

# Law Enforcement (Powers and Responsibilities) Act 2002 No 103

[2002-103]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Residential \(Land Lease\) Communities Act 2013 No 97](#) (not commenced)
  - [Cemeteries and Crematoria Act 2013 No 105](#) (not commenced)
  - [Motor Dealers and Repairers Act 2013 No 107](#) (not commenced)
  - [Bail \(Consequential Amendments\) Act 2014 No 5](#) (not commenced — to commence on 20.5.2014)
- **See also**
  - [Petroleum \(Onshore\) Amendment Bill 2013](#)
  - [Crimes Amendment \(Intoxication\) Bill 2014](#)
  - [Law Enforcement \(Powers and Responsibilities\) Amendment Bill 2014](#)

### Authorisation

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File last modified 15 May 2014

# Law Enforcement (Powers and Responsibilities) Act 2002 No 103



New South Wales

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# Law Enforcement (Powers and Responsibilities) Act 2002 No 103



New South Wales

An Act to consolidate and restate the law relating to police and other law enforcement officers' powers and responsibilities; to set out the safeguards applicable in respect of persons being investigated for offences; to repeal certain Acts and to consequentially amend other Acts; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Law Enforcement (Powers and Responsibilities) Act 2002*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Interpretation

(1) In this Act:

**Aboriginal person** means a person who:

- (a) is a member of the Aboriginal race of Australia, and
- (b) identifies as an Aboriginal person, and
- (c) is accepted by the Aboriginal community as an Aboriginal person.

**apprehended violence order** has the same meaning as in the *Crimes (Domestic and Personal Violence) Act 2007*.

**authorised officer** means:

- (a) a Magistrate or a Children's Magistrate, or
- (b) a registrar of the Local Court, or
- (c) an employee of the Attorney General's Department authorised by the Attorney

General as an authorised officer for the purposes of this Act either personally or as the holder of a specified office.

**Commissioner** means the Commissioner of Police.

**correctional centre** has the same meaning as it has in the [Crimes \(Administration of Sentences\) Act 1999](#).

**covert search warrant** means a search warrant issued under Division 2 of Part 5 that may be executed covertly.

**crime scene** means premises established as a crime scene under Part 7.

**crime scene power** means a power set out in section 95.

**crime scene warrant** means a warrant issued under section 94.

**criminal organisation search warrant** means a search warrant issued under Division 2 of Part 5 in relation to an organised crime offence.

**custody manager** means the police officer having from time to time the responsibility for the care, control and safety of a person detained at a police station or other place of detention.

**dangerous article** means:

- (a) a firearm, a spare barrel for any such firearm, or any ammunition for any such firearm, or
- (b) a prohibited weapon within the meaning of the [Weapons Prohibition Act 1998](#), or
- (c) a spear gun, or
- (d) an article or device, not being such a firearm, capable of discharging by any means:
  - (i) any irritant matter in liquid, powder, gas or chemical form or any dense smoke, or
  - (ii) any substance capable of causing bodily harm, or
- (e) a fuse capable of use with an explosive or a detonator, or
- (f) a detonator.

**dangerous implement** means:

- (a) a dangerous article, or
- (b) a knife, or



- (c) any other implement made or adapted for use for causing injury to a person, or
- (d) anything intended, by the person having custody of the thing, to be used to injure or menace a person or damage property, or
- (e) a laser pointer,

but does not include anything that is of a class or description declared by the regulations to be excluded from this definition.

**drug offence** means the possession, control or supply by a person of any prohibited drug or prohibited plant in contravention of the [Drug Misuse and Trafficking Act 1985](#).

**dwelling** includes:

- (a) any building or other structure intended for occupation as a dwelling and capable of being so occupied, whether or not it has ever been so occupied, and
- (b) a vessel or vehicle in or on which any person resides, and
- (c) any building or other structure within the same curtilage as a dwelling and occupied with, or the use of which is ancillary to the occupation of, the dwelling.

**electronic metal detection device** means an electronic device that is capable of detecting the presence of metallic objects.

**exercise** a function includes perform a duty.

**face** means a person's face:

- (a) from the top of the forehead to the bottom of the chin, and
- (b) between (but not including) the ears.

**face covering** means an item of clothing, helmet, mask or any other thing that is worn by a person and prevents the person's face from being seen (whether wholly or partly).

**facsimile** means facsimile transmission, the internet or any other means of electronic transmission of information in a form from which written material is capable of being reproduced with or without the aid of any other device or article.

**firearm** has the same meaning as it has in the [Firearms Act 1996](#), and includes an imitation firearm within the meaning of that Act.

**frisk search** means:

- (a) a search of a person conducted by quickly running the hands over the person's outer clothing or by passing an electronic metal detection device over or in close proximity to the person's outer clothing, and

- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person, including an examination conducted by passing an electronic metal detection device over or in close proximity to that thing.

**function** includes a power, authority or duty.

**identity** of a person means the name or residential address of the person (or both).

**indictable offence** means an offence for which proceedings may be taken on indictment, whether or not proceedings for the offence may also be taken otherwise than on an indictment.

**laser pointer** means a hand-held battery-operated device, designed or adapted to emit a laser beam, that may be used for the purposes of aiming, targeting or pointing.

**lawful custody** means lawful custody of the police.

**manufacture** has the same meaning as it has in the [Drug Misuse and Trafficking Act 1985](#).

**NSW Police Force** means the NSW Police Force established by the [Police Act 1990](#).

**occupier** of premises includes a person in charge of the premises.

**ordinary search** means a search of a person or of articles in the possession of a person that may include:

- (a) requiring the person to remove only his or her overcoat, coat or jacket or similar article of clothing and any gloves, shoes, socks and hat, and
- (b) an examination of those items.

**owner** of a vehicle means the responsible person for a vehicle within the meaning of the [Road Transport Act 2013](#), and includes:

- (a) a person who is not such an owner but who usually has the care, control and custody of the vehicle, and
- (b) any other person prescribed by the regulations for the purposes of this definition.

**parent** of a child means the person who has parental responsibility for the child.

**parental responsibility**, in relation to a child, means all the duties, powers, responsibilities and authorities which, by law, parents have in relation to their children.

**person of non-English speaking background** means a person who is born in a country outside Australia and whose first language is not English.

**police officer** means a member of the NSW Police Force holding a position that is designated under the [Police Act 1990](#) as a position to be held by a police officer.

**premises** includes any building, structure, vehicle, vessel or aircraft and any place, whether built on or not.

**prohibited drug** has the same meaning as it has in the [Drug Misuse and Trafficking Act 1985](#).

**prohibited plant** has the same meaning as it has in the [Drug Misuse and Trafficking Act 1985](#).

**prohibited weapon** has the same meaning as it has in the [Weapons Prohibition Act 1998](#).

**property** has the same meaning as it has in the [Crimes Act 1900](#).

**public place** includes:

- (a) a place (whether or not covered by water), or part of premises, that is open to the public or is used by the public, whether or not on payment of money or other consideration, whether or not the place or part is ordinarily so open or used and whether or not the public to whom it is open consists only of a limited class of persons, and
- (b) a road or road related area,

but does not include a school.

**road** means a road within the meaning of section 4 (1) of the [Road Transport Act 2013](#) (other than a road that is the subject of a declaration made under section 18 (1) (b) of that Act relating to all of the provisions of that Act).

**road related area** means a road related area within the meaning of section 4 (1) of the [Road Transport Act 2013](#) (other than a road related area that is the subject of a declaration made under section 18 (1) (b) of that Act relating to all of the provisions of that Act).

**roadblock authorisation** means an authorisation given by a senior police officer under section 37.

**scene of crime officer** means a member of the NSW Police Force responsible for examining or maintaining crime scenes.

**school** means:

- (a) a government school or registered non-government school within the meaning of the [Education Act 1990](#), or

- (b) a school providing education (whether secular or religious) at a pre-school or infants school level or at a primary or secondary level, or
- (c) a place used for the purposes of an establishment commonly known as a child-minding centre or for similar purposes, or
- (d) the land, and any building, occupied by or in connection with the conduct of such a school or place,

and includes any part of such a school or place, but does not include any building that is occupied or used solely as a residence or solely for a purpose unconnected with the conduct of such a school or place.

**senior police officer** means:

- (a) a Local Area Commander of Police, or
- (b) a Duty Officer for a police station, or
- (c) any other police officer of the rank of Inspector or above.

**Note—**

By virtue of the [Interpretation Act 1987](#) (section 48 (2)) a person acting in an office referred to above may exercise the functions of a senior police officer under this Act.

**serious indictable offence** means an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more.

**strip search** means a search of a person or of articles in the possession of a person that may include:

- (a) requiring the person to remove all of his or her clothes, and
- (b) an examination of the person's body (but not of the person's body cavities) and of those clothes.

**supply** has the same meaning as it has in the [Drug Misuse and Trafficking Act 1985](#).

**telephone** includes radio, facsimile and any other communication device.

**Torres Strait Islander** means a person who:

- (a) is a member of the Torres Strait Island race, and
- (b) identifies as a Torres Strait Islander, and
- (c) is accepted by the Torres Strait Island community as a Torres Strait Islander.

**vehicle** includes a motor vehicle, trailer or other registrable vehicle within the meaning of the [Road Transport Act 2013](#).

**vehicle roadblock powers**—see section 37.

- (2) In this Act, a reference to a person who has been charged with an offence is a reference to a person:
- (a) in respect of whom a charge sheet has been completed by a police officer where proceedings for an offence are to be commenced against the person, or
  - (b) against whom proceedings for an offence have been commenced.
- (3) Notes in the text of this Act do not form part of this Act.

**Note—**

In a heading to a provision of this Act, a reference to the **Cth Act** is a reference to the *Crimes Act 1914* of the Commonwealth and a reference to the **former LEPRA** is a reference to a provision of Part 5 as in force immediately before it was amended by the *Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Act 2009*.

#### **4 Relationship to common law and other matters**

- (1) Unless this Act otherwise provides expressly or by implication, this Act does not limit:
- (a) the functions, obligations and liabilities that a police officer has as a constable at common law, or
  - (b) the functions that a police officer may lawfully exercise, whether under an Act or any other law as an individual (otherwise than as a police officer) including, for example, powers for protecting property.
- (2) Without limiting subsection (1) and subject to section 9, nothing in this Act affects the powers conferred by the common law on police officers to deal with breaches of the peace.

#### **5 Relationship to other Acts**

- (1) This Act does not limit the functions that a police officer has under an Act or regulation specified in Schedule 1.
- (2) The regulations may amend Schedule 1 by adding the name of an Act or a regulation to the Schedule.
- (3) However, a police officer may exercise a function under this Act for the purpose of giving effect to an Act or regulation referred to in subsection (1).

#### **6 Inconsistency**

- (1) This section applies to a provision of another Act or regulation that confers functions on a police officer or other person (other than a provision of an Act or regulation referred to in section 5 (1)).

- (2) To the extent of any inconsistency, this Act prevails over an Act or regulation to which this section applies.
- (3) A provision of an Act enacted after the commencement of this section is not to be interpreted as amending or repealing, or otherwise altering the effect or operation of, a provision of this Act.
- (4) Subsection (3) does not affect the interpretation of a provision of an Act so far as that Act directly amends or repeals a provision of this Act or expressly provides for that Act to have effect despite a specified provision, or despite any provision, of this Act.

## **7 Provisions in this Act**

Nothing in any Part of this Act limits any functions, or prevents a police officer from exercising any functions, that the police officer has under any other Part of this Act.

### **Note—**

The general functions of police officers and other members of the NSW Police Force, and matters relating to police discipline, are dealt with in the [Police Act 1990](#). For other Acts containing significant police and law enforcement powers, see Schedule 1.

## **8 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

## **Part 2 Powers of entry**

### **Note—**

Safeguards containing requirements relating to the exercise of powers under this Part are set out in Part 15.

## **9 Power to enter in emergencies**

- (1) A police officer may enter premises if the police officer believes on reasonable grounds that:
  - (a) a breach of the peace is being or is likely to be committed and it is necessary to enter the premises immediately to end or prevent the breach of peace, or
  - (b) a person has suffered significant physical injury or there is imminent danger of significant physical injury to a person and it is necessary to enter the premises immediately to prevent further significant physical injury or significant physical injury to a person.
- (2) A police officer who enters premises under this section is to remain on the premises only as long as is reasonably necessary in the circumstances.

## **10 Power to enter to arrest or detain someone or execute warrant**

- (1) A police officer may enter and stay for a reasonable time on premises to arrest a person, or detain a person under an Act, or arrest a person named in a warrant.
- (2) However, the police officer may enter a dwelling to arrest or detain a person only if the police officer believes on reasonable grounds that the person to be arrested or detained is in the dwelling.
- (3) A police officer who enters premises under this section may search the premises for the person.
- (4) This section does not authorise a police officer to enter premises to detain a person under an Act if the police officer has not complied with any requirements imposed on the police officer under that Act for entry to premises for that purpose.
- (5) In this section:  
**arrest** of a person named in a warrant includes apprehend, take into custody, detain, and remove to another place for examination or treatment.

## **Part 3 Powers to require identity to be disclosed**

### **Division 1 General powers to require identity to be disclosed**

#### **11 Identity may be required to be disclosed** (cf [Crimes Act 1900](#), s 563)

- (1) A police officer may request a person whose identity is unknown to the officer to disclose his or her identity if the officer suspects on reasonable grounds that the person may be able to assist in the investigation of an alleged indictable offence because the person was at or near the place where the alleged indictable offence occurred, whether before, when, or soon after it occurred.
- (2) A police officer may request a person whose identity is unknown to the officer to disclose his or her identity if the officer proposes to give a direction to the person in accordance with Part 14 for the person to leave a place.

**Note—**

Section 201 sets out safeguards relating to requests made under this section.

#### **12 Failure of person to disclose identity on request** (cf [Crimes Act 1900](#), s 563)

A person who is requested by a police officer in accordance with sections 11 and 201 to disclose his or her identity must not, without reasonable excuse, fail or refuse to comply with the request.

Maximum penalty: 2 penalty units.

**13 False or misleading information about identity** (cf [Crimes Act 1900](#), s 563)

A person must not, without reasonable excuse, in response to a request made by a police officer in accordance with this Division:

- (a) give a name that is false in a material particular, or
- (b) give an address other than the person's full and correct address.

Maximum penalty: 2 penalty units.

**Division 1A Power to require identity of suspected AVO defendant to be disclosed**

**13A Identity of suspected AVO defendant may be required to be disclosed**

A police officer may request a person whose identity is unknown to the officer to disclose his or her identity if the officer suspects on reasonable grounds that an apprehended violence order has been made against the person.

**13B Failure of person to disclose identity on request**

A person who is requested by a police officer in accordance with this Division to disclose his or her identity must not, without reasonable excuse, fail or refuse to comply with the request.

