicant to provide such additional information concerning the application as is necessary for the designated officer's proper consideration of the application.	10 11 12 13
<b>7</b>	<b>Restrictions on search areas</b>	14
	The search area for which an authorisation is granted must consist of not more than 3 areas, each of which must:	15 16
(a)	be located in an outer metropolitan area, and	17
(b)	be not more than 5 square kilometres in area.	18
<b>8</b>	<b>Grant of authorisation</b>	19
(1)	A designated officer to whom an application for an authorisation is made may grant the authorisation only if satisfied that:	20 21
(a)	there are reasonable grounds for suspecting that any part or all of the search area proposed for the authorisation is being, or is to be, used on a regular basis for or in connection with the supply of indictable quantities of prohibited drugs or prohibited plants, and	22 23 24 25 26
(b)	the nature and extent of the operation proposed to be carried out is appropriate to the suspected criminal activity, and	27 28 29
(c)	the application has been made in accordance with this Part, and	30 31
(d)	the proposed search area complies with this Part.	32
(2)	In considering the matters referred to in subsection (1) (a) and (b), the designated officer is to have regard to the following:	33 34
(a)	the reliability of any information on which the application is based,	35 36

Police Powers Legislation Amendment Bill 2006

Schedule 2      Amendment of Police Powers (Drug Detection in Border Areas Trial)  
Act 2003

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(b)	the likelihood of success of the proposed operation compared with the likelihood of success of any other law enforcement operation that it would be reasonably practicable to conduct for the same purposes.	1 2 3 4
(3)	The authorisation may be granted unconditionally or subject to conditions.	5 6
(4)	An authorisation is to be in the form (if any) prescribed by the regulations.	7 8
(5)	If a designated officer grants an authorisation, the designated officer is to make a record of the reasons for which the designated officer was satisfied of the matters referred to subsection (1) (a) and (b).	9 10 11 12
(6)	If an application for an authorisation is refused by a designated officer, the police officer who made the application (and any other police officer who is aware of the application) may not make a further application for the same authorisation to that designated officer or any other designated officer unless the further application provides additional information that justifies the making of a further application.	13 14 15 16 17 18 19
<b>[8]</b>	<b>Section 9 Functions under authorisation</b>	20
	Omit “A police officer who is executing a drug detection warrant may” from section 9 (1).	21 22
	Insert instead “A police officer may, in accordance with an authorisation,”.	23
<b>[9]</b>	<b>Section 9 (1) (a)</b>	24
	Omit the paragraph. Insert instead:	25
	(a) establish one or more check points,	26
<b>[10]</b>	<b>Section 9 (2)</b>	27
	Omit “the drug detection warrant”. Insert instead “the authorisation”.	28
<b>[11]</b>	<b>Section 9 (3) (d)</b>	29
	Omit the paragraph.	30

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<b>[12] Section 9 (4)</b>	1
Insert after section 9 (3):	2
(4) If a police officer exercises a function under this Act that involves making a request that a person is required to comply with by law, the police officer must, as soon as is reasonably practicable after making the request, provide the person the subject of the request with:	3 4 5 6 7
(a) a warning that the person is required by law to comply with the request (unless the person has already complied or is in the process of complying), and	8 9 10
(b) if the person does not comply with the request after being given that warning, and the police officer believes that the failure to comply by the person is an offence, a warning that the failure to comply with the request is an offence.	11 12 13 14
<b>[13] Section 10</b>	15
Omit the section. Insert instead:	16
<b>10 Check points</b>	17
(1) A police officer may, at any time during the period in which an authorisation remains in force, remove a check point from one location and re-establish it at any other location in the search area.	18 19 20 21
(2) A police officer who establishes a check point must ensure that adequate measures are taken to ensure the safety of persons and vehicles approaching the check point.	22 23 24
<b>[14] Sections 11 (2) and (3), 12 (1) and 13</b>	25
Omit “a drug detection warrant” wherever occurring.	26
Insert instead “an authorisation”.	27
<b>[15] Sections 14, 15, 15A and 15B</b>	28
Omit sections 14 and 15. Insert instead:	29
<b>14 Duration of authorisation</b>	30
(1) An authorisation has effect, unless sooner revoked, during the period beginning at the time it is given and ending at a time specified in the authorisation by the designated officer who grants the authorisation.	31 32 33 34
(2) The period during which an authorisation has effect must not exceed 14 days, beginning with the day on which it is granted.	35 36

