

[Act 2002 No 103]



New South Wales

Law Enforcement (Powers and Responsibilities) Bill 2002

Explanatory note

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

Overview of Bill

The objects of this Bill are to:

- (a) consolidate, restate and clarify the law relating to police and other law enforcement officers' powers and responsibilities, and
- (b) set out the safeguards applicable in respect of persons being investigated for offences, and
- (c) make provision for other police powers, including powers relating to crime scenes, production of bank documents and other matters, and
- (d) make consequential repeals of, and amendments to, other Acts and provisions of a savings and transitional nature.

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

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 contains definitions of terms used in the proposed Act.

Clause 4 provides that the proposed Act is not to affect the functions, obligations and liabilities conferred on a police officer as a constable under the common law and other individual functions a police officer may exercise, including powers to deal with breaches of the peace.

Clause 5 provides that the proposed Act is not to affect functions that a police officer has under certain specified laws but that a police officer may exercise functions under the proposed Act for the purpose of giving effect to those specified laws.

Clause 6 provides that the proposed Act is to prevail over other inconsistent Acts or regulations whether enacted before or after the proposed Act, subject to express exceptions.

Clause 7 makes it clear that the provisions of each Part of the proposed Act (which each relate to particular kinds of powers) do not limit the functions, or exercise of functions, set out in any other proposed Part.

Clause 8 provides that the proposed Act is to bind the Crown.

Part 2 Powers of entry

The proposed Part sets out powers of police officers to enter premises for particular purposes.

These powers are derived from existing common law powers and also from powers contained in legislation of other jurisdictions.

Clause 9 enables a police officer to enter premises if the police officer believes on reasonable grounds that a breach of the peace is being or is likely to be committed and it is necessary to enter immediately to end or prevent the breach of peace. A

police officer may also enter premises if the police officer believes on reasonable grounds that a person has suffered significant physical injury or that there is imminent danger of significant injury to a person.

Clause 10 enables a police officer to enter premises to arrest a person, to detain a person under another Act or to arrest a person named in a warrant, but a dwelling may be entered only if the officer believes on reasonable grounds that the person is in the premises. The police officer may search the premises for the person.

Part 3 Powers to require identity to be disclosed

The provisions of the proposed Part re-enact existing New South Wales legislation.

Division 1 General power to require identity to be disclosed

Clause 11 sets out the power of a police officer to request a person to disclose his or her identity (that is, name and address) if the police officer believes on reasonable grounds that the person may be able to assist in the investigation of an indictable offence because the person was at or near the place where the alleged offence occurred before, when or soon after it occurred.

Clause 12 makes it an offence, without reasonable excuse, to fail or refuse to comply with the request to disclose identity.

Clause 13 makes it an offence, without reasonable excuse, to give a name that is false in a material particular or to give an address other than the full and correct address.

Division 2 Powers to require identity of drivers and passengers to be disclosed

Clause 14 sets out the power of a police officer to request the driver of, a passenger in or the owner of a vehicle to disclose his or her identity or the identity of a passenger or driver (as the case requires) if the police officer believes on reasonable grounds that the vehicle was or may have been used in connection with an indictable offence.

Clause 15 makes it an offence for a driver of a vehicle, without reasonable excuse, to fail or refuse to comply with the request to disclose his or her identity or the identity of a passenger or other information about the passenger's identity.

Clause 16 makes it an offence for a passenger in a vehicle, without reasonable excuse, to fail or refuse to comply with the request to disclose his or her identity or the identity of the driver or other information about the driver's identity.

Clause 17 makes it an offence for the owner of a vehicle, without reasonable excuse, to fail or refuse to comply with the request to disclose the identity of the driver or a passenger or other information about the driver's or passenger's identity.

Clause 18 makes it an offence for a driver, owner or passenger, without reasonable excuse, to give a name that is false in a material particular or to give an address other than the full and correct address.

Division 3 Proof of identity

Clause 19 enables a police officer to request a person requested to disclose his or her identity under the proposed Part to provide proof of his or her identity.

Part 4 Search and seizure powers without warrant

The provisions of the proposed Part re-enact existing New South Wales legislation.

Division 1 General personal search and seizure powers

Clause 20 defines specified offences as *relevant offences* for the purposes of the proposed Division. They are indictable offences, offences against section 545E of the *Crimes Act 1900* (relating to possession of dangerous articles other than firearms), and offences under the *Weapons Prohibition Act 1998*, the *Firearms Act 1996*, or a regulation made under either of those Acts.

Clause 21 sets out the powers of a police officer, without a warrant, to stop, search and detain a person and anything in the possession of or under the control of a person if the police officer suspects on reasonable grounds that particular circumstances exist. The circumstances include the person having in his or her possession or under his or her control a stolen thing or something that has been otherwise unlawfully obtained, a thing used or intended to be used in or in connection with the commission of a relevant offence, (in a public place) a dangerous article that is being, or was, or may have been so used or a prohibited plant or prohibited drug. A police officer may seize and detain any article that the

officer reasonably suspects is stolen or unlawfully obtained or may provide evidence of a relevant offence or that is a dangerous article or a prohibited plant or prohibited drug.

Clause 22 enables a police officer who is lawfully on premises to seize and detain a dangerous article, if the police officer reasonably suspects that it is being or was being used in or in connection with a relevant offence.

Division 2 Searches of persons on arrest or while in custody

Clause 23 sets out the power of a police officer to search a person at or after arrest if the officer suspects on reasonable grounds that the person is carrying anything that would present a danger to a person, that could be used to escape from lawful custody, that is a thing with respect to which an offence has been committed, that will provide evidence of the commission of an offence or that was used, or is intended to be used, in connection with the commission of an offence. A police officer who arrests a person for the purpose of taking the person into lawful custody may also search the person at or after arrest if the officer suspects on reasonable grounds that the person is carrying anything that would present a danger to the person or that could be used to assist the person to escape from lawful custody. A police officer may seize and detain anything of a kind for which the search may be conducted.

Clause 24 sets out the power of a police officer to search a person who is in lawful custody and to take from the person anything found on that search.

Division 3 Additional personal search and seizure powers in public places and schools

Clause 25 contains definitions of terms used in the proposed Division.