Maximum penalty: 2 penalty units.

**13C False or misleading information about identity**

A person must not, without reasonable excuse, in response to a request made by a police officer in accordance with this Division:

- (a) give a name that is false in a material particular, or
- (b) give an address other than the person's full and correct address.

Maximum penalty: 2 penalty units.

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

**14 Power of police officer to request disclosure of driver or passenger identity** (cf [Police Powers \(Vehicles\) Act 1998](#), s 6)

(1) A police officer who suspects on reasonable grounds that a vehicle is being, or was, or may have been used in or in connection with an indictable offence may make any one or more of the following requests:

- (a) a request that the driver of the vehicle disclose his or her identity and the identity



of any driver of, or passenger in or on, the vehicle at or about the time the vehicle was or may have been so used or at or about the time the vehicle last stopped before the request was made or a direction was given under this Division to stop the vehicle,

- (b) a request that any passenger in or on the vehicle disclose his or her identity and the identity of the driver of, or any other passenger in or on, the vehicle at or about the time the vehicle was or may have been so used or at or about the time the vehicle last stopped before the request was made or a direction was given under this Division to stop the vehicle,
- (c) a request that any owner of the vehicle (who was or was not the driver or a passenger) disclose the identity of the driver of, and any passenger in or on, the vehicle at or about the time the vehicle was or may have been so used or at or about the time the vehicle last stopped before the request was made or a direction was given under this Division to stop the vehicle.

**Note—**

Section 201 sets out safeguards containing requirements relating to such a request.

- (2) Nothing in this section limits the operation of section 11.

**15 Failure of driver to disclose identity** (cf *Police Powers (Vehicles) Act 1998*, s 7)

- (1) The driver of a vehicle who is requested by a police officer in accordance with sections 14 and 201 to disclose his or her identity must not, without reasonable excuse, fail or refuse to comply with the request.

Maximum penalty: 50 penalty units or 12 months imprisonment, or both.

- (2) The driver of a vehicle who is requested by a police officer in accordance with sections 14 and 201 to disclose the identity of any driver of, or passenger in or on, the vehicle must (unless the driver has a reasonable excuse for not doing so):

- (a) disclose the identity of the driver or passenger, or
- (b) if the driver does not know the full and correct identity of the driver or passenger—disclose such information about the driver's or passenger's identity (such as any alias used by the person or the general location of his or her residential address) as is known to the driver.

Maximum penalty: 50 penalty units or 12 months imprisonment, or both.

**Note—**

Section 201 sets out safeguards containing requirements relating to such requests.

**16 Failure of passenger to disclose identity** (cf *Police Powers (Vehicles) Act 1998*, s 7A)

- (1) A passenger in or on a vehicle who is requested by a police officer in accordance with sections 14 and 201 to disclose his or her identity must not, without reasonable excuse, fail or refuse to comply with the request.

Maximum penalty: 50 penalty units or 12 months imprisonment, or both.

- (2) A passenger in or on a vehicle who is requested by a police officer in accordance with sections 14 and 201 to disclose the identity of the driver of, or any other passenger in or on, the vehicle must (unless the passenger has a reasonable excuse for not doing so):

- (a) disclose the full and correct identity of the driver or other passenger, or
- (b) if the passenger does not know the full and correct identity of the driver or other passenger—disclose such information about the driver's or other passenger's identity (such as any alias used by the person or the general location of his or her residential address) as is known to the passenger.

Maximum penalty: 50 penalty units or 12 months imprisonment, or both.

**Note—**

Section 201 sets out safeguards containing requirements relating to such requests.

**17 Failure of owner to disclose identity** (cf *Police Powers (Vehicles) Act 1998*, s 8)

- (1) An owner of a vehicle who is requested in accordance with sections 14 and 201 by a police officer to disclose the identity of the driver of, or a passenger in or on, the vehicle must (unless the owner has a reasonable excuse for not doing so):
- (a) disclose the identity of any person the owner knows or has reason to suspect was the driver or a passenger, or
- (b) if the owner does not know the full and correct identity of the person—disclose such information about the person's identity (such as any alias used by the person or the general location of his or her residential address) as is known to the owner.

Maximum penalty: 50 penalty units or 12 months imprisonment, or both.

- (2) Subsection (1) extends to an owner of a vehicle who was the driver of, or a passenger in or on, the vehicle.
- (3) Without limitation, for the purposes of this section, an owner has reason to suspect a person was the driver of, or a passenger in or on, a vehicle if the owner has reason to suspect that a person had access to the vehicle.

**Note—**

Section 201 sets out safeguards containing requirements relating to such requests.

**18 False or misleading information about identity** (cf *Police Powers (Vehicles) Act 1998*, s 9)

A person must not, without reasonable excuse, in response to a request made by a police officer in accordance with section 14:

- (a) give a name that is false in a material particular, or
- (b) give an address other than the person's full and correct address or the full and correct address of the driver's or passenger's residence known to the person (as may be required).

Maximum penalty: 50 penalty units or 12 months imprisonment, or both.

### **Division 3 Proof of identity**

**19 Power of police officer to request proof of identity** (cf *Crimes Act 1900*, s 563)

A police officer may request a person who is requested under this Part to disclose his or her identity to provide proof of his or her identity.

### **Division 4 Removal of face coverings for identification purposes**

**19A Power of police officer to require removal of face coverings for identification purposes**

- (1) A police officer may require a person to remove any face covering worn by the person so as to enable the officer or another police officer to see the person's face if:
  - (a) the person has been lawfully required (whether under this or any other Act or a statutory instrument) by the officer requiring the removal of the covering to provide photographic identification, or
  - (b) the person has otherwise been lawfully required (whether under this or any other Act or a statutory instrument) by the officer requiring the removal of the covering to identify himself or herself or provide other identification particulars.

**Note—**

Section 201 and subsection (3) set out safeguards relating to such a requirement.

- (2) A requirement may be made of a person under this section based on a lawful requirement of a kind referred to in subsection (1) (a) or (b) whether or not the person has complied with that lawful requirement.
- (3) A police officer who requires a person to remove a face covering under this section must, as far as is reasonably practicable, ensure that the following procedures are followed:

- (a) the police officer must ask for the person's co-operation,
- (b) the viewing of the person's face must be conducted:
  - (i) in a way that provides reasonable privacy for the person if the person requests privacy, and
  - (ii) as quickly as is reasonably practicable.
- (4) It is sufficient compliance with a requirement made under this section if only so much of the face covering as prevents the person's face from being seen is removed.
- (5) The removal of a face covering in compliance with a requirement made under this section, or the viewing of a person's face following any such removal, does not constitute the carrying out of a search of a person for the purposes of this Act.
- (6) In this section:

**lawfully required** means lawfully required or requested to provide the identification or information concerned in circumstances where a failure or refusal to comply with a requirement or request of that kind may constitute an offence.

**photographic identification** includes (but is not limited to) any of the following:

- (a) an applicable driver licence (within the meaning of Part 5.1 of the [Road Transport Act 2013](#)) bearing a photograph of its holder,
- (b) a Photo Card (within the meaning of the [Photo Card Act 2005](#)) or any other kind of photo identity card (wherever issued),
- (c) a passport (wherever issued),
- (d) any other licence, permit or authority bearing a photograph of its holder (wherever issued),
- (e) any other identification with a photograph that is identification of a kind prescribed by the regulations.

### **19B Failure of person to remove face covering when required**

- (1) A person who is required by a police officer in accordance with sections 19A and 201 to remove a face covering must not, without special justification, fail or refuse to comply with the requirement.

Maximum penalty:

- (a) in the case of a person who is required to remove a face covering following a request made to the person under section 14 (Power of police officer to request disclosure of driver or passenger identity)—50 penalty units or 12 months imprisonment, or both, or

(b) in any other case—2 penalty units.

(2) A person has a **special justification** for not removing a face covering if (and only if):

(a) the person has a legitimate medical reason for not removing the face covering, or

(b) the person has any other excuse for not removing the face covering that is an excuse of a kind prescribed by the regulations.

(3) The onus of proof of a special justification lies on the person claiming to have the special justification.

### **19C Division does not limit other police powers**

The provisions of this Division do not limit any power that a police officer may have (apart from this Division) to require a person to remove a face covering.

## **Part 4 Search and seizure powers without warrant**

### **Note—**

Safeguards relating to the exercise of powers under this Part are set out in Part 15.

## **Division 1 General personal search and seizure powers**

### **20 Relevant offences**

The following offences are **relevant offences** for the purposes of this Division:

(a) indictable offences,

(b) an offence against section 93FB of the *Crimes Act 1900*,

(c) an offence against the *Weapons Prohibition Act 1998*, the *Firearms Act 1996*, or a regulation made under either of those Acts,

(d) an offence against a provision of Part 2 of the *Explosives Act 2003*.

### **21 Power to search persons and seize and detain things without warrant** (cf *Crimes Act 1900*, ss 357, 357E, *Drug Misuse and Trafficking Act 1985*, s 37)

(1) A police officer may, without a warrant, stop, search and detain a person, and anything in the possession of or under the control of the person, if the police officer suspects on reasonable grounds that any of the following circumstances exists:

(a) the person has in his or her possession or under his or her control anything stolen or otherwise unlawfully obtained,

(b) the person has in his or her possession or under his or her control anything used or intended to be used in or in connection with the commission of a relevant offence,

- (c) the person has in his or her possession or under his or her control in a public place a dangerous article that is being or was used in or in connection with the commission of a relevant offence,
- (d) the person has in his or her possession or under his or her control, in contravention of the *Drug Misuse and Trafficking Act 1985*, a prohibited plant or a prohibited drug.

(2) A police officer may seize and detain:

- (a) all or part of a thing that the police officer suspects on reasonable grounds is stolen or otherwise unlawfully obtained, and
- (b) all or part of a thing that the police officer suspects on reasonable grounds may provide evidence of the commission of a relevant offence, and
- (c) any dangerous article, and
- (d) any prohibited plant or prohibited drug in the possession or under the control of a person in contravention of the *Drug Misuse and Trafficking Act 1985*,  
found as a result of a search under this section.

### **21A Ancillary power to search persons**

- (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:
  - (a) to open his or her mouth, or
  - (b) to shake, or otherwise move, his or her hair.
- (2) Subsection (1) does not authorise a police officer to forcibly open a person's mouth.
- (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.

Maximum penalty: 5 penalty units.

### **22 Power to seize and detain dangerous articles on premises** (cf *Crimes Act 1900*, s 357)

A police officer who is lawfully on any premises may seize and detain any dangerous article that the police officer finds on the premises, if the police officer suspects on reasonable grounds that the dangerous article is being or was used in or in connection with the commission of a relevant offence.

#### **Note—**

Premises include vessels, vehicles, aircraft and other places.

## **Division 2 Searches of persons on arrest or while in custody**

### **23 Power to carry out search on arrest** (cf Cth Act, s 3ZE, common law)

- (1) A police officer who arrests a person for an offence or under a warrant, or who is present at the arrest, may search the person at or after the time of arrest, if the officer suspects on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying anything:
  - (a) that would present a danger to a person, or
  - (b) that could be used to assist a person to escape from lawful custody, or
  - (c) that is a thing with respect to which an offence has been committed, or
  - (d) that is a thing that will provide evidence of the commission of an offence, or
  - (e) that was used, or is intended to be used, in or in connection with the commission of an offence.
- (2) A police officer who arrests a person for the purpose of taking the person into lawful custody, or who is present at the arrest, may search the person at or after the time of arrest, if the officer suspects on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying anything:
  - (a) that would present a danger to a person, or
  - (b) that could be used to assist a person to escape from lawful custody.
- (3) A police officer may seize and detain a thing found in a search if it is a thing of a kind referred to in subsection (1) or (2).
- (4) Nothing in this section limits section 24.

### **23A Ancillary power to search persons**

- (1) In conducting a search of a person under section 23, a police officer may, if the police officer suspects on reasonable grounds that a thing of a kind referred to in section 23 (1) or (2) is concealed in the person's mouth or hair, request the person:
  - (a) to open his or her mouth, or
  - (b) to shake, or otherwise move, his or her hair.
- (2) Subsection (1) does not authorise a police officer to forcibly open a person's mouth.
- (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.

Maximum penalty: 5 penalty units.

**24 Power to carry out search of person in custody** (cf Cth Act, s 3ZH, common law)

A police officer may search a person who is in lawful custody (whether at a police station or at any other place) and seize and detain anything found on that search.

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

**25 Definitions**

In this Division:

**knife** includes:

- (a) a knife blade, and
- (b) a razor blade, and
- (c) any other blade,

but does not include anything that is of a class or description declared by the regulations to be excluded from this definition.

**locker** includes any facility for the storage of a student's personal effects at a school.

**26 Power to search for knives and other dangerous implements** (cf [Summary Offences Act 1988](#), s 28A)

- (1) A police officer may request a person who is in a public place or a school to submit to a frisk search if the police officer suspects on reasonable grounds that the person has a dangerous implement (other than a laser pointer) in his or her custody.
- (1A) A police officer may request a person who is in a public place to submit to a frisk search if the police officer suspects on reasonable grounds that the person has a laser pointer in his or her custody.
- (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:
  - (a) to submit to a search of any bag or other personal effect that is on or with the person,
  - (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.
- (3) For the purposes of this section, the fact that a person is present in a location with a high incidence of violent crime may be taken into account in determining whether there are reasonable grounds to suspect that the person has a dangerous implement (other than a laser pointer) in his or her custody.



- (4) In conducting a search of a person under this section, a police officer must, in the case of a search of a student in a school and if reasonably possible to do so, allow the student to nominate an adult who is on the school premises to be present during the search.
- (5) In conducting a search of a person under this section, a police officer may request the person to produce either or both of the following:
  - (a) anything that the police officer has detected or seen on or with the person during the search and has reasonable grounds to suspect is a dangerous implement,
  - (b) anything detected during the search by an electronic metal detection device that the device indicates is of a metallic nature.
- (6) (Repealed)

## **27 Failure to comply with requests relating to search and dangerous implements**

A person must not, without reasonable excuse:

- (a) fail or refuse to produce anything detected or seen on or with the person in such a search when requested to do so by a police officer in accordance with sections 26 and 201, or
- (b) fail or refuse to comply with a request made by a police officer in accordance with sections 26 and 201 for the person to submit to a search.

Maximum penalty: 50 penalty units.

## **28 Power to confiscate knives or other dangerous implements** (cf [Summary Offences Act 1988](#), s 28B)

- (1) A police officer may, in a public place or school:
  - (a) take possession of anything that the police officer has reasonable grounds to suspect is a dangerous implement that is unlawfully in a person's custody, and
  - (b) confiscate the thing.
- (2) Any such confiscated thing is to be dealt with in accordance with Division 1 of Part 17.
- (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.