(3)	An authorisation cannot be extended but a further authorisation may be granted for the same or part of the same area.	1 2
<b>15</b>	<b>Revocation of authorisation</b>	3
(1)	The police officer who gives an authorisation, or a designated officer of a more senior rank, may revoke an authorisation at any time.	4 5 6
(2)	A revocation of an authorisation does not affect anything lawfully done in reliance on the authorisation before it ceased to have effect.	7 8 9
<b>15A</b>	<b>Defects in authorisations</b>	10
	An application for an authorisation, and any authorisation granted on the basis of such an application, is not invalidated by any procedural defect, other than a defect that affects the substance of the application or authorisation in a material particular.	11 12 13 14 15
<b>15B</b>	<b>Report on conduct of operation</b>	16
	Within 14 days after the expiry of an authorisation, the police officer to whom the authorisation was granted must cause a report to be given to the designated officer who granted the authorisation:	17 18 19 20
(a)	stating whether or not the operation proposed to be carried out under the authorisation was carried out, and	21 22
(b)	if the operation was carried out—setting out briefly the result of the operation (including a brief description of anything seized), and	23 24 25
(c)	if the operation was not carried out—setting out briefly the reasons why the operation was not carried out, and	26 27
(d)	containing such other particulars as may be prescribed by the regulations.	28 29
<b>[16]</b>	<b>Section 16 Offences relating to authorisations</b>	30
	Omit “a person executing or assisting in the execution of a drug detection warrant” from section 16 (1).	31 32
	Insert instead “a person exercising functions under an authorisation”.	33



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<b>[17] Section 17 Search records to be kept</b>	1
Omit “drug detection warrants obtained” and “such warrant” from section 17 (1).	2
	3
Insert instead “authorisations granted” and “such authorisation” respectively.	4
<b>[18] Section 18 Search warrants and other powers not affected</b>	5
Omit “ <i>Search Warrants Act 1985</i> ” from section 18 (1) (a).	6
Insert instead “ <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> ”.	7
<b>[19] Section 18A</b>	8
Insert after section 18:	9
<b>18A Use of assistants</b>	10
The functions conferred on a police officer under this Act may be exercised by the police officer with the aid of such assistants as the police officer considers necessary, subject to any conditions of the relevant authorisation.	11
	12
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	14
<b>[20] Section 22 Monitoring of operation of Act by Ombudsman</b>	15
Omit “9 months from the date of commencement of this section” from section 22 (1).	16
	17
Insert instead “12 months from the date of commencement of Schedule 2 [1] to the <i>Police Powers Legislation Amendment Act 2006</i> ”.	18
	19
<b>[21] Section 22 (2)</b>	20
Omit the subsection. Insert instead:	21
(2) For that purpose, the Ombudsman may:	22
(a) require the Commissioner of Police to provide information about the exercise of those functions, and	23
	24
(b) inspect the records of NSW Police at any time.	25
<b>[22] Section 22 (3) and (4)</b>	26
Omit “9-month period” wherever occurring. Insert instead “12-month period”.	27

Police Powers Legislation Amendment Bill 2006

Schedule 2      Amendment of Police Powers (Drug Detection in Border Areas Trial)  
Act 2003

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<b>[23] Section 23</b>	1
Omit the section. Insert instead	2
<b>23 Revival and expiry of Act</b>	3
(1) On the commencement of Schedule 2 [23] to the <i>Police Powers Legislation Amendment Act 2006</i> this Act is revived.	4 5
(2) This Act expires on the day that is 18 months after the revival of this Act.	6 7
<b>[24] Long title</b>	8
Omit “border areas”. Insert instead “outer metropolitan areas”.	9

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<b>Schedule 3</b>	<b>Amendment of Terrorism (Police Powers) Act 2002</b>	1
		2
	(Section 5)	3
<b>[1]</b>	<b>Section 8 Who may give an authorisation</b>	4
	Insert after section 8 (2):	5
	(3) In giving an authorisation, the Commissioner of Police, Deputy Commissioner of Police or other police officer is to be satisfied that the nature and extent of the powers to be conferred by the authorisation are appropriate to the threatened or suspected terrorist act.	6 7 8 9 10
<b>[2]</b>	<b>Section 14 Exercise of special powers conferred by authorisation by police officers</b>	11 12
	Omit section 14 (2). Insert instead:	13
	(2) A police officer may exercise those powers whether or not the officer has been provided with a copy of the authorisation or notified of all the terms of the authorisation.	14 15 16
<b>[3]</b>	<b>Section 17 Power to search persons</b>	17
	Omit section 17 (3). Insert instead:	18
	(3) A police officer must not detain a person for any longer than is reasonably necessary for the purpose of conducting a search under this section.	19 20 21
<b>[4]</b>	<b>Section 18 Power to search vehicles</b>	22
	Omit section 18 (2). Insert instead:	23
	(2) A police officer must not detain a vehicle for any longer than is reasonably necessary for the purpose of conducting a search under this section.	24 25 26
<b>[5]</b>	<b>Section 23 Supplying police officer's details and other information</b>	27
	Omit "if requested to do so" from section 23 (1).	28