Clause 26 enables a police officer to request a person who is in a public place or school to submit to a frisk search, and to search the person, if the police officer suspects on reasonable grounds that the person has a dangerous implement in his or her custody. If the person is in a school and is a student, the police officer may request that the person submit to a search of the person's locker and an examination of any bag or other personal effect in the locker. An adult nominated by the student may be present during the search. The police officer may request the production of anything seen or detected on the person that is a suspected dangerous implement or anything detected by an electronic metal detection device.

Clause 27 makes it an offence, without reasonable excuse, to fail or refuse to produce a thing as requested or to submit to a search as requested.

Clause 28 enables a police officer to confiscate a dangerous implement that is unlawfully in a person's custody in a public place or school.

Division 4 Provisions relating generally to personal searches

The provisions of the proposed Division reflect the common law relating to police search powers, current police guidelines relating to searches and relevant provisions of Commonwealth legislation.

Clause 29 applies the proposed Division to searches by a police officer or other person under the proposed Act.

Clause 30 authorises a police officer or other person to carry out a frisk search or an ordinary search whenever the police officer or other person is authorised to carry out a search. In a frisk search, the police officer or other person may treat a person's outer clothing (to which the search is to be confined) as the outer clothing after a coat or jacket is removed.

Clause 31 authorises a police officer or other person to carry out a strip search if the officer or other person suspects on reasonable grounds that it is necessary to carry out such a search for the purposes of the search and that the seriousness and urgency of the circumstances require the strip search to be carried out.

Clause 32 sets out rules applying generally to personal searches that a police officer or other person must comply with as far as is reasonably practicable in the circumstances. These include requirements to inform the person as to whether and why it is necessary to remove clothing, to ask for cooperation, to conduct the search in a way that provides reasonable privacy and is as quick as is reasonably practicable, to conduct the least invasive kind of search, not to search the person's genital area unless necessary to do so for the search purposes, to allow the person to dress as soon as the search is finished and not to question a person while searching the person. A search is to be conducted by a person of the same sex.

Clause 33 sets out rules applying generally to strip searches that a police officer or other person must comply with as far as is reasonably practicable in the circumstances. These include requirements to conduct the search in a private area, not to search in view of persons of the opposite sex, not to search a person's body cavities, not to remove more clothes than is necessary and for a search not to involve more visual inspection than is necessary. A medical practitioner or parent or guardian may be present if the person being searched has no objection. The

proposed section also requires strip searches of children aged between 10 and 18 years of age or persons suffering impaired intellectual functioning to be carried out, if reasonably practicable, in the presence of a parent or guardian of a person being searched.

Clause 34 prohibits strip searches of persons under 10 years of age.

Division 5 Vehicle entry, search and roadblock powers

Clause 35 defines specified offences as *relevant offences* for the purposes of the proposed Division. They are indictable offences, offences against section 545E of the *Crimes Act 1900* (relating to possession of dangerous articles other than firearms), and offences under the *Weapons Prohibition Act 1998*, the *Firearms Act 1996*, or a regulation made under either of those Acts.

Clause 36 sets out the powers of a police officer, without a warrant, to stop, search and detain a vehicle if the police officer suspects on reasonable grounds that particular circumstances exist. The circumstances include the vehicle containing, or a person in the vehicle having in his or her possession or under his or her control, a stolen thing or something that has been otherwise unlawfully obtained or a prohibited plant or a prohibited drug, the vehicle being used, or containing a thing used or intended to be used, in or in connection with the commission of a relevant offence, the vehicle being in a public place and containing a dangerous article that is being, or was, or may have been, used in connection with a relevant offence or that circumstances exist on or in the vicinity of a public place that are likely to give rise to a serious risk to public safety. The powers extend to a vehicle of a class of vehicles if the police officer reasonably suspects that the vehicle is being used, or was or may have been used, in or in connection with the commission of an indictable offence or that circumstances exist on or in the vicinity of a public place that are likely to give rise to a serious risk to public safety. A police officer may seize and detain any article that the officer reasonably suspects is stolen or unlawfully obtained or may provide evidence of an offence or that is a dangerous article or a prohibited plant or prohibited drug.

Clause 37 contains the power of a senior police officer to authorise police officers to exercise powers to erect roadblocks and direct vehicles to stop if the senior police officer suspects on reasonable grounds that the vehicle is being, or was, or may have been, used in connection with the commission of an indictable offence and doing so may provide evidence of such an offence or a risk to public safety may be lessened.

Clause 38 enables a police officer to give reasonable directions to facilitate the exercise of a search power or a vehicle roadblock power under the proposed Division.

Clause 39 makes it an offence, without reasonable excuse, to fail or refuse to stop a vehicle if requested to do so under the proposed Division or to fail or refuse to comply with a direction under the proposed Division.

Clause 40 provides for roadblock authorisations to be verbal or written, and for the period for which they remain in force (up to 6 hours).

Clause 41 sets out matters to be specified in a roadblock authorisation and requires a record to be made of a roadblock authorisation.

Division 6 Vessel and aircraft entry and search powers

Clause 42 sets out the powers of a police officer, without a warrant, to stop, search and detain a vessel or aircraft if the police officer suspects on reasonable grounds that particular circumstances exist. The circumstances include the vessel or aircraft containing, or a person in the vessel or aircraft having in his or her possession or under his or her control, a stolen thing or something that has been otherwise unlawfully obtained, the vessel or aircraft being used or intended to be used, or containing a thing used or intended to be used, in or in connection with the commission of a relevant offence to which the proposed section applies and the vessel or aircraft being in a public place and containing a dangerous article that is being or may have been used in connection with such an offence. A police officer may seize and detain any article that the officer reasonably suspects is stolen or unlawfully obtained or may provide evidence of a relevant offence or that is a dangerous article or a prohibited plant or prohibited drug.

Clause 43 contains a power for certain police officers authorised by the proposed section to board vessels to prevent injury, preserve peace and good order or to prevent, detect or investigate offences and sets out powers that may be exercised on boarding a vessel.

Clause 44 confers a power on the commander of an aircraft, or a person authorised by an authorised officer, to search, without a warrant, an aircraft or a person, luggage or freight on an aircraft.

Clause 45 enables certain police officers to search, detain and enter a vessel or aircraft if they reasonably suspect that there is a prohibited plant or prohibited drug in or on the vessel or aircraft in contravention of the *Drug Misuse and Trafficking Act 1985*.