## **Division 4 Provisions relating generally to personal searches**

### **29 Application of Division**

This Division applies to any search of a person carried out, or authorised to be carried out, by a police officer or other person under this Act (other than an internal search under

Division 3 of Part 11), except as otherwise provided by this Act or the regulations.

### **30 Frisk searches and ordinary searches**

- (1) A police officer or other person who is authorised to search a person may carry out a frisk search or an ordinary search of the person for any purpose for which the search may be conducted.
- (2) In conducting a frisk search, a police officer or other person may, if the police officer or other person has asked the person to remove a coat or jacket, treat the person's outer clothing as being the person's outer clothes after the coat or jacket has been removed.

### **31 Strip searches** (cf common law)

A police officer or other person who is authorised to search a person may conduct a strip search of the person if the police officer or other person suspects on reasonable grounds that it is necessary to conduct a strip search of the person for the purposes of the search and that the seriousness and urgency of the circumstances require the strip search to be carried out.

### **32 Preservation of privacy and dignity during search**

- (1) A police officer or other person who searches a person must, as far as is reasonably practicable in the circumstances, comply with this section.
- (2) The police officer or other person must inform the person to be searched of the following matters:
  - (a) whether the person will be required to remove clothing during the search,
  - (b) why it is necessary to remove the clothing.
- (3) The police officer or other person must ask for the person's co-operation.
- (4) The police officer or other person must conduct the search:
  - (a) in a way that provides reasonable privacy for the person searched, and
  - (b) as quickly as is reasonably practicable.
- (5) The police officer or other person must conduct the least invasive kind of search practicable in the circumstances.
- (6) The police officer or other person must not search the genital area of the person searched, or in the case of female or a transgender person who identifies as a female, the person's breasts unless the police officer or person suspects on reasonable grounds that it is necessary to do so for the purposes of the search.

- (7) A search must be conducted by a police officer or other person of the same sex as the person searched or by a person of the same sex under the direction of the police officer or other person concerned.
- (8) A search of a person must not be carried out while the person is being questioned. If questioning has not been completed before a search is carried out, it must be suspended while the search is carried out.
- (9) A person must be allowed to dress as soon as a search is finished.
- (10) If clothing is seized because of the search, the police officer or other person must ensure the person searched is left with or given reasonably appropriate clothing.

(11) In this section:

**questioning** of a person means questioning the person, or carrying out an investigation (in which the person participates).

**transgender person** means a person, whether or not the person is a recognised transgender person:

- (a) who identifies as a member of the opposite sex, by living, or seeking to live, as a member of the opposite sex, or
- (b) who has identified as a member of the opposite sex by living as a member of the opposite sex, or
- (c) who, being of indeterminate sex, identifies as a member of a particular sex by living as a member of that sex,

and includes a reference to the person being thought of as a transgender person, whether or not the person is, or was, in fact a transgender person.

### **33 Rules for conduct of strip searches** (cf Cth Act, s 3ZI)

- (1) A police officer or other person who strip searches a person must, as far as is reasonably practicable in the circumstances, comply with the following:
  - (a) the strip search must be conducted in a private area,
  - (b) the strip search must not be conducted in the presence or view of a person who is of the opposite sex to the person being searched,
  - (c) except as provided by this section, the strip search must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search.
- (2) A parent, guardian or personal representative of the person being searched may, if it is reasonably practicable in the circumstances, be present during a search if the

person being searched has no objection to that person being present.

- (3) A strip search of a child who is at least 10 years of age but under 18 years of age, or of a person who has impaired intellectual functioning, must, unless it is not reasonably practicable in the circumstances, be conducted in the presence of a parent or guardian of the person being searched or, if that is not acceptable to the child or person, in the presence of another person (other than a police officer) who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person.
- (4) A strip search must not involve a search of a person's body cavities or an examination of the body by touch.
- (5) A strip search must not involve the removal of more clothes than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.
- (6) A strip search must not involve more visual inspection than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.
- (7) A strip search may be conducted in the presence of a medical practitioner of the opposite sex to the person searched if the person being searched has no objection to that person being present.
- (8) This section is in addition to the other requirements of this Act relating to searches.
- (9) In this section:

***impaired intellectual functioning*** means:

- (a) total or partial loss of a person's mental functions, or
- (b) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction, or
- (c) a disorder, illness or disease that affects a person's thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour.

**Note—**

Procedures for searches of a more invasive nature are dealt with under the [Crimes \(Forensic Procedures\) Act 2000](#).

### **34 No strip searches of children under 10 years**

A strip search must not be conducted on a person who is under the age of 10 years.

## Division 5 Vehicle stop, entry, search and roadblock powers

### 35 Relevant offences

The following offences are **relevant offences** for the purposes of this Division:

- (a) indictable offences,
- (b) an offence against section 93FB of the *Crimes Act 1900*,
- (c) an offence against the *Weapons Prohibition Act 1998*, the *Firearms Act 1996*, or a regulation made under either of those Acts.

### 36 Power to search vehicles and seize things without warrant (cf *Crimes Act 1900*, ss 357, 357E, *Police Powers (Vehicles) Act 1998*, s 10, *Drug Misuse and Trafficking Act 1985*, s 37)

- (1) A police officer may, without a warrant, stop, search and detain a vehicle if the police officer suspects on reasonable grounds that any of the following circumstances exists:
  - (a) the vehicle contains, or a person in the vehicle has in his or her possession or under his or her control, anything stolen or otherwise unlawfully obtained,
  - (b) the vehicle is being, or was, or may have been, used in or in connection with the commission of a relevant offence,
  - (c) the vehicle contains anything used or intended to be used in or in connection with the commission of a relevant offence,
  - (d) the vehicle is in a public place or school and contains a dangerous article that is being, or was, or may have been, used in or in connection with the commission of a relevant offence,
  - (e) the vehicle contains, or a person in the vehicle has in his or her possession or under his or her control, a prohibited plant or prohibited drug in contravention of the *Drug Misuse and Trafficking Act 1985*,
  - (f) circumstances exist on or in the vicinity of a public place or school that are likely to give rise to a serious risk to public safety and that the exercise of the powers may lessen the risk.
- (2) A police officer may, without a warrant, stop, search and detain a class of vehicles on a road, road related area or other public place or school if the police officer suspects on reasonable grounds that any of the following circumstances exist:
  - (a) a vehicle of the specified class of vehicles is being, or was, or may have been, used in or in connection with the commission of an indictable offence and the exercise of the powers may provide evidence of the commission of the offence,
  - (b) circumstances exist on or in the vicinity of a public place or school that are likely

to give rise to a serious risk to public safety and that the exercise of the powers may lessen the risk.

(3) A police officer may seize and detain:

- (a) all or part of a thing that the police officer suspects on reasonable grounds is stolen or otherwise unlawfully obtained, and
- (b) all or part of a thing that the police officer suspects on reasonable grounds may provide evidence of the commission of a relevant offence, and
- (c) any dangerous article, and
- (d) any prohibited plant or prohibited drug in the possession or under the control of a person in contravention of the *Drug Misuse and Trafficking Act 1985*,

found as a result of a search under this section.

### **36A Power to stop vehicles**

A police officer may stop a vehicle if the police officer suspects on reasonable grounds that the driver of, or a passenger in or on, the vehicle is a person in respect of whom the police officer has grounds to exercise a power of arrest or detention or a search power under this Act or any other law.

### **37 Powers to stop vehicles and erect roadblocks** (cf *Police Powers (Vehicles) Act 1998*, s 10)

(1) For the purposes of this Act, the following are **vehicle roadblock powers**:

- (a) the power to establish a roadblock (consisting of any appropriate form of barrier or obstruction preventing or limiting the passage of vehicles) on any specified road, road related area or other public place or school,
- (b) the power to stop vehicles at a roadblock.

(2) A senior police officer may authorise another police officer to exercise any or all of the vehicle roadblock powers in respect of any specified vehicle (or class of vehicles) on a road, road related area or other public place or school if the senior police officer suspects on reasonable grounds that:

- (a) the vehicle (or a vehicle of the specified class of vehicles) is being, or was, or may have been, used in or in connection with the commission of an indictable offence and the exercise of the powers may provide evidence of the commission of the offence, or
- (b) circumstances exist on or in the vicinity of that road, road related area, place or school that are likely to give rise to a serious risk to public safety and the exercise of the powers may lessen the risk.

- (3) A police officer may exercise vehicle roadblock powers without obtaining an authorisation by a senior police officer if the police officer suspects on reasonable grounds that it is necessary to exercise the powers and that the seriousness and urgency of the circumstances require the powers to be exercised without obtaining the authorisation.
- (4) A police officer who acts under subsection (3) must notify a senior police officer as soon as practicable and obtain an authorisation for any ongoing action.

**38 Power to give reasonable directions** (cf *Police Powers (Vehicles) Act 1998*, s 10)

A police officer who exercises a stop, search or detention power under this Division, or who is authorised to exercise a vehicle roadblock power under this Division, has the power to give reasonable directions (to facilitate the exercise of the power) to any person:

- (a) in or on the vehicle concerned, or
- (b) on or in the vicinity of a road, road related area or other public place or school.

**39 Failure to comply with directions** (cf *Police Powers (Vehicles) Act 1998*, s 10)

A person must not, without reasonable excuse:

- (a) fail or refuse to stop a vehicle the person is driving when directed to do so by a police officer under this Division, or
- (b) fail or refuse to comply with any other direction given by a police officer under this Division.

Maximum penalty: 50 penalty units or 12 months imprisonment, or both.

**40 Duration and form of roadblock authorisation** (cf *Police Powers (Vehicles) Act 1998*, s 11)

- (1) A roadblock authorisation may be given either verbally (including by telephone, radio or other communication device) or in writing (including facsimile).
- (2) A roadblock authorisation has effect for a period of 6 hours (or such lesser period as may be specified by the senior police officer giving the authorisation).
- (3) Nothing in this section prevents a senior police officer from giving a further roadblock authorisation in respect of the same vehicle (or class of vehicles) on a road, road related area or other public place or school.

**41 Record of roadblock authorisation** (cf *Police Powers (Vehicles) Act 1998*, s 12)

- (1) A senior police officer who gives a roadblock authorisation must:
  - (a) if the authorisation is in writing—specify the following:
    - (i) the date on, and time at, which the authorisation is given,

- (ii) the vehicle roadblock powers conferred by the authorisation and the indictable offence or risk to public safety in respect of which the authorisation is given,
  - (iii) the road, road related area or other public place or school in respect of which the authorisation is given,
  - (iv) the vehicle (or class of vehicles) in respect of which the authorisation is given,
  - (v) the period of the authorisation if the period is less than 6 hours, or
- (b) if the authorisation is given verbally—make a record as soon as is reasonably practicable after the giving of the authorisation of the matters referred to in paragraph (a).

(2) A failure to comply with subsection (1) does not invalidate a roadblock authorisation.

## **Division 6 Vessel and aircraft entry and search powers**

### **42 Power to search vessels and aircraft and seize things without warrant** (cf [Crimes Act 1900](#), ss 357, 357D, 357E)

- (1) A police officer may, without a warrant, stop, search and detain a vessel or an aircraft if the police officer suspects on reasonable grounds that any of the following circumstances exists:
- (a) the vessel or aircraft contains, or a person in the vessel or aircraft has in his or her possession or under his or her control, anything stolen or otherwise unlawfully obtained,
  - (b) the vessel or aircraft is being or was used in or in connection with the commission of a relevant offence,
  - (c) the vessel or aircraft contains anything used or intended to be used in or in connection with the commission of a relevant offence,
  - (d) the vessel or aircraft is in a public place and contains a dangerous article that is being or was used in or in connection with the commission of a relevant offence.
- (2) A police officer may seize and detain:
- (a) all or part of a thing that the police officer suspects on reasonable grounds is stolen or otherwise unlawfully obtained, and
  - (b) all or part of a thing that the police officer suspects on reasonable grounds may provide evidence of the commission of a relevant offence, and
  - (c) any dangerous article, and
  - (d) any prohibited plant or prohibited drug in the possession or under the control of a



person in contravention of the *Drug Misuse and Trafficking Act 1985*,  
found as a result of a search under this section.

- (3) The following offences are **relevant offences** for the purposes of this section:
- (a) indictable offences,
  - (b) an offence against section 93FB of the *Crimes Act 1900*,
  - (c) an offence against the *Weapons Prohibition Act 1998*, the *Firearms Act 1996*, or a regulation made under either of those Acts.

**43 Power to board vessels** (cf *Crimes Act 1900*, s 357C)

- (1) A police officer authorised by this section may, without a warrant, with as many other police officers as he or she thinks necessary, take the actions set out in subsection (2) if the police officer suspects on reasonable grounds that it is necessary to do so:
- (a) to prevent, on a vessel, injury to people or damage to property by fire or otherwise, or
  - (b) to preserve peace and good order on a vessel, or
  - (c) to prevent, detect or investigate any offence that may be, or may have been, committed on a vessel.
- (2) The police officer may take any one or more of the following actions:
- (a) enter into any part of any vessel,
  - (b) search and inspect the vessel,
  - (c) take all necessary measures for preventing, on the vessel, injury to persons or damage to property by fire or otherwise,
  - (d) take all necessary measures for preserving peace and good order on the vessel or for preventing, detecting or investigating any offences that may be, or may have been, committed on the vessel.
- (3) The following police officers are authorised by this section:
- (a) a police officer of or above the rank of sergeant,
  - (b) a police officer in charge of a police station,
  - (c) a police officer in charge of a police vessel.

**44 Power to search aircraft for safety reasons** (cf *Crimes Act 1900*, s 357A)

- (1) An authorised person may, without a warrant, search an aircraft, any person on board

or about to board an aircraft, or any luggage or freight on board an aircraft, or about to be placed on board an aircraft, if the person suspects on reasonable grounds that an offence involving the safety of the aircraft is being, or was, or may have been, or may be, committed on board or in relation to the aircraft.

- (2) The following persons are authorised persons for the purposes of this section:
  - (a) the commander of the aircraft,
  - (b) a person authorised in writing by an authorised officer, on the basis of a suspicion referred to in subsection (1), to carry out a search under this section.
- (3) A search of a person conducted under this section must be conducted by a person of the same sex as the person being searched.

**45 Search powers relating to prohibited plants and prohibited drugs** (cf *Drug Misuse and Trafficking Act 1985*, s 37)

- (1) A police officer authorised by this section may, without a warrant, with as many other police officers as he or she thinks necessary, take the actions set out in subsection (2) if the police officer reasonably suspects that there is in a vessel or aircraft a prohibited plant or prohibited drug that is, in contravention of the *Drug Misuse and Trafficking Act 1985*, in the possession or under the control of any person.
- (2) The police officer may take the following actions:
  - (a) stop and detain the vessel or aircraft,
  - (b) enter into any part of the vessel or aircraft,
  - (c) search and inspect the vessel or aircraft.
- (3) The following police officers are authorised by this section:
  - (a) a police officer of or above the rank of sergeant,
  - (b) a police officer in charge of a police station,
  - (c) a police officer in charge of a police vessel.