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<b>[6] Section 23 (3)–(5)</b>	1
Insert after section 23 (2):	2
(3) If a police officer exercises a power that involves the making of a request that a person is required to comply with by law, the police officer must, as soon as is reasonably practicable after making the request, provide the person the subject of the request with:	3
(a) a warning that the person is required by law to comply with the request (unless the person has already complied or is in the process of complying), and	4
(b) if the person does not comply with the request after being given that warning, and the police officer believes that the failure to comply by the person is an offence, a warning that the failure to comply with the request is an offence.	5
(4) If a police officer is exercising more than one power to which this section applies on a single occasion, and in relation to the same person, the police officer is required to comply with subsection (1) (a) and (b) in relation to that person only once on that occasion.	6
(5) If 2 or more police officers are exercising a power to which this section applies, only one officer present is required to comply with this section.	7
<b>[7] Section 27O Powers conferred by covert search warrant</b>	8
Insert at the end of section 27O (1) (l):	9
, and	10
(m) to do anything else that is reasonable for the purpose of concealing anything done in the execution of the warrant from the occupier of the premises.	11
<b>[8] Section 36 Review of Act</b>	12
Omit “every 12 months thereafter” from section 36 (2).	13
Insert instead “every 24 months thereafter”.	14

<b>Schedule 4</b>	<b>Amendment of other Acts and regulation</b>	1
	(Section 6)	2
<b>4.1</b>	<b>Crimes Act 1900 No 40</b>	3
<b>[1]</b>	<b>Part 10 Arrest of offenders</b>	4
	Omit the Part.	5
	Transfer sections 353AC, 353AD and 353AE to the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> as sections 138A, 138B and 138C, respectively, in Division 3 of Part 10 of that Act (as inserted by this Act).	6 7 8
	Renumber section 353B as section 547D in Division 2 of Part 14A.	9
	Transfer section 353C to the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> as section 104A of that Act.	10 11
<b>[2]</b>	<b>Section 547D (as renumbered by Schedule 4.1 [1])</b>	12
	Omit “justice before whom the person is brought”. Insert instead “court”.	13
<b>4.2</b>	<b>Crimes (Forensic Procedures) Act 2000 No 59</b>	14
	<b>Section 112 Relationship with Part 10 of the Law Enforcement (Powers and Responsibilities) Act 2002 and other Acts</b>	15 16
	Omit “section 353AC or 353AD of the <i>Crimes Act 1900</i> ” from section 112 (d).	17
	Insert instead “section 138A or 138B of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> .”	18 19
<b>4.3</b>	<b>Criminal Procedure Act 1986 No 209</b>	20
<b>[1]</b>	<b>Section 334 Penalty notices</b>	21
	Omit “must be served personally” from section 334 (2).	22
	Insert instead “may be served personally or by post”.	23
<b>[2]</b>	<b>Section 340 Withdrawal of penalty notice</b>	24
	Omit section 340 (1). Insert instead:	25
	(1) A senior police officer may at any time withdraw a penalty notice issued by a police officer under this Part.	26 27

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<b>[3] Section 340 (3) (b1) and (b2)</b>	1
Insert after section 340 (3) (b):	2
(b1) Any subsequent action already taken in relation to the notice, including any enforcement action, is to be reversed.	3 4
(b2) Any costs relating to that subsequent action are not payable and, if paid, are repayable.	5 6
<b>[4] Section 340 (3) (c)</b>	7
Insert “, subject to any time limit within which such proceedings are required to be commenced,” after “may”.	8 9
<b>[5] Section 344 Monitoring of Part by Ombudsman</b>	10
Omit “sections 353AC and 353AE (in so far as it relates to the exercise of powers under section 353AC) of the <i>Crimes Act 1900</i> ” from section 344 (1).	11 12
Insert instead “sections 138A and 138C (in so far as it relates to the exercise of powers under section 138A) of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> ”.	13 14 15
<b>[6] Section 344A</b>	16
Insert after section 344:	17
<b>344A Further review by Ombudsman—Aboriginal and Torres Strait Islander communities</b>	18 19
(1) The Ombudsman is to review the operation of the provisions of:	20
(a) this Part, and	21
(b) the regulations made under this Part, and	22
(c) sections 138A and 138C (in so far as it relates to the exercise of powers under section 138A) of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> ,	23 24 25
in so far as those provisions impact on Aboriginal and Torres Strait Islander communities.	26 27
(2) A report in relation to the review is to be provided to the Attorney General and the Minister for Police by 30 November 2008.	28 29

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<b>4.4 Criminal Procedure Regulation 2005</b>	1
<b>[1] Clauses 11 and 12</b>	2
Omit “31 December 2006” wherever occurring.	3
Insert instead “30 April 2007”.	4
<b>[2] Schedule 2 Penalty notice offences</b>	5
Omit the matter relating to section 61 of the <i>Crimes Act 1900</i> in the table to the Schedule.	6
	7