Part 5 Search and seizure powers with warrant or other authority

The provisions of the proposed Part re-enact existing New South Wales legislation.

Division 1 Definitions

Clause 46 contains definitions of terms used in the proposed Part.

Division 2 Police powers relating to warrants

Clause 47 enables a police officer to apply to an authorised officer for a search warrant if the police officer believes on reasonable grounds that there is, or within 72 hours will be, in or on any premises, a thing connected with particular offences or a thing that is stolen or otherwise unlawfully obtained.

Clause 48 enables an authorised officer to issue a search warrant if satisfied there are reasonable grounds for doing so.

Clause 49 provides that a police officer executing a search warrant may seize and detain a thing mentioned in the warrant or connected with an offence.

Clause 50 empowers a police officer to search a person found on the premises whom the officer reasonably suspects of having a thing mentioned in the warrant.

Clause 51 enables a police officer to make certain inquiries if the warrant relates to child prostitution offences.

Clause 52 makes it an offence, without reasonable excuse, to obstruct or hinder a person executing a search warrant.

Division 3 Notices to produce documents

Clause 53 enables a police officer to apply to an authorised officer for a notice to produce documents if the police officer believes on reasonable grounds that an authorised deposit-taking institution holds documents that may be connected with an offence committed by someone else.

Clause 54 provides that an authorised officer may issue a notice if satisfied there are reasonable grounds for suspecting that an authorised deposit-taking institution holds documents that may be connected with an offence committed by someone else and that the institution is not a party to the offence.

Clause 55 requires the authorised officer to include the name of the institution in the notice.

Clause 56 contains a procedure for dealing with claims by an authorised deposit-taking institution that certain documents are privileged.

Clause 57 makes it clear that an authorised deposit-taking institution is not liable for anything done in the honest belief that it was complying with a notice to produce documents but is guilty of an offence if it refuses or fails to comply with a notice without reasonable excuse.

Clause 58 provides that a document produced under the proposed Division is taken to be seized under the proposed Act, which has the effect of making it subject to the safeguards applicable to things seized.

Division 4 Provisions relating generally to warrants and notices to produce documents

Clause 59 sets out the provisions generally applicable to search warrants, crime scene warrants, detention warrants and notices to produce and other specified warrants, while limiting the application of some provisions to things that are not search warrants.

Clause 60 sets out the manner of applying for a warrant in person.

Clause 61 sets out the manner of applying for a warrant by telephone, radio, facsimile or other communication device in urgent circumstances.

Clause 62 sets out the information to be contained in an application for a warrant.

Clause 63 makes it an offence to give false or misleading information in an application for a warrant, knowing it to be false or misleading.

Clause 64 provides that a further application for a warrant after a refusal may not be made to an authorised officer unless justified by additional information but may be made to a Magistrate without such information.

Clause 65 contains requirements as to records to be kept of applications for warrants.

Clause 66 requires a warrant to be in the form prescribed by the regulations.

Clause 67 requires an occupier's notice to be given to a person to whom a warrant is issued and to be served on entry to the premises concerned or as soon as practicable after, unless service is postponed by the issuing authorised officer.

Clause 68 requires a person executing a warrant to make an announcement before entry except where the safety of any person, or the execution of the warrant, may be affected.

Clause 69 requires a person executing a warrant to show the warrant relied on.

Clause 70 enables a person executing a warrant to use reasonable force to enter the premises and to break open receptacles if reasonably necessary to do so.

Clause 71 enables a person executing a warrant to use assistants.

Clause 72 requires a person executing a warrant to execute a warrant by day unless authorised in the warrant to do so by night.

Clause 73 provides for the time at which a warrant expires and the general limits on the period for which warrants may be issued and on extensions of that time.

Clause 74 requires a person executing a warrant to report to the authorised officer who issued it as to its execution, and related matters, within 10 days after the execution of the warrant or the expiry of the warrant, whichever first occurs.

Clause 75 provides for other authorised officers to exercise functions if the original authorised officer who issues a warrant dies, ceases to be an authorised officer or is absent.

Clause 76 provides that a defect does not invalidate a warrant unless it affects the substance of a warrant in a material particular.

Division 5 Miscellaneous

Clause 77 abolishes common law search warrants.

Clause 78 enables the Minister to enter into arrangements in relation to the transmission to or from other States and Territories of things seized under this Act or under the law of another State or Territory, where the thing seized is relevant to the investigation of an offence.

Clause 79 converts certain references.

Clause 80 applies search warrant provisions to electricity and gas legislation.

Part 6 Search, entry and seizure powers relating to domestic violence offences

The provisions of the proposed Part re-enact existing New South Wales legislation.

Clause 81 contains definitions of terms used in the proposed Part.

Clause 82 enables a police officer to enter a dwelling at the invitation of an occupier if the police officer believes on reasonable grounds that a domestic violence offence is being, or may have been recently, committed or is imminent, or is likely to be committed. The police officer may not enter or remain if authority to do so is refused or there is no other authority to do so, except where the invitation was given by a person who the officer believes to be the victim of the offence.

Clause 83 enables a warrant to be applied for if entry is denied and the police officer suspects that the same circumstances exist and entry is necessary to investigate or prevent a domestic violence offence.

Clause 84 makes it an offence, without reasonable excuse, to obstruct or hinder a person executing a domestic violence warrant.

Clause 85 enables a police officer who enters premises under the proposed Part to investigate, render aid to any injured person, exercise a power of arrest, prevent the commission of an offence and inquire for and, if informed that firearms are present, search for firearms.

Clause 86 requires a police officer who enters premises and who believes on reasonable grounds that there is a firearm in a dwelling to apply for a search warrant to search for firearms if informed that there is no firearm in the dwelling. The warrant may authorise any firearms to be seized and detained.

Clause 87 confers on a police officer who lawfully enters a dwelling a power to search for a dangerous article if the police officer believes on reasonable grounds that such an article is in the dwelling and is being, or was, or may have been or may be used to commit a domestic violence offence.

Part 7 Crime scenes

The proposed Part enacts new provisions setting out the powers of police officers in relation to crime scenes.

Clause 88 empowers a police officer who is lawfully on premises (whether under the authority of a crime scene warrant or under any other lawful authority) to establish a crime scene and exercise crime scene powers in accordance with the proposed Part.