## **Part 5 Search and seizure powers with warrant or other authority**

**Note—**

Safeguards relating to the exercise of powers under this Part are set out in Parts 15 and 17.

### **Division 1 Definitions**

#### **46 Interpretation**

- (1) In this Part:

**adjoining occupier's notice** means a notice referred to in section 67B.

**eligible applicant**, for a search warrant, means:

- (a) any police officer, or
- (b) if it is a covert search warrant—any person authorised to apply for such a warrant under section 46C, or
- (c) if it is a criminal organisation search warrant—a police officer authorised to apply for such a warrant under section 46D.

**eligible issuing officer** means:

- (a) for a warrant other than a covert search warrant or a criminal organisation search warrant—an authorised officer, or
- (b) for a covert search warrant or a criminal organisation search warrant—an eligible Judge, or
- (c) for a notice to produce issued under Division 3—an authorised officer.

**eligible Judge**—see section 46B.

**executing officer** means:

- (a) for a warrant other than a covert search warrant—any police officer, or
- (b) for a covert search warrant:
  - (i) any police officer, or
  - (ii) any member of staff of the Police Integrity Commission if the applicant for the warrant was authorised to make the application under section 46C (1) (b), or
  - (iii) any member of staff of the New South Wales Crime Commission if the applicant for the warrant was authorised to make the application under section 46C (1) (c).

**indictable offence** includes any act or omission which if done, or omitted to be done, in New South Wales would constitute an offence punishable on indictment.

**occupier's notice** means an occupier's notice referred to in section 67.

**organised criminal activity**—see section 46AA.

**searchable offence**—see section 46A.

**subject premises**, in relation to a warrant or an application for a warrant, means premises the subject of the warrant or the application (as the case may be).

**telephone crime scene warrant** means a crime scene warrant that is a telephone warrant.

**telephone warrant** means a warrant applied for by telephone as provided by section 61.

- (2) A reference in this Part to an offence includes a reference to an offence that there are reasonable grounds for believing has been, is being, or is to be, committed (as the case requires).
- (3) For the purposes of this Part, a thing is connected with a particular offence if it is:
  - (a) a thing with respect to which the offence has been committed, or
  - (b) a thing that will provide evidence of the commission of the offence, or
  - (c) a thing that was used, or is intended to be used, in or in connection with the commission of the offence.
- (4) Nothing in this Part applies to or in respect of, or affects the exercise of any power under, a covert search warrant issued under the [Terrorism \(Police Powers\) Act 2002](#).

#### **46AA Organised criminal activity**

- (1) In this Part:

**organised criminal activity** means any activity that:

- (a) is carried out on an organised basis, and
- (b) is carried out to advance any one or more of the following objectives:
  - (i) obtaining material benefits from conduct constituting a serious indictable offence,
  - (ii) obtaining material benefits from conduct engaged in outside New South Wales (including outside Australia) that, if it occurred in New South Wales, would constitute a serious indictable offence,
  - (iii) committing serious violence offences,
  - (iv) engaging in conduct outside New South Wales (including outside Australia) that, if it occurred in New South Wales, would constitute a serious violence offence.

**serious violence offence** means an offence punishable by imprisonment for life or for a term of 10 years or more, where the conduct constituting the offence involves:

- (a) loss of a person's life or serious risk of loss of a person's life, or

- (b) serious injury to a person or serious risk of serious injury to a person, or
- (c) serious damage to property in circumstances endangering the safety of any person, or
- (d) perverting the course of justice (within the meaning of Part 7 of the [Crimes Act 1900](#)) in relation to any conduct that, if proved, would constitute a serious violence offence as referred to in paragraph (a), (b) or (c).

(2) For the purposes of this section, an activity is carried out on an **organised basis** if it is planned, organised, structured or otherwise carried out in such a manner as to indicate that the activity is carried out on more than one occasion and involves more than one participant.

**46A Searchable offences** (cf former LEPPRA, s 47 (1))

(1) For the purposes of this Part, **searchable offence** in relation to a warrant:

(a) means any of the following:

- (i) an indictable offence,
- (ii) a firearms or prohibited weapons offence,
- (iii) a narcotics offence,
- (iv) a child abuse material offence,
- (v) an offence involving a thing being stolen or otherwise unlawfully obtained, and

(b) if the warrant is a covert search warrant—means a serious offence, and

(c) if the warrant is a criminal organisation search warrant—means an organised crime offence.

(2) In subsection (1):

**child abuse material offence** means an offence under section 91H or 578C of the [Crimes Act 1900](#).

**firearms or prohibited weapons offence** means an offence under the [Firearms Act 1996](#), the [Weapons Prohibition Act 1998](#) or a regulation made under either of those Acts, being an offence committed in respect of a firearm, an imitation firearm or a prohibited weapon within the meaning of those Acts.

**narcotics offence** means:

- (a) an offence under the [Poisons and Therapeutic Goods Act 1966](#), or a regulation made under that Act, being an offence committed in respect of:

- (i) a restricted substance prescribed for the purposes of section 16 of that Act, or
- (ii) a drug of addiction within the meaning of that Act, or
- (b) an offence under the *Drug Misuse and Trafficking Act 1985* or a regulation made under that Act.

**organised crime offence** means any serious indictable offence arising from, or occurring as a result of, organised criminal activity.

**serious offence** means the following:

- (a) any indictable offence punishable by imprisonment for a period of 7 or more years and that involves the following:
    - (i) the supply, manufacture or cultivation of drugs or prohibited plants,
    - (ii) the possession, manufacture or sale of firearms within the meaning of the *Firearms Act 1996*,
    - (iii) money laundering,
- Note—**
- For example, section 193B of the *Crimes Act 1900*.
- (iv) car and boat rebirthing activities,
- Note—**
- For example, section 154G of the *Crimes Act 1900*.
- (v) the unauthorised access to, or modification or impairment of, computer data or electronic communications,
  - (vi) an activity involving theft carried out on an organised basis,
  - (vii) violence causing grievous bodily harm or wounding,
  - (viii) the possession, manufacture or supply of false instruments,
  - (ix) corruption,
  - (x) destruction of property,
  - (xi) homicide,
  - (xii) kidnapping,
- (b) any offence under Division 10 (Offences in the nature of rape, offences relating to other acts of sexual assault etc) of Part 3 of the *Crimes Act 1900* punishable by imprisonment for a period of 7 or more years,

- (c) an offence under section 80D (Causing sexual servitude) or 80E (Conduct of business involving sexual servitude) of the *Crimes Act 1900*,
  - (d) an offence under section 93FA (Possession, supply or making of explosives) of the *Crimes Act 1900*,
  - (e) an offence under Division 15 (Child prostitution) or 15A (Child pornography) of Part 3 of the *Crimes Act 1900*,
  - (f) an offence under section 308F (Possession of data with intent to commit serious computer offence) or 308G (Producing, supplying or obtaining data with intent to commit serious computer offence) of the *Crimes Act 1900*,
  - (g) an offence of attempting to commit, or of conspiracy or incitement to commit, or of aiding or abetting, an offence referred to in paragraphs (a)–(f).
- (3) For the purposes of this section, an activity involving theft is carried out on an **organised basis** if:
- (a) it is planned, organised, structured or otherwise carried out in such a manner as to indicate that the activity is carried out on more than one occasion and involves more than one participant, and
  - (b) it is carried out for profit or gain.

#### **46B Eligible Judges**

- (1) In this Part:

**eligible Judge** means a Judge in relation to whom a consent under subsection (2) and a declaration under subsection (3) are in force.

- (2) A Judge of the Supreme Court may, by instrument in writing, consent to be nominated by the Attorney General under subsection (3).
- (3) The Attorney General may, by instrument in writing, declare Judges in relation to whom consents are in force under subsection (2) to be eligible Judges for the purposes of this Part.
- (4) An eligible Judge has, in relation to the exercise of a function conferred on the eligible Judge by this Part, the same protection and immunity as a Judge of the Supreme Court has in relation to proceedings in the Supreme Court.
- (5) A Judge who has given consent under this section may, by instrument in writing, revoke the consent.
- (6) A declaration of an eligible Judge under subsection (3) cannot be revoked by the Attorney General. However, the declaration of a Judge as an eligible Judge is revoked if:

- (a) the eligible Judge revokes his or her consent in accordance with subsection (5) or ceases to be a Judge, or
  - (b) the Chief Justice notifies the Attorney General that the Judge should not continue to be an eligible Judge.
- (7) To avoid doubt, the selection of the eligible Judge to exercise any particular function conferred on eligible Judges is not to be made by the Attorney General or other Minister of the Crown, and the exercise of that particular function is not subject to the control and direction of the Attorney General or other Minister of the Crown.

#### **46C Authority to apply for covert search warrant**

- (1) The following persons are authorised to apply for a covert search warrant:
- (a) a police officer authorised to make the application by a police officer holding the rank of Superintendent or above,
  - (b) the Commissioner or an Assistant Commissioner for the Police Integrity Commission or a member of staff of the Police Integrity Commission authorised to make the application by the Commissioner or an Assistant Commissioner,
  - (c) the Commissioner or an Assistant Commissioner for the New South Wales Crime Commission or a member of staff of the New South Wales Crime Commission authorised to make the application by the Commissioner or an Assistant Commissioner.
- (2) An authorisation to apply for a covert search warrant in respect of a searchable offence may be given in accordance with this section if the person giving the authorisation:
- (a) suspects on reasonable grounds that there is, or within 10 days will be, in or on the premises a thing of a kind connected with the searchable offence, and
  - (b) considers that it is necessary for the entry and search of those premises to be conducted without the knowledge of any occupier of the premises.

#### **46D Authority to apply for criminal organisation search warrant**

- (1) An application for a criminal organisation search warrant may be made by a police officer authorised to make the application by a police officer holding the rank of Superintendent or above.
- (2) An authorisation to apply for a criminal organisation search warrant in respect of a searchable offence may be given in accordance with this section if the person giving the authorisation suspects on reasonable grounds that there is, or within 7 days there will be, in or on the premises a thing of a kind connected with the searchable offence.



## Division 2 Police and other law enforcement officers' powers relating to warrants

### 47 Power to apply for search warrants (cf [Search Warrants Act 1985](#) s 5, [Crimes Act 1900](#), ss 357EA, 578D, former LEPR, s 47)

- (1) A police officer may apply to an eligible issuing officer for a search warrant (other than a criminal organisation search warrant) in respect of any premises if the police officer believes on reasonable grounds that there is, or within 72 hours will be, in or on the premises a thing connected with a searchable offence in relation to the warrant.
- (2) Without limiting subsection (1), a police officer may apply to an eligible issuing officer for a search warrant if the police officer believes on reasonable grounds that a child prostitution offence has recently been committed, is being committed, or within 72 hours will be committed, on or with respect to premises.
- (3) An eligible applicant may apply to an eligible issuing officer for a covert search warrant to authorise the covert entry and search of premises if the eligible applicant:
  - (a) suspects on reasonable grounds that there is, or within 10 days will be, in or on the premises a thing of a kind connected with a searchable offence in relation to the warrant, and
  - (b) considers that it is necessary for the entry and search of those premises to be conducted without the knowledge of any occupier of the premises.
- (3A) An eligible applicant may apply to an eligible issuing officer for a criminal organisation search warrant in respect of premises if the eligible applicant has reasonable grounds to suspect that there is, or within 7 days there will be, in or on the premises a thing connected with a searchable offence in relation to the warrant.
- (4) To avoid doubt, an application may be made under this section with respect to an act or omission that would be a searchable offence for the warrant if done, or omitted to be done, in New South Wales even though the act or omission occurred outside New South Wales and was not an offence against the law of New South Wales.
- (5) In this section:

**child prostitution offence** means an offence under section 91D, 91E, 91F or 91G of the [Crimes Act 1900](#).

### 47A General authority conferred by search warrants (cf former LEPR, s 48)

- (1) A search warrant authorises any executing officer for the warrant:
  - (a) to enter the subject premises, and
  - (b) to search the premises for things connected with a particular searchable offence

in relation to the warrant.

**Note—**

Section 67 requires that an occupier of the premises entered under a search warrant (other than a covert search warrant) be given notice on entry or as soon as practicable afterwards. Notice under a covert search warrant is not required to be given to the occupier on entry—see section 67A which permits the deferral of the giving of notice for up to 3 years in total in specified circumstances.

- (2) If the search warrant is a covert search warrant, the executing officer is also authorised:
- (a) to conduct the entry and search of the subject premises without the knowledge of any occupier of the subject premises, and
  - (b) if necessary to do so to enter and search the subject premises—to enter premises adjoining or providing access to the subject premises (**adjacent premises**) without the knowledge of the occupier of the adjacent premises, and
  - (c) to impersonate another person for the purposes of executing the warrant, and
  - (d) 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.

**Note—**

Other sections of this Act authorise other things to be done under search warrants.

**48 Issue of search warrants** (cf [Search Warrants Act 1985](#), s 6, [Crimes Act 1900](#), s 357EA, former LEPPRA, s 48)

- (1) An eligible issuing officer to whom an application for a search warrant is made under section 47 may, if satisfied that there are reasonable grounds for doing so, issue the search warrant.

**Note—**

See section 62 (3) in relation to matters to be considered by an eligible issuing officer in determining whether there are reasonable grounds to issue a warrant.

- (2) An eligible issuing officer to whom an application is made for a covert search warrant who is not satisfied that there are reasonable grounds for issuing the covert search warrant may, at the request of the eligible applicant (if the eligible applicant is a police officer), instead issue a search warrant that may not be executed covertly, but only if satisfied that there are reasonable grounds to do so.

**49 Seizure of things pursuant to search warrant** (cf [Search Warrants Act 1985](#), s 7, former LEPPRA, s 49)

- (1) A person executing a search warrant issued under this Division:
- (a) may seize and detain a thing (or thing of a kind) mentioned in the warrant, and

(b) may, in addition, seize and detain any other thing that the person finds in the course of executing the warrant and that the person has reasonable grounds to believe is connected with any offence.

(2) Without limiting subsection (1), the power to seize and detain a thing includes:

- (a) a power to remove the thing from the premises where it is found, and
- (b) a power to guard the thing in or on those premises, and
- (c) if it is a covert search warrant that authorises the placing of a kind of thing in substitution for a seized thing—a power to place a thing of that kind on the subject premises in substitution for a thing seized.

**Note—**

For the disposal of things seized pursuant to a search warrant, see Division 2 of Part 17.

**49A Return or retrieval of thing seized or placed**

- (1) A covert search warrant may authorise the return of a thing seized under section 49 (1) (a), or the retrieval of a thing placed under section 49 (2) (c), if the warrant expressly authorises such a return or retrieval.
- (2) If the covert search warrant authorises the return or retrieval of a thing, the subject premises may be re-entered by an executing officer, but only for the purpose of returning or retrieving the thing (as the case may be).
- (3) Any re-entry to return or retrieve a thing must occur within 7 days of the first entry under the covert search warrant (or such longer period as is allowed, prior to the expiration of the 7-day period, by an eligible issuing officer).
- (4) An executing officer authorised to re-enter premises and return or retrieve a thing under this section may do so with the aid of such assistants as the executing officer considers necessary.

**50 Search of persons pursuant to warrant** (cf [Search Warrants Act 1985](#), s 8, former LEPR, s 50)

A person executing a search warrant issued under this Division may search any person found in or on the premises whom the person executing the warrant reasonably suspects of having a thing mentioned in the warrant.

**Notes—**

- 1** Under sections 99 and 100 a police officer or other person may arrest and take before an authorised officer to be dealt with according to law any person found in or on the premises whom the police officer or other person suspects on reasonable grounds of having committed an offence.
- 2** Division 4 of Part 4 contains provisions generally applicable to searches of persons.

### **51 Inquiries pursuant to warrant related to child prostitution offences**

Without limiting any other powers under this Division, a person executing a search warrant issued under this Division in relation to an offence under section 91D, 91E, 91F or 91G of the *Crimes Act 1900* may make in the premises the subject of the warrant inquiries relating to any such offence.

### **52 Obstruction or hindrance of person executing warrant** (cf *Search Warrants Act 1985*, s 9)

A person must not, without reasonable excuse, obstruct or hinder a person executing a warrant issued under this Division.

Maximum penalty: 100 penalty units or 2 years imprisonment, or both.

## **Division 3 Notices to produce documents**

### **53 Notices to produce documents**

- (1) A police officer who believes on reasonable grounds that an authorised deposit-taking institution holds documents that may be connected with an offence committed by someone else may apply to an eligible issuing officer for a notice to produce the documents.
- (2) An application under this section may be, but is not required to be, made instead of an application for a search warrant.
- (3) To avoid doubt, an application under this section may be made under this Division with respect to an act or omission that is an offence even though the act or omission occurred outside New South Wales and was not an offence against the law of New South Wales, if the act or omission if done, or omitted to be done, in New South Wales would constitute an offence.

#### **Note—**

For provisions relating generally to applications for notices to produce documents and other matters, see section 59.

### **54 Issue of notice to produce documents**

- (1) An eligible issuing officer to whom an application for a notice to produce documents is made may issue a notice to produce documents if satisfied that there are reasonable grounds for suspecting that:
  - (a) the authorised deposit-taking institution holds documents that may be connected with an offence, and
  - (b) the institution is not a party to the offence.
- (2) The eligible issuing officer may, in the notice, specify that the documents are to be produced to a police officer within a stated time and at a stated place and in a stated

form (whether electronic or otherwise).

- (3) A police officer must give the notice to the authorised deposit-taking institution named in the notice as soon as reasonably practicable after it is issued.

### **55 Information in application for notice to produce documents**

Without limiting the application of section 54 to notices to produce documents, an eligible issuing officer must not issue a notice to produce documents unless the application for the notice includes the name of the authorised deposit-taking institution the subject of the application.

### **56 Claims of privilege**

- (1) If, under a notice to produce documents, an authorised deposit-taking institution claims that documents required to be produced contain communications between the institution and someone else that may not, in proceedings, be adduced under Division 1, 1A or 3 of Part 3.10 of the *Evidence Act 1995*, the police officer must, if the police officer proposes to proceed to enforce the notice, as soon as reasonably practicable, apply to a Magistrate for an order for access to the documents.
- (2) A Magistrate may, on application made under this section in respect of a document, make one of the following orders:
  - (a) that the police officer be given access to the document,
  - (b) that the documents be given to the police officer and copied by the police officer and the original document be returned to the authorised deposit-taking institution,
  - (c) that the document is not required to be produced by the authorised deposit-taking institution.
- (3) If an order is made under subsection (2) (b):
  - (a) a police officer is authorised, if the document is in electronic form, to produce a hard copy of the information contained in the document, and
  - (b) the order may include a condition that the document must, on the request of a police officer, be produced to a court hearing a proceeding for an offence for which the document is to be used as evidence.

### **57 Obligations and liability of authorised deposit-taking institution**

- (1) An authorised deposit-taking institution is not subject to any action, liability, claim or demand for complying with, or producing something in the honest belief that it was complying with a notice to produce documents or an order of a Magistrate under this Division.
- (2) An authorised deposit-taking institution, or an officer of an authorised deposit-taking

institution, must not, without reasonable excuse, fail or refuse to comply with a notice to produce documents.

Maximum penalty: 100 penalty units or 2 years imprisonment, or both.

#### **58 Produced document taken to be seized**

A document produced under this Division is taken to have been seized under this Act.

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

#### **59 Application of Division**

(1) This Division applies to the following warrants:

- (a) search warrants issued to executing officers under Division 2,
- (b) search warrants issued under a provision specified in Schedule 2,
- (c) crime scene warrants issued under Part 7,
- (d) warrants issued under Division 1 of Part 11,
- (e) search warrants issued under a provision of, or a provision made under, an Act, being a provision that provides that this Division applies to a search warrant issued under that provision.

(2) This Division (other than sections 67, 67B and 68 and sections 61 (5)-(8) and 73A (6) (e), to the extent they require an occupier's notice) applies to notices to produce documents issued under Division 3 in the same way as it applies to warrants.

(3) This Division (other than sections 67, 67B and 68 and sections 61 (5)-(8) and 73A (6) (e), to the extent they require an occupier's notice) applies to warrants issued under Part 6 and Division 2 of Part 11.

(4) Sections 60 (2), (3) and (4), 61 (2)-(8), 63-66, 75 and 76 apply to detention warrants issued under Part 9.

#### **60 Application for warrant in person** (cf [Search Warrants Act 1985](#), s 11)

- (1) An application for a warrant must be in writing in the form prescribed by the regulations and must be made by the applicant in person.
- (2) An eligible issuing officer must not issue a warrant unless the information given by the applicant in or in connection with the application is verified before the eligible issuing officer on oath or affirmation or by affidavit.
- (3) An eligible issuing officer may administer an oath or affirmation or take an affidavit for

the purposes of an application for a warrant.

(4) This section does not apply to a telephone warrant.

**61 Telephone warrant** (cf *Search Warrants Act 1985*, s 12)

(1) A person may apply by telephone for a warrant.

**Note—**

Telephone includes radio, facsimile and any other communication device.

- (2) An eligible issuing officer must not issue a warrant on an application made by telephone unless the eligible issuing officer is satisfied that the warrant is required urgently and that it is not practicable for the application to be made in person.
- (3) An application must be made by facsimile if the facilities to do so are readily available for that purpose.
- (4) If it is not practicable for an application for a warrant to be made by telephone directly to an eligible issuing officer, the application may be transmitted to the eligible issuing officer by another person on behalf of the applicant.
- (5) An eligible issuing officer who issues a warrant on an application made by telephone must:
- (a) complete and sign the warrant, and
  - (b) furnish the warrant to the person who made the application or inform that person of the terms of the warrant and of the date and time when it was signed, and
  - (c) prepare and furnish an occupier's notice to the person who made the application or inform the person of the terms of the occupier's notice.
- (6) If a warrant is issued on an application made by telephone, the applicant:
- (a) in a case where the applicant was not furnished with the warrant—must complete a form of warrant in the terms indicated by the eligible issuing officer under subsection (5) and write on it the name of that eligible issuing officer and the date and time when the warrant was signed, and
  - (b) in a case where the applicant was not furnished with an occupier's notice—must complete a form of occupier's notice in the terms indicated by the eligible issuing officer under subsection (5).
- (7) A form of warrant and a form of occupier's notice so completed is taken to be a warrant issued, and an occupier's notice prepared and furnished, in accordance with this Act.
- (8) A warrant or occupier's notice is to be furnished by an eligible issuing officer by

transmitting it by facsimile, if the facilities to do so are readily available, and the copy produced by that transmission is taken to be the original document.

**62 Information in, and consideration of, application for warrant** (cf *Search Warrants Act 1985*, s 12A, former LEPRA, s 62)

- (1) An eligible issuing officer must not issue a warrant unless the application for the warrant includes the following information:
  - (a) the name of the applicant and details of the authority of the applicant to make the application for the warrant,
  - (b) particulars of the grounds on which the application is based, including (without limitation) the nature of the searchable offence or other offence involved,
  - (c) the address or other description of the subject premises,
  - (d) if the warrant is required to search for a particular thing—a full description of that thing and, if known, its location,
  - (e) if the warrant is required to search for a kind of thing—a description of the kind of thing,
  - (f) if a previous application for the same warrant was refused—details of the refusal and any additional information required by section 64,
  - (g) any other information required by the regulations.
- (2) In addition, an eligible issuing officer must not issue a covert search warrant unless the application for the warrant includes the following information:
  - (a) the name of the following persons:
    - (i) the occupier (if known) of the subject premises,
    - (ii) any person believed to have committed, or to be intending to commit, the searchable offence in respect of which the application is made,
  - (b) whether the occupier is believed to be knowingly concerned with the commission of that searchable offence,
  - (c) if it is proposed that premises adjoining or providing access to the subject premises be entered for the purposes of entering the subject premises—the address or other description of the premises that adjoin or provide such access and particulars of the grounds on which entry to those premises is required,
  - (d) any powers proposed to be exercised on entry to the subject premises that are sought to be authorised by the warrant under section 47A (2) (d),



(e) details of any covert search warrant that has previously been issued in respect of the subject premises.

(2A) In addition, an eligible issuing officer must not issue a criminal organisation search warrant unless the application for the warrant includes the following information:

(a) the name of the following persons:

(i) the occupier (if known) of those premises,

(ii) any person believed to have committed, or to be intending to commit, the searchable offence in respect of which the application is made,

(b) whether the occupier is believed to be knowingly concerned with the commission of the searchable offence.

(3) An eligible issuing officer, when determining whether there are reasonable grounds to issue a warrant, is to consider (but is not limited to considering) the following matters:

(a) the reliability of the information on which the application is based, including the nature of the source of the information,

(b) if the warrant is required to search for a thing in relation to an alleged offence—whether there is sufficient connection between the thing sought and the offence.

(4) In addition, an eligible issuing officer, when determining whether there are reasonable grounds to issue a covert search warrant, is to consider the following matters:

(a) the extent to which it is necessary for the entry and search of those premises to be conducted without the knowledge of any occupier of the premises,

(b) the nature and gravity of the searchable offence in respect of which the application is made,

(c) the extent to which the privacy of a person who is not believed to be knowingly concerned in the commission of the searchable offence is likely to be affected if the warrant is issued,

(d) whether any conditions should be imposed by the eligible issuing officer in relation to the execution of the warrant,

(e) if it is proposed that premises adjoining or providing access to the subject premises be entered for the purposes of entering the subject premises:

(i) whether this is reasonably necessary in order to enable access to the subject premises, or

(ii) whether this is reasonably necessary in order to avoid compromising the

investigation of the searchable offence or other offence.

- (5) The applicant must provide (either orally or in writing) such further information as the eligible issuing officer requires concerning the grounds on which the warrant is being sought.
- (6) Nothing in this section requires an applicant for a warrant to disclose the identity of a person from whom information was obtained if the applicant is satisfied that to do so might jeopardise the safety of any person.

**63 False or misleading information in applications** (cf [Search Warrants Act 1985](#), s 12B)

- (1) A person must not, in or in connection with an application for a warrant, give information to an eligible issuing officer that the person knows to be false or misleading in a material particular.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

- (1A) A person must not, in or in connection with a report or an occupier's notice given in relation to a search warrant, give information to an eligible issuing officer that the person knows to be false or misleading in a material particular.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

- (2) This section applies to an application by telephone as well as in person.
- (3) This section applies whether or not the information given is also verified on oath or affirmation or by affidavit.

**64 Further application for warrant after refusal** (cf [Search Warrants Act 1985](#), s 12C)

- (1) If an application by a person for a warrant is refused by an eligible issuing officer, that person (or any other person who is aware of the application) may not make a further application for the same warrant to that or any other eligible issuing officer unless the further application provides additional information that justifies the making of the further application.
- (2) However, in the case of a warrant other than a covert search warrant, a further application may be made to a Magistrate following a refusal to issue the warrant by an eligible issuing officer who is not a Magistrate whether or not additional information is provided in the further application. Only one such further application may be made in any particular case.

**65 Record of proceedings before eligible issuing officer** (cf [Search Warrants Act 1985](#), s 13)

- (1) An eligible issuing officer who issues a warrant must cause a record to be made of all relevant particulars of the grounds the eligible issuing officer has relied on to justify the issue of the warrant.

- (1A) An eligible issuing officer who refuses to issue a warrant must cause a record to be made of all relevant particulars of the grounds the eligible issuing officer has relied on to justify the refusal to issue the warrant.
- (2) The regulations may make provision for or with respect to:
  - (a) the keeping of records in connection with the issue and execution of warrants, and
  - (b) the inspection of any such records, and
  - (c) any other matter in connection with any such records.
- (3) Any matter that might disclose the identity of a person must not be recorded pursuant to this section if the eligible issuing officer is satisfied that to do so might jeopardise the safety of any person.

**66 Form of warrant** (cf [Search Warrants Act 1985](#), s 14)

- (1) A warrant is to be in the form prescribed by the regulations.
- (2) Without limiting subsection (1), a covert search warrant must specify the following:
  - (a) the address or other description of any premises that adjoin or provide access to the subject premises that may be entered under the warrant for the purposes of entering the subject premises,
  - (b) the name of the following persons:
    - (i) the occupier (if known) of the subject premises,
    - (ii) any person believed to have committed, or to be intending to commit, the searchable offence to which the warrant relates,
  - (c) whether the occupier is believed to be knowingly concerned with the commission of that searchable offence,
  - (d) any conditions imposed in relation to the execution of the warrant,
  - (e) a description of the kinds of things that may be placed in substitution for a seized thing,
  - (f) any other matter required by the regulations.