Clause 89 applies the proposed Part to all premises whether or not a public place but provides that a crime scene warrant is not necessary in relation to the exercise of crime scene powers in a public place.

Clause 90 sets out the circumstances when a crime scene may be established.

A crime scene may be established on premises by a police officer who suspects on reasonable grounds that an offence committed in connection with a traffic accident (resulting in death or serious injury) or a serious indictable offence is being, or was, or may have been, committed on the premises and that it is reasonably necessary to do so to preserve, or search for and gather, evidence of such an offence. A crime scene may also be established by a police officer who suspects on reasonable grounds that evidence of a serious indictable offence committed elsewhere may be on the premises and that it is reasonably necessary to do so to preserve, or search for and gather, evidence of such an offence.

Clause 91 sets out the way in which a crime scene may be established.

Clause 92 enables a police officer to exercise certain crime scene powers for the purpose of preserving evidence of the commission of an offence. The powers may be exercised for not more than 3 hours unless a crime scene warrant is obtained. A crime scene may not be established more than once at the same place in a 24 hour period unless a crime scene warrant is obtained.

Clause 93 requires a police officer who establishes a crime scene for less than 3 hours to notify a senior police officer of that fact.

Clause 94 enables a police officer to apply to an authorised officer for a crime scene warrant.

Clause 95 sets out the powers that may be exercised at a crime scene. These include powers to give directions to leave or not to enter a crime scene, to remove obstructions, to perform necessary investigations, to conduct examinations or processes, to open things, to use utilities, to seize things, to dig up things, to remove walls or ceilings and other reasonably necessary and incidental powers.

Clause 96 makes it an offence, without reasonable excuse, to obstruct or hinder a person executing a crime scene warrant or to fail or refuse to comply with a direction of a police officer given pursuant to crime scene powers.

Clause 97 provides that the proposed Part does not prevent an application being made for a search warrant, or affect the exercise of any other function at or in relation to a crime scene.

Clause 98 makes it clear that the proposed Part does not confer any additional power of entry or limit any power of entry of a police officer.

Part 8 Powers relating to arrest

The provisions of the proposed Part re-enact existing New South Wales legislation and enact certain provisions reflecting the common law.

Clause 99 sets out the powers of police officers to arrest without a warrant. A police officer may arrest a person if that person is in the act of committing an offence, has just committed an offence, has committed a serious indictable offence for which the person has not yet been tried or if the police officer suspects on reasonable grounds that the person has committed an offence. A police officer must not arrest a person for the purpose of taking proceedings for an offence against the person unless the officer suspects on reasonable grounds that the arrest is necessary to ensure the person's attendance at court or for other purposes relating to the protection of evidence or preventing the repetition of an offence or another offence. An arrested person, and any property on the person, must, as soon as is reasonably practicable, be taken before an authorised officer to be dealt with according to law.

Clause 100 sets out the powers of persons other than police officers to arrest without a warrant. Any such person may arrest another person if that other person is in the act of committing an offence, has just committed an offence or has committed a serious indictable offence for which the person has not yet been tried. An arrested person, and any property on the person, must be taken before an authorised officer to be dealt with according to law.

Clause 101 sets out the power of a police officer to arrest with a warrant and to deal with a person in accordance with a warrant.

Clause 102 sets out the power of a police officer to arrest a person who the police officer suspects on reasonable grounds is unlawfully at large.

Clause 103 sets out the power of a police officer to apply for a warrant for the arrest of a person who is unlawfully at large and enables a warrant to be issued.

Clause 104 sets out the power of a police officer to arrest a person if the police officer suspects on reasonable grounds that the person has committed an interstate offence.

Clause 105 enables a police officer to discontinue an arrest at any time.

Clause 106 provides that a person who, following arrest, is taking part in a covert investigation ceases to be under arrest.

Clause 107 provides that the proposed Part does not affect the power of a police officer to commence proceedings for an offence other than by arresting a person, or the power to deal with offences in other ways (including the issue of a penalty notice).

Clause 108 provides that the proposed Part does not affect the operation of the *Young Offenders Act 1997*.

Part 9 Investigations and questioning

The provisions of the proposed Part re-enact existing New South Wales legislation.

Division 1 Preliminary

Clause 109 sets out the objects of the proposed Part.

Clause 110 contains definitions of terms used in the proposed Part.

Clause 111 sets out the persons to whom the proposed Part applies, who are persons arrested by a police officer for an offence but not persons detained as intoxicated persons.

Clause 112 enables regulations to be made modifying the application of the proposed Part to children, Aboriginal persons or Torres Strait Islanders, persons of non-English speaking background and persons who have a disability.

Clause 113 makes it clear that the proposed Part does not affect certain existing powers of arrest and investigation or certain rights of persons in custody.

Division 2 Investigation and questioning powers

Clause 114 enables a police officer to detain an arrested person for the investigation period for the purpose of investigating whether the person committed the offence for which the person was arrested. Other offences may be investigated and the person must be released, or brought before an authorised officer or court, within the investigation period.

Clause 115 describes the investigation period which is to be a period that is reasonable having regard to the circumstances but is not to exceed 4 hours or such longer period as may be permitted by a detention warrant.

Clause 116 sets out the matters to be taken into account for determining the reasonable investigation period. These include the condition of the person, whether the person's presence is necessary, the number, seriousness and complexity of the offences, the time required for investigation facilities to become available and other matters.

Clause 117 provides that certain times may be disregarded when determining the length of an investigation period, including transport time, times to allow communication with friends, legal advisers and other persons and time spent waiting for medical attention and other specified periods.

Clause 118 enables a police officer, before the end of the investigation period, to apply to an authorised officer for a detention warrant to extend the maximum investigation period by up to 8 hours. The period cannot be extended more than once and a warrant must not be issued unless the authorised officer is satisfied that the further period of detention is reasonably necessary, there is no reasonable alternative means of completing the investigation, the investigation is being conducted diligently and circumstances exist which make it impracticable for the investigation to be completed within the original period.

Clause 119 sets out requirements for detention warrants. An application may be made in person or by telephone and, in the case of a telephone application, information must be transmitted to the authorised officer within one day.

Clause 120 sets out the information that must be provided in an application for a detention warrant.

Clause 121 provides that a court may take into account any period during which a person was detained under the proposed Part when passing sentence on the person.