**67 Notice to occupier of premises entered pursuant to warrant** (cf [Search Warrants Act 1985](#), s 15)

- (1) An eligible issuing officer is to prepare and give an occupier's notice to the person to whom the eligible issuing officer issues a warrant.
- (2) An occupier's notice:

- (a) is to be in the form prescribed by the regulations, and
  - (b) must specify the following:
    - (i) the name of the person who applied for the warrant,
    - (ii) (Repealed)
    - (iii) the date and the time when the warrant was issued,
    - (iv) the address or other description of the premises the subject of the warrant, and
  - (c) must contain a summary of the nature of the warrant and the powers conferred by the warrant.
- (3) An occupier's notice under this section may be served personally or in such other manner as the eligible issuing officer who issued the warrant may direct.
- (4) **Time for service of notice—warrant other than a covert search warrant** A person executing a warrant other than a covert search warrant must:
- (a) on entry into or onto the premises or as soon as practicable after entry, serve the occupier's notice on a person who appears to be an occupier of the premises and to be of or above the age of 18 years, or
  - (b) if no such person is then present in or on the premises, serve the occupier's notice on the occupier of the premises within 48 hours after executing the warrant.
- (5) If an occupier's notice cannot practicably be served on a person in accordance with subsection (4) (b), the eligible issuing officer who issued the warrant may, by order, direct that, instead of service, such steps be taken as are specified in the order for the purpose of bringing the occupier's notice to the attention of the occupier.
- (6) An order under subsection (5) may direct that the occupier's notice be taken to have been served on the occupier on the happening of a specified event or on the expiry of a specified time.
- (7) Service in accordance with an order under subsection (5) is taken to constitute personal service for the purposes of subsection (4).
- (8) **Time for service of notice—covert search warrant** A person executing a covert search warrant must serve the occupier's notice on the person who was the occupier of the subject premises at the time the covert search warrant was executed as soon as practicable after the warrant is executed, unless the service of the notice is postponed under section 67A.

**67A Postponement of service of occupier's notice—covert search warrant**

- (1) Service of an occupier's notice relating to a covert search warrant may be postponed for a period of up to 6 months by the eligible issuing officer who issued the covert search warrant if that eligible issuing officer is satisfied that there are reasonable grounds for the postponement.
- (2) Service of an occupier's notice may be postponed on more than one occasion, but must not be postponed on any one occasion for a period exceeding 6 months or for more than 3 years in total.
- (3) The eligible issuing officer must not postpone service of an occupier's notice for periods exceeding 18 months in total unless satisfied that there are exceptional grounds that justify the postponement.

**67B Notice to adjoining occupiers of execution of covert search warrant**

- (1) The person to whom a covert search warrant is issued is to prepare a notice under this section (an **adjoining occupier's notice**) if the execution of the warrant will involve entering premises adjoining or providing access to the subject premises (**adjoining premises**) without the knowledge of the occupier of the adjoining premises.
- (2) Before the covert search warrant is executed, the adjoining occupier's notice is to be provided to the eligible issuing officer who issued the warrant for that officer's approval.
- (3) The adjoining occupier's notice:
  - (a) must specify the following:
    - (i) the name of the person who applied for the covert search warrant,
    - (ii) the date when the warrant was issued,
    - (iii) the address or other description of the subject premises, and
  - (b) is to specify or contain any other matters required by the regulations.
- (4) The adjoining occupier's notice must be served on the person who was the occupier of the adjoining premises at the time the covert search warrant was executed, on (or as soon as practicable after) service of the occupier's notice on the occupier of the subject premises under section 67 unless the eligible issuing officer directs that service of the notice may be dispensed with.
- (5) The adjoining occupier's notice may be served personally or in such other manner as the eligible issuing officer who issued the covert search warrant may direct.
- (6) In this section:

**adjoining premises** does not include common property within the meaning of the *Strata Schemes Management Act 1996*.

**68 Announcement before entry** (cf *Search Warrants Act 1985*, s 15A)

- (1) One of the persons executing a warrant must, before any of the persons executing the warrant enters the premises:
  - (a) announce that the person is authorised by the warrant to enter the premises, and
  - (b) give any person then in or on the premises an opportunity to allow entry into or onto the premises.
- (2) A person executing a warrant is not required to comply with this section if the warrant is a covert search warrant or if the person believes on reasonable grounds that immediate entry is required to ensure the safety of any person or to ensure that the effective execution of the warrant is not frustrated.

**69 Duty to show warrant** (cf *Search Warrants Act 1985*, s 16)

A person executing a warrant other than a covert search warrant must produce the warrant for inspection by an occupier of the premises if requested to do so by that occupier.

**70 Use of force etc to enter and search premises** (cf *Search Warrants Act 1985*, s 17)

- (1) A person authorised to enter premises pursuant to a warrant may use such force as is reasonably necessary for the purpose of entering the premises.
- (1A) An executing officer authorised to enter premises pursuant to a warrant may, if it is reasonably necessary to do so for the purpose of entering those premises, do any of the following:
  - (a) disable any alarm, camera or surveillance device at the premises,
  - (b) pacify any guard dog at the premises.
- (2) A person authorised to search premises pursuant to a warrant may, if it is reasonably necessary to do so, break open any receptacle in or on the premises for the purposes of that search.
- (3) An executing officer authorised to search premises pursuant to a warrant may do anything that it is reasonably necessary to do for the purpose of preventing the loss or destruction of, or damage to, any thing connected with an offence that the executing officer believes on reasonable grounds to be at those premises, including by blocking any drains at or used in connection with the premises.
- (4) A person authorised to search premises pursuant to a warrant may do anything that it is reasonably necessary to do to render safe any dangerous article found in or on the

premises.

**71 Use of assistants to execute warrant** (cf [Search Warrants Act 1985](#), s 18)

A person may execute a warrant with the aid of such assistants as the person considers necessary.

**72 Execution of warrant by day or night** (cf [Search Warrants Act 1985](#), s 19)

(1A) A covert search warrant may be executed by day or by night.

- (1) A warrant (other than a covert search warrant) may be executed by day, but must not be executed by night unless the eligible issuing officer, by the warrant, authorises its execution by night.
- (2) An eligible issuing officer is not to authorise the execution of a warrant by night unless satisfied that there are reasonable grounds for doing so. Those grounds include (but are not limited to) the following:
  - (a) the execution of the warrant by day is unlikely to be successful because, for example, it is issued to search for a thing that is likely to be on the premises only at night or other relevant circumstances will only exist at night,
  - (b) there is likely to be less risk to the safety of any person if it is executed by night,
  - (c) an occupier is likely to be on the premises only at night to allow entry without the use of force.

(3) In this section:

**by day** means during the period between 6 am and 9 pm on any day.

**by night** means during the period between 9 pm on any day and 6 am on the following day.

**73 Expiry of warrant**

- (1) A warrant ceases to have effect, unless it is sooner withdrawn or extended, as follows:
  - (a) in the case of any warrant (other than a telephone warrant or crime scene warrant)—when it has been executed, or at the time specified in it for its expiry, whichever first occurs,
  - (b) in the case of a telephone warrant (other than a telephone crime scene warrant)—when it has been executed, or at the expiry of 24 hours after the time of its issue, whichever first occurs,
  - (c) in the case of a crime scene warrant (other than a telephone crime scene warrant)—at the time specified in it for its expiry,

- (d) in the case of a telephone crime scene warrant—at the expiry of 24 hours after the time of its issue.
- (2) An eligible issuing officer who issues a warrant (other than a telephone warrant) must specify in the warrant the time when the warrant is to expire.
- (2A) The time so specified for a covert search warrant is the date that is 10 days after the date on which the warrant is issued.
- (2B) The time so specified for a criminal organisation search warrant is the date that is 7 days after the date on which the warrant is issued.
- (3) The time so specified for a warrant other than a covert search warrant or a criminal organisation search warrant is to be 72 hours after the issue of the warrant or, if the issue of the warrant for a period exceeding 72 hours is permitted by this section, at any time within a further period not exceeding 72 hours.
- (4) The issue of a warrant for a period exceeding 72 hours is permitted by this section if:
  - (a) in the case of a warrant issued under Division 2 of Part 11—the eligible issuing officer is satisfied that the purpose for which the warrant was issued cannot be satisfied within 72 hours, or
  - (b) in any other case—the eligible issuing officer is satisfied that the warrant cannot be executed within 72 hours.
- (5) If no time of expiry is specified in a warrant (other than a telephone warrant, a covert search warrant or a criminal organisation search warrant), the warrant expires 72 hours after issue.
- (6) If no time of expiry is specified in a covert search warrant, the warrant expires 10 days after issue.
- (7) If no time of expiry is specified in a criminal organisation search warrant, the warrant expires 7 days after issue.

### **73A Extension of warrant**

- (1) A warrant (other than a covert search warrant, a criminal organisation search warrant or a telephone warrant) that expires 72 hours after its issue may be extended by the eligible issuing officer who issued the warrant:
  - (a) in the case of a warrant issued under Division 2 of Part 11—if the eligible issuing officer is satisfied that the purpose for which the warrant was issued cannot be satisfied within 72 hours, and
  - (b) in any other case—if the eligible issuing officer is satisfied that the warrant cannot be executed within 72 hours.



- (2) A telephone crime scene warrant may be extended, for up to 60 hours at a time, by the eligible issuing officer who issued the warrant.
- (3) Any other telephone warrant may not be extended.
- (4) The time for expiry of a warrant that can be extended (other than a telephone crime scene warrant) may be extended only once.
- (5) The time for expiry of a telephone crime scene warrant may be extended twice.
- (6) Any extension of a warrant under this section:
  - (a) must not extend the period for which the warrant has effect beyond 144 hours after its issue, except as provided by subsection (7), and
  - (b) must be made on the application of the person to whom the warrant was issued or any other person who is authorised to execute the warrant, and
  - (c) must be made on a written application made in person, unless it is impractical for the applicant to appear before an eligible issuing officer before the warrant expires, and
  - (d) must be made before the expiry of the warrant, and
  - (e) must be made by issuing a replacement warrant (specifying the new time for expiry of the warrant) and replacement occupier's notice.
- (7) A crime scene warrant may be extended so that it has effect for a period of up to 720 hours after its issue if:
  - (a) the offence in connection with which the warrant was issued is a terrorism offence, and
  - (b) the eligible issuing officer who issued the warrant is satisfied that there are reasonable grounds for extending the warrant beyond a period of 144 hours after its issue.

**Note—**

720 hours is equivalent to 30 days.

- (8) In this section:

**terrorism offence** means an offence under Part 6B of the *Crimes Act 1900* or an offence under Division 101, 102 or 103 of the *Criminal Code* of the Commonwealth.

**74 Report to eligible issuing officer on execution of warrant other than covert search warrant** (cf *Search Warrants Act 1985*, s 21)

- (1) The person to whom a warrant other than a covert search warrant is issued must

furnish a report in writing to the eligible issuing officer who issued the warrant:

- (a) stating whether or not the warrant was executed, and
  - (b) if the warrant was executed—setting out briefly the result of the execution of the warrant (including a brief description of anything seized), and
  - (c) if the warrant was not executed—setting out briefly the reasons why the warrant was not executed, and
  - (d) in the case of a search warrant—stating whether or not an occupier’s notice has been served in connection with the execution of the warrant, and
  - (e) in the case of a telephone warrant—containing a copy of the form of warrant and, in the case of a search warrant, the form of occupier’s notice if those documents were not furnished to the person, and
  - (f) containing such other particulars as may be prescribed by the regulations.
- (2) The report must be furnished within 10 days after the execution of the warrant or the expiry of the warrant, whichever first occurs.

**74A Report to eligible issuing officer on execution of covert search warrant**

- (1) An executing officer for a covert search warrant must provide a report in writing to the eligible issuing officer who issued the warrant:
- (a) stating the address or other description of the subject premises, and
  - (b) stating whether or not the warrant was executed, and
  - (c) if the warrant was executed:
    - (i) stating the date on which the warrant was executed, and
    - (ii) stating the name (or code-name) of the person in charge when the warrant was executed, and
    - (iii) stating the name (or code-name) of any person who entered the subject premises to assist in the execution of the warrant and the nature of the assistance provided, and
    - (iv) stating the powers that were exercised under the warrant, and
    - (v) setting out briefly the result of the execution of the warrant (including a brief description of anything seized, placed in substitution for a seized thing or examined and any data accessed under section 75B), and
  - (d) if the warrant was not executed—setting out briefly the reasons why the warrant was not executed, and

- (e) containing such other particulars as may be prescribed by the regulations.
- (2) The report must be provided within 10 days after the execution of the warrant or the expiry of the warrant, whichever first occurs.
- (3) If premises are entered for the purposes of returning or retrieving a thing under section 49A, a report must also be provided in writing to the eligible issuing officer who issued the warrant:
  - (a) stating the address or other description of the premises, and
  - (b) stating the date on which the premises were re-entered, and
  - (c) stating the name (or code-name) of any person who entered the premises for the purposes of the return or retrieval, and
  - (d) stating the name (or code-name) of any person who re-entered the subject premises to assist in the return or retrieval of the thing and the nature of the assistance provided, and
  - (e) setting out a brief description of the thing, and
  - (f) if the thing was not returned or retrieved—setting out the reasons why the thing was not returned or retrieved, and
  - (g) containing such other particulars as may be prescribed by the regulations.
- (4) The report is to be provided within 10 days after the entry to the premises for the purposes of retrieving or returning the thing under section 49A.
- (5) The Commissioner of Police, Commissioner for the New South Wales Crime Commission or Commissioner for the Police Integrity Commission is to ensure that a copy of any report provided under this section is given to the Attorney General.
- (6) A person may be referred to by a code-name in a report required under this section only if:
  - (a) the person who provides the report believes on reasonable grounds that use of the code-name is necessary to protect the safety of the person referred to, and
  - (b) a record of the person's actual name and reasons for use of the code-name is kept by the authority in which the person is employed.
- (7) If an executing officer for a covert search warrant has died or is absent the report may be provided by another person from the authority in which the executing officer was or is employed who is authorised to make an application for a covert search warrant.

**75 Death, absence of eligible issuing officer who issued warrant** (cf [Search Warrants Act](#))

1985, s 22, former LEPR, s 75)

If the eligible issuing officer who issued a warrant has died, has ceased to be an eligible issuing officer or is absent:

- (a) a report required to be provided to that eligible issuing officer under section 74 or 74A, or
- (b) a power exercisable by that eligible issuing officer under section 67 (5), 67A (1), 67B (4) and (5), 73 (4), 73A or 75A (2) or (4),

must be provided to, or may be exercised by, as the case may be, any other eligible issuing officer.

### **75A Operation of electronic and other equipment at premises and removal of things from premises for examination**

- (1) A person executing or assisting in the execution of a warrant to which this Division applies may:
  - (a) bring to the premises the subject of the warrant any electronic and other equipment reasonably necessary for the examination of a thing found at the premises, and
  - (b) operate any such equipment (or equipment already at those premises) to examine a thing found at the premises in order to determine whether it is or contains a thing that may be seized under the warrant, and
  - (c) move a thing found at the premises to another place (for up to 7 working days) for examination in order to determine whether it is or contains a thing that may be seized under the warrant if the occupier of the premises consents or if:
    - (i) it is significantly more practicable to do so having regard to the timeliness and cost of examining the thing at another place and the availability of expert assistance, and
    - (ii) there are reasonable grounds to suspect it is or contains a thing that may be seized under the warrant.
- (2) If a thing is moved to another place for examination under this section, an eligible issuing officer may authorise the removal of the thing for an additional period (not exceeding 7 working days at any one time) if satisfied that the additional period is required to determine whether it is or contains a thing that may be seized under the warrant.
- (3) The person executing the warrant must advise the occupier that the occupier may make submissions to the eligible issuing officer on the matter and is to give the occupier a reasonable opportunity to do so (except in the case of a covert search

warrant).

- (4) The eligible issuing officer may authorise the removal of a thing for a period exceeding a total of 28 days only if satisfied that it is justified on the basis that there are exceptional circumstances in the case.
- (5) The limitation imposed by this section on the period that a thing may be removed to another place ceases when it is determined that it is or contains a thing that may be seized under the warrant.
- (6) This section does not authorise the operation of equipment already at the premises the subject of the warrant to examine a thing unless the person operating the equipment has reasonable grounds to believe that the examination can be carried out without damaging the equipment or the thing.

**75B Access to and downloading of data from computers (including access to computers outside premises the subject of a warrant)**

- (1) The person executing or assisting in the execution of a warrant to which this Division applies may operate equipment at the premises the subject of the warrant to access data (including data held at premises other than the subject premises) if the person believes on reasonable grounds that the data might be data that could be seized under the warrant.

**Note—**

Under section 49, data may be seized under a warrant if connected with an offence. Section 46 (3) provides that a thing is connected with an offence if, for example, it will provide evidence of the commission of the offence.

- (2) The person executing or assisting in the execution of the warrant may:
  - (a) copy any accessed data to a disk, tape or other data storage device brought to the premises, and
  - (b) with the approval of the occupier of the premises, copy any accessed data to a disk, tape or other data storage device already at the premises, and
  - (c) take the disk, tape or other data storage device from the premises to examine the accessed data to determine whether it (or any part of it) is data that could be seized under the warrant.
- (3) The person executing or assisting in the execution of the warrant may operate the equipment to put any data that could be seized in documentary form and seize the document so produced.
- (4) The person executing or assisting in the execution of the warrant may seize the equipment and any disk, tape or other data storage device:
  - (a) if it is not practicable to exercise the powers referred to in subsection (2) or (3) in

relation to the data, or

(b) if possession by the occupier of the equipment or device could constitute an offence.

- (5) This section does not authorise the operation of equipment already at the premises the subject of the warrant to access data unless the person operating the equipment has reasonable grounds to believe that the equipment can be operated without damaging the equipment or the data.
- (6) The responsible officer for an authority must arrange for the removal of any data obtained by the exercise of a power referred to in this section by a member of the authority from any device under the control of the authority and the destruction of any other reproduction of the data in the control of the authority if the responsible officer is satisfied that the data is data that could not be seized under the warrant.
- (7) Subsection (6) does not require the destruction of court records.
- (8) In this section, **responsible officer for an authority** means the following:
- (a) in relation to data obtained by a police officer—the Commissioner of Police,
  - (b) in relation to data obtained by a member of staff of the Police Integrity Commission—the Commissioner for the Police Integrity Commission,
  - (c) in relation to data obtained by a member of staff of the New South Wales Crime Commission—the Commissioner for the New South Wales Crime Commission,
  - (d) in relation to data obtained in execution of a search warrant issued under a provision of an Act specified in Schedule 2—the person prescribed by the regulations.

**76 Defects in warrants** (cf [Search Warrants Act 1985](#), s 23)

A warrant is not invalidated by any defect, other than a defect that affects the substance of the warrant in a material particular.

## **Division 5 Miscellaneous**

### **76A Applications with respect to covert search warrants to be dealt with in absence of public**

Applications under this Part, and any matters arising under this Part, in respect of covert search warrants that are dealt with by an eligible issuing officer are to be dealt with in the absence of the public.

### **76B Publication of documents relating to search warrants**

- (1) A person must not intentionally or recklessly publish an application for a covert search

warrant, a report prepared under section 74 or 74A, an occupier's notice or any information directly derived from such an application, report or notice unless:

- (a) an occupier's notice that relates to the execution of the warrant has been given under section 67 or 67B, or
- (b) directions have been given in relation to the giving of the occupier's notice under section 67.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) This section does not make it an offence to publish any application, report, notice or information if the publication is for the purposes of:
  - (a) exercising any functions under this Part, or
  - (b) the internal management of the NSW Police Force, the New South Wales Crime Commission, the Police Integrity Commission, the Supreme Court or the Attorney General's Department.

**77 Abolition of common law search warrants** (cf [Search Warrants Act 1985](#), s 24)

Any common law power conferred on a justice of the peace or any other person to issue a warrant authorising a person to enter premises for the purpose of searching for stolen goods or any other thing continues to be abolished.

**78 Ministerial arrangements for things seized in connection with extra-territorial offences** (cf [Search Warrants Act 1985](#), s 24A)

- (1) In this section:

***appropriate authority*** means:

- (a) in relation to another State or a Territory (other than the Australian Capital Territory)—an authority exercising, in relation to the Police Force of that State or Territory, functions corresponding to those of the Commissioner in relation to the NSW Police Force, or
  - (b) in relation to the Australian Capital Territory—the Commissioner of the Australian Federal Police.
- (2) The Minister may enter into arrangements with a Minister of another State or a Territory under which:
    - (a) things seized under this Act that may be relevant to the investigation of an offence against the law of that other State or Territory:
      - (i) are to be transmitted to the appropriate authority in that State or Territory for the purposes of the investigation of, or proceedings in respect of, that offence, and

- (ii) when no longer required for the purposes of any such investigation or proceedings, are (unless disposed of by order or direction of a court or Magistrate) to be returned to the Commissioner of Police, and
- (b) things seized under the law of that other State or Territory that may be relevant to the investigation of an offence against the law of this State:
  - (i) are to be transmitted to the Commissioner of Police, and
  - (ii) when no longer required for the purposes of the investigation of an offence, or proceedings in respect of an offence, are (unless disposed of by order or direction of a court or Magistrate) to be returned to the appropriate authority in the State or Territory in which they were seized.
- (3) This section has effect despite Division 2 of Part 17.

**79 References in other Acts to “authorised justice” or “authorised officer”** (cf [Search Warrants Act 1985](#), s 24B)

A reference in any other Act to an authorised justice or authorised officer in relation to a warrant to which Division 4 applies is to be read as a reference to an eligible issuing officer within the meaning of paragraph (a) of the definition of **eligible issuing officer** in section 46 (1) of this Act.

**80 Application of warrant provisions** (cf [Search Warrants Act 1985](#), s 26)

- (1) The regulations may apply, to and in respect of search warrants issued under the [National Electricity \(NSW\) Law](#), such of the provisions of this Part and Parts 15 and 17 as are specified in the regulations and are not inconsistent with that Law.
- (2) The regulations may apply, to and in respect of search warrants issued under the [National Gas \(NSW\) Law](#), such of the provisions of this Part and Parts 15 and 17 as are specified in the regulations and are not inconsistent with that Law.

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

**Note—**

Safeguards relating to the exercise of powers under this Part are set out in Parts 15 and 17.

**81 Definitions**

In this Part:

**domestic violence offence** has the same meaning as in the [Crimes \(Domestic and Personal Violence\) Act 2007](#).

**occupier** of a dwelling means a person immediately entitled to possession of the



dwelling.

**82 Entry by invitation** (cf [Crimes Act 1900](#), s 357F)

- (1) A police officer who 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, in any dwelling may, if invited to do so by a person who apparently resides in the dwelling (whether or not the person is an adult) enter the dwelling and remain in the dwelling for any of the following purposes:
  - (a) to investigate whether a domestic violence offence has been committed,
  - (b) to take action to prevent the commission or further commission of a domestic violence offence.
- (2) However, a police officer may not enter or remain in a dwelling merely because of any such invitation if:
  - (a) authority to so enter or remain is expressly refused by an occupier of the dwelling, and
  - (b) the police officer is not otherwise authorised (whether under this or any other Act or law or subsection (3)) to so enter or remain.
- (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.
- (4) For the purposes of this section, a **victim of a domestic violence offence** 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.

**83 Entry by warrant where entry denied** (cf [Crimes Act 1900](#), s 357G)

- (1) A police officer may apply to an authorised officer for a warrant if the police officer:
  - (a) has been denied entry to a specified dwelling, and
  - (b) the police officer suspects that:
    - (i) a domestic violence offence is being, or may have been recently, committed, or is imminent, or is likely to be committed in the dwelling, and
    - (ii) it is necessary for a police officer to enter the dwelling immediately in order to investigate whether a domestic violence offence has been committed or to take action to prevent the commission or further commission of a domestic violence offence.

- (2) An authorised officer may, if satisfied that there are reasonable grounds for the police officer's suspicion, issue a warrant authorising any police officer:
- (a) to enter the dwelling, and
  - (b) to investigate whether a domestic violence offence has taken place or to take action to prevent the commission or further commission of a domestic violence offence, or both.

**Note—**

For provisions relating to applications for warrants, and other related matters, see section 59.

**84 Obstruction or hindrance of person executing warrant** (cf [Search Warrants Act 1985](#), s 9)

A person must not, without reasonable excuse, obstruct or hinder a person executing a warrant issued under this Part.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

**85 Powers that may be exercised on entry into premises** (cf [Crimes Act 1900](#), s 357H)

- (1) A police officer who enters a dwelling pursuant to a power conferred by or under this Part is to take only the action in the dwelling that is reasonably necessary:
- (a) to investigate whether a domestic violence offence has been committed, and
  - (b) to render aid to any person who appears to be injured, and
  - (c) to exercise any lawful power to arrest a person, and
  - (d) to prevent the commission or further commission of a domestic violence offence.
- (2) A police officer who so enters a dwelling must inquire as to the presence of any firearms in the dwelling and, if informed that there is or are a firearm or firearms, must take all such action as is reasonably practicable to search for and to seize and detain the firearm or firearms.
- (3) A police officer who so enters a dwelling is to remain in the dwelling only as long as is necessary to take the actions required or permitted by this Part.

**86 Police may enter and search for firearms** (cf [Crimes Act 1900](#), s 357I)

- (1) A police officer who, on an inquiry under section 85, is informed that there is no firearm in the dwelling but who believes on reasonable grounds that there is or are a firearm or firearms in the dwelling, must apply to an authorised officer for the issue of a search warrant.
- (2) A police officer who believes on reasonable grounds that:
- (a) a domestic violence offence is being, or may have been recently, committed, or is

imminent, or is likely to be committed, otherwise than in a dwelling, and

(b) any of the persons concerned may have a firearm in a dwelling,

must apply to an authorised officer for the issue of a search warrant.

(3) In addition to any other powers of an authorised officer under Part 5, an authorised officer who issues a search warrant that a police officer is required to apply for under this section may, in the warrant, authorise any police officer:

(a) to enter and search the dwelling concerned for firearms, and

(b) to seize and detain any firearms that may be found in the dwelling.

(4) This section does not apply to a police officer if the circumstances are such that the police officer has power to search and seize a dangerous article under another provision of this Act or another law.

### **87 Search and seizure powers** (cf *Crimes Act 1900*, s 357)

A police officer who enters a dwelling under a power conferred by or under this Act and who believes, on reasonable grounds, that:

(a) a dangerous article or dangerous implement (other than a laser pointer) is in the dwelling, and

(b) that the dangerous article or dangerous implement is being, or was, or may have been or may be used to commit a domestic violence offence,

may search the dwelling for the dangerous article or dangerous implement and seize and detain the dangerous article or dangerous implement.

## **Part 6A Emergency powers—public disorder**

### **Division 1 Preliminary**

#### **87A Definitions**

(1) In this Part:

**licensed premises** means premises licensed or required to be licensed under the *Liquor Act 2007* for the sale or supply of liquor.

**liquor** has the same meaning as in the *Liquor Act 2007*.

**mobile phone** includes any device that may be used, in whole or in part, for the purpose of sending or receiving voice or other data over a mobile telephone network, whether or not it may be used for any other purpose.

**public disorder** means a riot or other civil disturbance that gives rise to a serious

risk to public safety, whether at a single location or resulting from a series of incidents in the same or different locations.

**public place** includes a school.

**road** includes a road related area, and a part of a road or road related area.

- (2) For the purposes of this Part, controlling a public disorder includes containing or reducing the disorder or bringing the disorder to an end.
- (3) For the purposes of this Part:
  - (a) a person in an area that is the target of an authorisation under Division 3 includes a person who is about to enter the area or who has recently left the area, and
  - (b) a vehicle that is in an area the target of an authorisation under Division 3 includes a vehicle that is about to enter the area or that has recently left the area.

## **Division 2 Liquor restrictions**

### **87B Emergency prohibition on sale or supply of liquor**

- (1) A police officer of or above the rank of Superintendent may authorise the closure of any licensed premises, or the prohibition of the sale or supply of liquor on any licensed premises, if the police officer:
  - (a) has reasonable grounds for believing that there is a large-scale public disorder occurring in the vicinity of the licensed premises or there is a threat of such a disorder occurring in the near future, and
  - (b) is satisfied that the closure or prohibition will reasonably assist in preventing or controlling the public disorder.
- (2) The period that an authorisation relating to any licensed premises has effect must not exceed the period that the police officer giving the authorisation considers reasonably necessary for the purpose for which it is given, but must not in any case exceed 48 hours. The period that the authorisation has effect may be extended by the giving of a further authorisation, but only if the total period of the authorisation in relation to those premises does not exceed 48 hours.
- (3) Any police officer may, in accordance with an authorisation under subsection (1), direct any person who is apparently in charge of, or who is selling or supplying liquor on, licensed premises to close the premises or to cease selling or supplying liquor on those premises, as the case requires.
- (4) An authorisation under subsection (1) may be given orally or in writing and, if given orally, it must be confirmed by instrument in writing as soon as it is reasonably practicable to do so.