Division 3 Safeguards relating to persons in custody for questioning

Clause 122 requires the custody manager at a police station or other place of detention to caution the detained person about the use in evidence of anything said by the person and to give the person a summary of the provisions of the proposed Part.

Clause 123 confers on a detained person the right to be informed of the right to communicate or attempt to communicate with a friend, relative, guardian or independent person and a legal practitioner and to be given facilities to do so. Questioning is to be deferred for a reasonable period (of up to 2 hours after the initial communication) to enable this to be done and a legal practitioner must be allowed to be present, if requested, during any investigative procedure.

Clause 124 confers on a detained person who is not an Australian citizen or a permanent Australian resident the right to be informed of the right to communicate or attempt to communicate with a consular official of the country of which the person is a citizen and to be given facilities to do so. Questioning is to be deferred for a period of up to 2 hours after the initial communication to enable this to be done.

Clause 125 sets out the circumstances when the requirements relating to communication with friends and other persons need not be complied with by a custody manager. These include a situation where the custody manager believes that doing so is likely to result in an accomplice avoiding arrest, the concealment, fabrication, destruction or loss of evidence or intimidation of a witness, hindering the recovery of any person or property concerned in the offence or bodily injury being caused to another person.

Clause 126 requires a detained person to be informed of any inquiry as to the person's whereabouts by a friend, relative or guardian and provides for the information to be given unless the detained person does not agree, the custody manager does not believe the person is a friend, relative or guardian or that giving the information may result in an accomplice avoiding arrest, the concealment, fabrication, destruction or loss of evidence or intimidation of a witness, hindering the recovery of any person or property concerned in the offence or bodily injury being caused to another person.

Clause 127 requires a detained person to be informed of any inquiry as to the person's whereabouts by a legal practitioner representing the person, a consular

official or a person in a professional capacity relating to the detained person's welfare and provides for the information to be given unless the detained person does not agree or the custody manager does not believe the person requesting information.

Clause 128 requires the custody manager to provide an interpreter if the custody manager believes on reasonable grounds that the person has inadequate English and cannot communicate with reasonable fluency in English or cannot communicate with reasonable fluency because of disability.

Clause 129 requires the custody manager to provide medical attention to the detained person.

Clause 130 requires the custody manager to provide reasonable refreshments and access to toilet facilities and, if practicable, facilities to wash, shower or bathe.

Clause 131 requires the custody manager to keep a custody record for each detained person and to ensure that a copy is given to the person when taken before a Magistrate, authorised officer or court or when released.

Division 4 Regulations

Clause 132 enables regulations to be made for or with respect to guidelines regarding the exercise of functions conferred or imposed on police officers under the proposed Part, police officers who may act as custody managers and the keeping of records relating to persons who are detained under the proposed Part.

Part 10 Other powers relating to persons in custody

The provisions of the proposed Division re-enact existing New South Wales legislation.

Division 1 Taking of identification particulars

Clause 133 enables a police officer to take or cause to be taken identification particulars necessary to identify a person who is in lawful custody and who has been or is intended to be charged with an offence. A police officer may take or cause to be taken all particulars necessary to identify the person, including photographs, finger-prints and palm-prints (if over 14 years).

Clause 134 provides that a court that finds a specified offence to have been proven against a person may order that the person present himself or herself and submit to the taking of identification particulars. A person who does not present himself or herself may be arrested.

Clause 135 extends the proposed Division to persons in the lawful custody of the police or other authority and extends the powers of the police to the other authority concerned. It also makes it clear that the consent of the person in custody is not required for the taking of action under proposed section 133 or 134.

Clause 136 applies special provisions to children under 14 years, with an order of the Children's Court or an authorised officer being required before identification particulars can be taken.

Clause 137 requires a court, if an offence alleged against a child is found not to be proven against the child, to serve on the child, the parents or guardian of the child or any other person having the care of the child, a notice setting out their right to request the court to order identification particulars relating to the child to be destroyed.

Division 2 Examination of persons in custody

Clause 138 enables a medical practitioner, on the request of a police officer of the rank of sergeant or above, to examine a person in custody for an offence who has been charged with the offence if there are reasonable grounds for believing that the examination will provide evidence as to the commission of the offence.

Part 11 Drug detection powers

The provisions of the proposed Part re-enact existing New South Wales legislation.

Division 1 Drug premises

Clause 139 contains definitions of terms used in the proposed Division.

Clause 140 enables a police officer above the rank of sergeant to apply for a search warrant to search premises if the officer has reasonable grounds to believe that they are being used for the unlawful supply or manufacture of any prohibited drug.

Clause 141 confers powers to pass through land or buildings, to break open doors and do other acts for the purpose of executing a search warrant under the proposed Division.

Clause 142 confers powers on police officers executing search warrants under the proposed Division to search persons, arrest or proceed against persons, seize firearms or prohibited drugs and money and to require persons to disclose their identity.

Clause 143 makes it an offence to obstruct a police officer executing a search warrant under the proposed Division, to fail or refuse to comply with a request to disclose identity or to give a name and address that is false in a material particular or an address that is not full and correct.

Clause 144 makes it clear that the proposed Division does not limit the operation of the *Disorderly Houses Act 1943* or any other law relating to entry onto or searching premises.

Division 2 Use of drug detection dogs

Clause 145 defines *general drug detection*.

Clause 146 gives a police officer authority to use a dog for the purpose of searching a person for the purpose of detecting a drug offence, if the officer is authorised to carry out such a search, and also authorises an officer to be accompanied by a dog under the officer's control if entitled to be on premises. The State or police officer is not liable to any action, liability, claim or demand merely because a dog entered, or was in or on, premises.

Clause 147 authorises a police officer to use a dog to carry out general drug detection, but only as provided by the proposed Division.

Clause 148 enables a police officer to use a dog to carry out general drug detection in relation to persons at or entering or leaving premises where liquor is sold (other than a restaurant), a public place where a sporting event or other entertainment is being held or on or entering a public passenger vehicle or a station, platform or stopping place on a public transport route.

Clause 149 enables a police officer to obtain a warrant authorising the officer to use a dog to carry out general drug detection in a public place.

Clause 150 requires police officers using a dog under the proposed Division to take all reasonable precautions to prevent the dog touching a person and to keep the dog under control. Dogs may be used as part of a covert operation only if authorised by warrant. The proposed Division does not confer any additional power on a police officer to enter premises or detain any person.

Division 3 Use of medical imaging to search for internally concealed drugs

Clause 151 contains definitions of terms used in the proposed Division. Internal searches are defined as searches of a person's body involving an ultrasound, x-ray, CAT scan or other form of medical imaging.

Clause 152 sets out the persons who are eligible judicial officers for the purposes of the proposed Division.

Clause 153 prohibits internal searches under the proposed Division on persons under 10 years.

Clause 154 permits internal searches to be carried out with the informed consent of the suspect or by order of an eligible judicial officer (if a suspect is a child or incapable person or has refused consent).

Clause 155 enables a police officer to detain a person for the purpose of consenting to an internal search if satisfied that the person is a suspect, that the search is likely to produce evidence of an offence relating to the supply of a prohibited drug and the detention is justified in all the circumstances. Detention is to be for not more than 2 hours (if the person is not arrested) or for no longer than 2 hours after the end of an investigation period (if the person is arrested).

Clause 156 sets out the requirements for a request of a suspect for consent to an internal search.

Clause 157 sets out the matters about which a suspect must be informed when a request for consent to an internal search is made.

Clause 158 requires a suspect to be immediately released if no evidence of drugs is found during an internal search or enables a person to be detained for a further period if evidence is found.

Clause 159 enables a police officer to apply in writing to an eligible judicial officer for an order authorising an internal search and the detention of a suspect for that purpose.

Clause 160 sets out requirements for the hearing of an application for an order, including representation rights, the right of a child or incapable person or an Aboriginal person or Torres Strait Islander to have a search friend and, with consent, rights to call and cross-examine witnesses.

Clause 161 enables an eligible judicial officer to make an order authorising an internal search and the detention of a suspect for that purpose if satisfied that the person is a suspect, that the search is likely to produce evidence of an offence relating to the supply of the prohibited drug and the detention is justified in all the circumstances. An order cannot be made if a search would be unsafe and a search of a child involving electromagnetic radiation or radiography may only be carried out on 2 occasions in 2 years, subject to exceptional circumstances. The judicial officer must appoint a search friend to represent the interests of a suspect who is an Aboriginal person, a Torres Strait Islander, a child or an incapable person.

Clause 162 requires an internal search to be carried out by a medical practitioner or an appropriately qualified person and, if one has been appointed, in the presence of the search friend appointed by the eligible judicial officer.

Clause 163 enables the use of any medical procedure or apparatus that the medical practitioner or appropriately qualified person considers reasonably safe in the circumstances.

Clause 164 enables a medical practitioner to take such measures in relation to a detained suspect as are necessary to preserve the suspect's life.

Clause 165 contains rules relating to internal searches, including rules preserving privacy.

Clause 166 prohibits a suspect from being questioned while an internal search is being carried out.

Clause 167 requires a suspect to be cautioned before an internal search is carried out.

Clause 168 prevents a search from being conducted in a cruel, inhuman or degrading manner but makes it clear that the carrying out of an internal search is not of itself cruel, inhuman or degrading.

Clause 169 requires a medical practitioner who conducts an internal search to report to the Commissioner of Police.

Clause 170 sets out a suspect's rights to consult with a legal practitioner and to communicate with another person.

Clause 171 requires a police officer to arrange for an interpreter for a suspect who is unable, because of inadequate knowledge of the English language or physical disability, to communicate orally with reasonable fluency in the English language before seeking consent to a search, cautioning the suspect or taking other specified actions.

Clause 172 provides for an internal search not to proceed where consent is withdrawn, except by order of an eligible judicial officer.

Clause 173 enables a search friend or a legal representative to make requests or objections on behalf of a suspect and requires them to be informed of matters.

Clause 174 requires requests for consent and information about searches, and a suspect's responses, to be recorded electronically if practicable or, if not, in writing.

Clause 175 sets out requirements for police officers in relation to audio and video recordings.

Clause 176 requires material to be made available to a suspect by sending it to his or her last known address or the suspect's legal representative's last known address.

Clause 177 prohibits any charge being made for giving material to a suspect or to view a video recording of the suspect.

Clause 178 sets out the burden of proof relating to matters required to be proved under the proposed Division.

Clause 179 excuses from criminal or civil liability a medical practitioner or appropriately qualified person who carries or helps to carry out an internal search under the proposed Division, if anything done or omitted was done or omitted in good faith in the belief that consent had been given or an order had been made authorising the search.

Clause 180 makes it clear that a medical practitioner or appropriately qualified person is not required to carry out an internal search under the proposed Division.

Clause 181 sets out the relationship of the proposed Division with proposed Part 9.

Clause 182 provides for the detention period to be extended for up to 48 hours by order of an eligible judicial officer, if satisfied, on application by a police officer, that the further period is reasonably necessary to carry out an internal search or to confirm that matter revealed by a search is drugs.

Clause 183 makes it an offence to intentionally or recklessly publish the name of a suspect on whom an internal search is carried out or any information likely to identify the suspect, unless the suspect has been charged with an offence or an eligible judicial officer has authorised the publication.

Clause 184 requires the Minister to establish and update lists of search friends in relation to parts of the State.

Part 12 Powers relating to vehicles and traffic

The provisions of the proposed Part re-enact existing New South Wales legislation.

Division 1 Regulation of traffic

Clause 185 confers power on police officers to give reasonable directions for the safe and efficient regulation of traffic.

Clause 186 confers power on police officers to close roads and road related areas during temporary obstructions to traffic or for any temporary purpose.

Division 2 Other police powers relating to vehicles

Clause 187 enables the Commissioner of Police to authorise the use of tyre deflation devices in connection with police pursuits of vehicles.

Clause 188 enables police officers, authorised by the Commissioner of Police, to enter premises where motor vehicle repairs are carried on for the purpose of inspecting motor vehicles or trailers or parts of motor vehicles or trailers to ascertain whether they are stolen. It will be an offence to wilfully delay or obstruct a police officer exercising any such power.

Division 3 Powers to prevent intoxicated drivers from driving

Clause 189 contains a scheme whereby a police officer may prohibit a person from driving, require ignition and other keys to be handed over and immobilise or detain a vehicle, if of the opinion that the person is under the influence of alcohol or any other drug, or a combination of drugs. The person affected may request a breath test.

Clause 190 sets out the period for which the keys and vehicle may be detained and the persons to whom they may be returned. Application may be made to a Local Court for their return if they are not returned within 24 hours of a request being made.

Clause 191 makes it an offence to fail or refuse to comply with a requirement or prohibition of a police officer under the proposed Division or to attempt to obstruct a police officer in the exercise of a power under the proposed Division.

Clause 192 enables expenses incurred in connection with the immobilisation, removal or detention of a motor vehicle to be recovered from the driver or intending driver or owner of the vehicle as a debt in a court of competent jurisdiction.

Part 13 Use of dogs to detect firearms and explosives

The provisions of the proposed Part re-enact existing New South Wales legislation.

Clause 193 defines *general firearms or explosives detection* and *relevant firearms or explosives offence*.

Clause 194 makes it clear that the proposed Part does not confer any additional power on a police officer to enter premises or to detain any person.

Clause 195 gives a police officer authority to use a dog for the purpose of searching a person for the purpose of detecting a relevant firearms or explosives offence, if the officer is authorised to carry out such a search, and also authorises an officer to be accompanied by a dog if entitled to be on premises. The State or police officer is not liable to any action, liability, claim or demand merely because a dog entered, or was in or on, premises.

Clause 196 authorises a police officer to use a dog to carry out general firearms or explosives detection without a warrant. A police officer using a dog under the proposed Part is required to take all reasonable precautions to prevent the dog touching a person and to keep the dog under control. The proposed section does not affect a search of a person who is reasonably suspected of committing a relevant firearms or explosives offence.

Part 14 Powers to give directions

The provisions of the proposed Part re-enact existing New South Wales legislation.

Clause 197 sets out the powers of police officers to give directions to persons in public places. A direction may be given if a police officer believes on reasonable grounds that a person's behaviour or presence in the place is causing an obstruction, constitutes harassment or intimidation of other persons or is causing or is likely to cause fear to other persons, so long as fear would be caused to a person of reasonable firmness. A direction may also be given if a police officer believes on reasonable grounds that a person's behaviour or presence in the place is for the purpose of unlawfully supplying, or intending to supply, or soliciting to supply a prohibited drug or for the purpose of obtaining, procuring or purchasing a prohibited drug. A direction may be given to a group of persons.

Clause 198 requires a direction to be reasonable in the circumstances for the purpose of reducing or eliminating the obstruction, harassment, intimidation or fear or stopping the supply or soliciting to supply, or the obtaining, procuring or purchasing of the prohibited drug.

Clause 199 makes it an offence, without reasonable excuse, to refuse or fail to comply with a direction under the proposed Part. A person will not be guilty of an offence unless it is proved that the person persisted, after a direction was given, to engage in the relevant conduct.

Clause 200 makes it clear that the proposed Part does not authorise directions to be given in relation to industrial disputes, apparently genuine demonstrations or protests, processions or organised assemblies.

Part 15 Safeguards relating to powers

The provisions of the proposed Part extend safeguards currently applicable to the exercise of some police powers to the broad range of powers.

Clause 201 contains the general safeguards applicable to the exercise by police officers of powers of search, arrest, entry to private premises, seizure of property, detention or stopping of persons, vessels, vehicles and aircraft and powers to require disclosure of identity, establish crime scenes, give directions in public places and require production of certain things. A police officer must, before exercising a power, or as soon as reasonably practicable after exercising a power, provide the person subject to the exercise of the power with evidence that the officer is a police officer, his or her name and place of duty, the reason for the

exercise of the power and a warning that failure or refusal to comply with a request of the police officer in the exercise of the power may be an offence. In the case of a power to request disclosure of identity, to give a direction or to request a person to produce a dangerous implement or metallic object, these requirements must be met before the power is exercised.

Clause 202 provides that the safeguards are not required to be complied with when exercising a power of arrest if the police officer believes on reasonable grounds that it is not reasonably practicable to do so because of the seriousness and urgency of the circumstances.

Clause 203 provides that the safeguards are not required to be complied with when exercising a power to search premises or under a search warrant, if the police officer believes on reasonable grounds that immediate entry is required to ensure the safety of a person or to ensure that the effective execution of a warrant is not frustrated.

Clause 204 requires a police officer not to detain a vehicle, vessel or aircraft for a search for any longer than is necessary for the purpose.

Part 16 Powers relating to intoxicated persons

The provisions of the proposed Part re-enact existing New South Wales legislation.

Clause 205 contains definitions of terms used in the proposed Part.

Clause 206 enables a police officer to detain an intoxicated person found in a public place (including a school) if the person is behaving in a disorderly manner or is in need of physical protection because the person is intoxicated. The intoxicated person is to be taken to a responsible person who is willing to undertake the person's care immediately (such as a family member) or to a police station or children's detention centre if necessary while finding a responsible person or because there is no responsible person or taking the intoxicated person is impracticable or because of the person's violent behaviour.

Clause 207 sets out rules for the treatment of intoxicated persons detained in a police station or children's detention centre, including a requirement not to be detained in a cell (unless it is impracticable to do otherwise), to be provided with food, drink, bedding and blankets and to be released as soon as the person ceases to be an intoxicated person.

Clause 208 enables a police officer or detention officer to search an intoxicated person and to take possession of personal belongings, which are to be returned when the person ceases to be detained.

Clause 209 requires records to be kept of persons detained in a police station or children's detention centre under the proposed Part and to keep the record for a period of 3 years.

Clause 210 excuses from liability a police officer, detention officer or any other person in respect of anything done or omitted to be done in good faith for the execution or purported execution of the proposed Part.

Part 17 Property in police custody

Division 1 Confiscated knives and other dangerous articles and implements

The provisions of the proposed Division re-enact existing New South Wales legislation and extend its operation to seized dangerous articles.

Clause 211 applies the proposed Division to dangerous articles seized under the proposed Act and dangerous implements confiscated under proposed section 28. The proposed Division will not apply if another Act provides for the confiscation of the dangerous article or dangerous implement.

Clause 212 enables an application to be made to the Local Area Commander of Police in the area in which an article or implement was seized or confiscated for the return of the article or implement. The application must be in writing and the article or implement need not be returned if relevant proceedings have not been determined, the person is the subject of a firearms prohibition order or possession of the article or implement is an offence.

Clause 213 provides for an appeal to a Local Court against a failure or refusal to return a dangerous article or implement. On appeal, an order may be made forfeiting the article or implement to the Crown or that it be returned.

Clause 214 provides that a seized dangerous article or confiscated dangerous implement is forfeited to the Crown if an application for its return is not made within 28 days or if an application is made and refused, at the expiration of an appeal provision or on an order that it be forfeited. It may be disposed of by sale or destruction.

Division 2 Other property in police custody

The provisions of the proposed Division extend to property that is not connected with an offence provisions currently applicable only to property in police custody that is connected with an offence and enable courts to determine matters relating to the ownership of property in police custody. The proposed Division also re-enacts provisions of existing New South Wales legislation relating to livestock in police custody.

Clause 215 contains definitions of terms used in the proposed Division.

Clause 216 applies the proposed Division to property that is in police custody, whether or not in connection with an offence but not to dangerous articles or dangerous implements dealt with under proposed Division 1 or to certain livestock.

Clause 217 requires a police officer who seizes a document to allow a person who would otherwise be entitled to it to inspect it at any reasonable time and from time to time and take extracts from it or make copies of it.

Clause 218 requires a police officer who seizes a thing under the proposed Act to return it to the owner or person who had lawful possession of it before it was seized if the police officer is satisfied that its retention for evidence is not required and it is lawful for the person to have possession of the thing.

Clause 219 enables a court, on application by a person, to make an order that property in police custody be returned to the person or be dealt with as the court thinks fit or be forfeited to the Crown and may, for that purpose, adjust property rights and make findings relating to ownership and liability for expenses. Forfeited property that is money is to be paid to the Treasurer for payment to the Consolidated Fund and other property is to be sold by public auction or disposed of as the Commissioner of Police thinks fit if not sold or suitable for sale.

Clause 220 provides that property that is connected with an offence and has not been delivered to the person lawfully entitled to it within 1 month of the determination of the relevant proceedings is, in the case of money, to be paid to the Treasurer for payment to the Consolidated Fund or, in any other case, to be sold by public auction or disposed of as the Commissioner of Police thinks fit if not sold or suitable for sale.

Clause 221 provides that property that is not connected with an offence and has not been delivered to the person lawfully entitled to it may be used for the purposes of

a police integrity testing program. Otherwise it is, in the case of money, to be paid to the Treasurer for payment to the Consolidated Fund or, in any other case, to be sold by public auction or disposed of as the Commissioner of Police thinks fit if not sold or suitable for sale.

Clause 222 enables a police officer to deliver livestock before proceedings are determined if there is no ownership dispute.

Clause 223 enables a police officer to apply to a court for an order to sell livestock the subject of offence proceedings if ownership is not disputed but the location of the owner is unknown. Notice must be published of the intention to apply for an order, of at least 28 days, and the Commissioner of Police may be reimbursed for expenses involved in keeping the livestock.

Clause 224 provides for the sale of livestock on the order of a court if ownership is disputed and no party is prepared to pay the expenses of keeping the livestock or a party fails to do so. The order may also provide for who is to pay the expenses of keeping the livestock in police custody. Notice must be published of the intention to apply for an order, of at least 28 days.

Clause 225 provides that any income or benefit derived from the livestock (including offspring of livestock born in custody) is to be held or applied on behalf of the owner of the livestock.

Clause 226 requires a police officer to notify the parties in dispute as to ownership of livestock of the owner's rights to any income or benefit derived from livestock while in custody.

Clause 227 makes it clear that the provisions relating to ownership are in addition to other provisions under the proposed Division.

Clause 228 enables a person who is lawfully entitled to property dealt with under the proposed Division to recover from the Treasurer the money or proceeds of sale held by the Treasurer.

Clause 229 confers jurisdiction on courts for the purposes of the proposed Division.

Part 18 Use of force

Clause 230 makes it lawful for a police officer exercising a function under the proposed Act or any other Act or law in relation to an individual or a thing, and anyone helping a police officer, to use such force as is reasonably necessary to exercise the function.

Clause 231 empowers a police officer to use such force as is reasonably necessary to make an arrest or prevent the escape of the person after arrest.

Part 19 Miscellaneous

Clause 232 protects police officers in relation to acts done in accordance with warrants or notices to produce if there is an irregularity, a defect or lack of jurisdiction in their issue.

Clause 233 provides that evidence of a thing discovered during or as a result of a search carried out in accordance with the proposed Act is not inadmissible merely because the thing is a dangerous article or dangerous implement of a different nature from that referred to in the reason for the search.

Clause 234 provides that proceedings for an offence against the proposed Act or regulations made under the proposed Act are to be dealt with summarily by a Local Court.

Clause 235 enables penalty notices to be issued for offences under the proposed Act that are prescribed for that purpose by regulations under the proposed Act.

Clause 236 provides that the onus of proof of reasonable excuse in proceedings for an offence against the proposed Act or regulations made under the proposed Act lies on the accused person.

Clause 237 enables the instructions issued to police officers by the Commissioner under the *Police Act 1990* may include instructions and guidelines with respect to functions conferred by or under the proposed Act.

Clause 238 contains the general regulation-making power.

Clause 239 is a formal provision giving effect to the Schedule of repeals.

Clause 240 is a formal provision giving effect to the Schedule of amendments to other Acts and regulations.

Clause 241 is a formal provision giving effect to the Schedule of savings and transitional provisions.

Clause 242 provides for the monitoring of certain new powers by the Ombudsman for a period of 2 years from the commencement of the proposed section.

Clause 243 provides for a review of the proposed Act to be undertaken 3 years after the date of assent to the proposed Act.

Schedule 1 Acts not affected by this Act

The proposed Schedule lists the Acts containing police powers that are not affected by the proposed Act.

Schedule 2 Search warrants under other Acts

The proposed Schedule lists the provisions in Acts applying search warrant provisions.

Schedule 3 Repeals

The proposed Schedule lists the Acts to be repealed by the proposed Act.

Schedule 4 Amendment of other Acts and instruments

The proposed Schedule sets out the amendments to other Acts and instruments to be made by the proposed Act.

Schedule 5 Savings and transitional provisions

The proposed Schedule contains savings and transitional provisions consequent on the enactment of the proposed Act.