- (5) An authorisation under subsection (1) may be revoked at any time by a police officer of or above the rank of Superintendent if the police officer is satisfied that the authorisation is no longer necessary. The police officer is to give notice to a person apparently in charge of the licensed premises of the revocation of the authorisation.
- (6) A person to whom a direction is given under this section must comply with the direction.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

### **87C Emergency alcohol-free zones**

- (1) A police officer of or above the rank of Superintendent may, by instrument in writing, establish in an area within a public place an emergency alcohol-free zone if the police officer:
  - (a) has reasonable grounds for believing that there is a large-scale public disorder occurring in the vicinity of the area or there is a threat of such a disorder occurring in the near future, and
  - (b) is satisfied that the establishment of the zone will assist in preventing or controlling the public disorder.
- (2) The period for which an emergency alcohol-free zone may be established in any area must not exceed the period that the police officer establishing the zone considers reasonably necessary for the purpose for which it is established, but must not in any case exceed 48 hours. The period for which the zone is established may be extended by a further instrument, but only if the total period that the zone is established in the area does not exceed 48 hours.
- (3) A police officer who finds a person or group of persons drinking or in possession of liquor in an emergency alcohol-free zone may warn the person or group of persons that it is an offence to drink liquor in the zone and that any liquor in the possession of the person or persons may be confiscated unless it is immediately removed from the zone.
- (4) A person who has received a warning under subsection (3) in relation to an emergency alcohol-free zone, but who:
  - (a) commences to drink liquor in the zone, or
  - (b) fails to stop drinking liquor in the zone, or
  - (c) resumes drinking liquor in the zone,is guilty of an offence.

Maximum penalty: 20 penalty units.

- (5) An emergency alcohol-free zone may be established under this section in respect of an area that is an alcohol-free zone established under the [Local Government Act 1993](#). In that case, a person cannot be convicted of an offence under this section and that Act in respect of the same act or omission.
- (6) Any liquor in the immediate possession of a person in an emergency alcohol-free zone who is committing, or has just committed, an offence under this section, and any container in which the liquor is packaged, may be seized by a police officer.
- (7) Any liquor in the immediate possession of a person in an emergency alcohol-free zone who has received a warning under subsection (3), and any container in which the liquor is packaged, may also be seized by a police officer if:
  - (a) the person does not immediately remove the liquor from the zone, and
  - (b) the police officer is satisfied that the seizure of the liquor will assist in preventing or controlling the public disorder.
- (8) Any liquor (and any container) seized under this section is, by virtue of the seizure, forfeited to the State and may be disposed of in accordance with directions given by the Commissioner of Police.
- (9) The establishment of an emergency alcohol-free zone under this section may be revoked at any time by a police officer of or above the rank of Superintendent if the police officer is satisfied that it is no longer necessary.

### **Division 3 Special powers to prevent or control public disorders**

#### **87D Authorisation of special powers to prevent or control public disorder in public place**

- (1) An authorisation for the exercise in a public place of the special powers conferred by this Division may be given in accordance with this Division if the police officer giving the authorisation:
  - (a) has reasonable grounds for believing that there is a large-scale public disorder occurring or a threat of such a disorder occurring in the near future, and
  - (b) is satisfied that the exercise of those powers is reasonably necessary to prevent or control the public disorder.
- (2) In giving an authorisation, the police officer is to be satisfied that the nature and extent of the powers to be conferred by the authorisation are appropriate to the public disorder that is occurring or threatened.

#### **87E Target of authorisation**

- (1) An authorisation may authorise the exercise of the special powers conferred by this Division in a public place:

- (a) for the purpose of preventing or controlling a public disorder in a particular area described in the authorisation, or
- (b) for the purpose of preventing persons travelling by a road specified in the authorisation to an area to create or participate in a public disorder (whether or not the area is also subject to an authorisation under paragraph (a)).

(2) The area or road is referred to in this Division as the **target** of the authorisation.

#### **87F Giving of authorisation**

- (1) An authorisation may be given by the Commissioner of Police or by a Deputy or Assistant Commissioner of Police. The power conferred by this section cannot be delegated.
- (2) An authorisation may be given orally or by instrument in writing.
- (3) If the authorisation is given orally, it must be confirmed by instrument in writing as soon as it is reasonably practicable to do so.
- (4) An authorisation must:
  - (a) state that it is given under this Division, and
  - (b) describe the general nature of the public disorder or threatened public disorder to which it applies (including the day or days it occurs or is likely to occur), and
  - (c) describe the area or specify the road targeted by the authorisation, and
  - (d) specify the time it ceases to have effect.

#### **87G Duration and revocation of authorisation**

- (1) An authorisation has effect, unless sooner revoked, during the period beginning at the time it is given and ending at the time specified in the authorisation.
- (2) The period that an authorisation relating to any area or road has effect must not exceed the period that the police officer giving the authorisation considers reasonably necessary for the purpose for which it is given, but must not in any case exceed 48 hours.
- (3) The period that the authorisation has effect may be extended by the giving of a further authorisation, but only if:
  - (a) the total period of the authorisation in relation to the area or road does not exceed 48 hours, or
  - (b) the Supreme Court, on the application of the police officer proposing to give the further authorisation, determines that the police officer is entitled to give the

further authorisation.

- (4) The Commissioner of Police or a Deputy or Assistant Commissioner of Police may revoke an authorisation at any time, and must revoke it if directed to do so by order of the Supreme Court.
- (5) The cessation of an authorisation (by revocation or otherwise) does not affect anything lawfully done in reliance on the authorisation before it ceased to have effect.

#### **87H Exercise of special powers conferred by authorisation by police officers**

- (1) The special powers conferred by this Division may be exercised by any police officer in a public place for the purposes for which an authorisation is given under this Division.
- (2) A police officer may exercise those powers whether or not the officer has been provided with or notified of the terms of the authorisation.

#### **87I Power to place or establish cordon or roadblock**

- (1) A police officer may, for the purposes of stopping and searching persons or vehicles under this Division or preventing persons entering or leaving an area without the permission of a police officer:
  - (a) place a cordon around a target area or any part of it, or
  - (b) establish a roadblock on a target road (including any road in a target area).
- (2) A police officer must not refuse permission for a person to leave the area unless it is reasonably necessary to do so to avoid a risk to public safety or to the person's own safety.
- (3) A cordon or roadblock may consist of any appropriate form of physical barrier or obstruction preventing or limiting the passage of vehicles or persons.

#### **87J Power to stop and search vehicles**

- (1) A police officer may, without a warrant, stop and search a vehicle, and anything in or on the vehicle, if:
  - (a) the vehicle is in an area that is the target of an authorisation, or
  - (b) the vehicle is on a road that is the target of an authorisation.
- (2) A police officer may detain a vehicle for so long as is reasonably necessary to conduct a search under this section.

#### **87K Power to search persons**

- (1) A police officer may, without a warrant, stop and search a person, and anything in the possession of or under the control of the person, if:



- (a) the person is in an area that is the target of an authorisation, or
  - (b) the person is in or on a vehicle on a road that is the target of an authorisation.
- (2) Division 4 of Part 4 (except to the extent that it authorises strip searches) applies to the search of a person conducted under this section.
- (3) A police officer may detain a person for so long as is reasonably necessary to conduct a search under this section.

**87L Power to obtain disclosure of identity**

- (1) A police officer may request a person whose identity is unknown to the officer to disclose his or her identity if:
- (a) the person is in an area that is the target of an authorisation (whether or not in or on a vehicle), or
  - (b) the person is in or on a vehicle on a road that is the target of an authorisation, and the police officer reasonably suspects that the person has been involved or is likely to be involved in a public disorder.

- (2) A person who is so requested to disclose his or her identity must not, without reasonable excuse, fail or refuse to comply with the request.

Maximum penalty: 50 penalty units or 12 months imprisonment, or both.

- (3) A person must not, without reasonable excuse, in response to any such request:

- (a) give a name that is false in a material particular, or
- (b) give an address other than the person's full and correct address.

Maximum penalty: 50 penalty units or 12 months imprisonment, or both.

- (4) A police officer may request a person who is requested under this section to disclose his or her identity to provide proof of his or her identity.

**87M Power to seize and detain things**

- (1) A police officer may, in connection with a search under this Division:
- (a) seize and detain, for a period of not more than 7 days, a vehicle, mobile phone or other thing if the seizure and detention of the vehicle, phone or thing will assist in preventing or controlling a public disorder, or
  - (b) seize and detain all or part of a thing (including a vehicle) that the officer suspects on reasonable grounds may provide evidence of the commission of a serious indictable offence (whether or not related to a public disorder).

- (2) The Local Court may, on the application of a police officer, authorise the continued detention of a vehicle, mobile phone or other thing under subsection (1) (a) for an additional period not exceeding 14 days if satisfied that its continued detention will assist in preventing or controlling a public disorder. More than one extension of the detention may be authorised under this subsection, so long as each extension does not exceed 14 days.
- (3) A power conferred by this section to seize and detain a thing includes:
  - (a) a power to remove a thing from the place where it is found, and
  - (b) a power to guard the thing in or on the place where it is found.
- (4) The regulations may make provision for or with respect to the seizure, detention and return of vehicles, mobile phones or other things referred to in subsection (1) (a).

**87MA Power to disperse groups**

- (1) If a group of persons are assembled within an area that is the target of an authorisation, a police officer may give a direction to those persons, or to any of them, to disperse immediately.
- (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.
- (3) (Repealed)
- (4) A person must not, without reasonable excuse, refuse or fail to comply with a direction given in accordance with this section.

Maximum penalty: 50 penalty units.

- (5) A direction under this section is to be given orally and, if given to a group of persons, is to be given in such a manner as is likely to be audible to all persons in that group, or to as many of them as practicable.
- (6) If a direction under this section is given to a group of persons, it is not necessary for the police officer to repeat the direction, or to repeat the information and warning required to be given under section 201, to each person in the group.
- (7) However, just because the police officer is not required to repeat any such direction, information or warning does not in itself give rise to any presumption that each person in the group has received the direction, information or warning.

**87MB Powers exercisable where vehicle outside the target area of authorisation given under this Division**

- (1) This section applies where:

- (a) an authorisation has been given under this Division in connection with a public disorder, and
  - (b) a vehicle is on a road that is not (or not in an area) the target of the authorisation.
- (2) A police officer may exercise the powers conferred under this Division in relation to the vehicle (and any person or thing in or on the vehicle) without the authorisation extending to the vehicle if:
- (a) the officer suspects on reasonable grounds that the occupants of the vehicle have participated or intend to participate in the public disorder, and
  - (b) the officer is satisfied that the exercise of those powers is reasonably necessary to prevent or control the public disorder.
- (3) This section does not limit the operation of section 87A (3).
- (4) This section does not authorise a police officer to exercise the powers under section 87MA.

**87N Emergency exercise of powers**

- (1) If:
- (a) a police officer suspects on reasonable grounds that there is a large-scale public disorder occurring or a threat of such a disorder occurring in the near future, and
  - (b) the officer suspects on reasonable grounds that the occupants of a vehicle on a road have participated or intend to participate in the public disorder,
- the officer may exercise the powers conferred under this Division in relation to the vehicle (and any person or thing in or on the vehicle) without an authorisation having been given under this Division in connection with the public disorder or threatened public disorder.
- (2) Before exercising any such power, the officer must obtain approval to do so (orally or in writing) from a police officer of or above the rank of Inspector. Approval is not to be given unless the police officer is satisfied that the officer seeking to exercise the power has reasonable grounds for the suspicions referred to in subsection (1).
- (3) A police officer is to cease exercising powers under this section:
- (a) if the officer is notified that an application for an authorisation under this Division in connection with the public disorder or threatened disorder has been granted or refused, or
  - (b) if 3 hours has expired since approval was given for the exercise of those powers,
- whichever first occurs.

- (4) This section does not authorise a police officer to exercise the powers under section 87MA.

## **Division 4 Miscellaneous**

### **87O Report to Ombudsman on exercise of powers and monitoring by Ombudsman**

- (1) The Ombudsman is to keep under scrutiny the exercise of powers conferred on police officers under this Part.
- (2) For that purpose, the Ombudsman may require the Commissioner of Police or any public authority to provide information about the exercise of those powers.
- (3) The Commissioner of Police is to ensure that the Ombudsman is provided with a report on:
- (a) any authorisation given under Division 3 or approval given under section 87N, and
  - (b) the reasons for giving the authorisation or approval, and
  - (c) the powers used under the authorisation or approval.
- (4) The report is to be provided within 3 months after the authorisation or approval ceases to have effect.
- (5) The Ombudsman is to include, in the annual report of the Ombudsman's work and activities under section 30 of the *Ombudsman Act 1974* a report of the work and activities under this section.

**Note—**

Section 30 of that Act provides for the annual report to be tabled in Parliament.

### **87P (Repealed)**

## **Part 7 Crime scenes**

**Note—**

Safeguards relating to the exercise of powers under this Part are set out in Part 15.

### **88 Crime scene powers may be exercised if police officer lawfully on premises**

A police officer who is lawfully on premises (whether by authority of a crime scene warrant or for any other lawful reason) may:

- (a) establish a crime scene, and
- (b) exercise crime scene powers in accordance with this Part, and
- (c) stay on the premises for those purposes.

## **89 Application of Part to premises**

- (1) This Part applies to premises of any kind, whether or not a public place.
- (2) Despite any other provision of this Part, a police officer may exercise crime scene powers at a crime scene in a public place without obtaining a crime scene warrant and the provisions of this Part apply accordingly.
- (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:
  - (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
  - (b) the police officer is authorised to do so by a crime scene warrant or other lawful authority.

## **90 When crime scene may be established**

- (1) A crime scene may be established on premises by a police officer if the police officer suspects on reasonable grounds that:
  - (a) an offence committed in connection with a traffic accident that has resulted in the death of or serious injury to a person is being, or was, or may have been, committed on the premises and that it is reasonably necessary to establish a crime scene in or on the premises to preserve, or search for and gather, evidence of the commission of that offence, or
  - (b) a serious indictable offence is being, or was, or may have been, committed on the premises and it is reasonably necessary to establish a crime scene in or on the premises to preserve, or search for and gather, evidence of the commission of that offence, or
  - (c) there may be in or on the premises evidence of the commission of a serious indictable offence that may have been committed elsewhere and it is reasonably necessary to establish a crime scene in or on the premises to preserve, or search for and gather, evidence of the commission of that offence.
- (1A) A crime scene may also be established on premises by a police officer pursuant to the authority conferred by a crime scene warrant.
- (2) To avoid doubt, a crime scene may be established, crime scene powers may be exercised and a crime scene warrant applied for with respect to an act or omission that is a serious indictable offence even though the act or omission occurred outside New South Wales and was not an offence against the law of New South Wales, if the

act or omission if done, or omitted to be done, in New South Wales would constitute a serious indictable offence.

### **91 Establishment of crime scene**

- (1) A police officer may establish a crime scene on premises in any way that is reasonably appropriate in the circumstances.
- (2) A police officer who establishes a crime scene must, if reasonably appropriate in the circumstances, give the public notice that the premises are a crime scene.
- (3) A crime scene may not be established under this Part on the same premises more than once in a 24 hour period unless a crime scene warrant is obtained in respect of the second and any subsequent occasion.

### **92 Exercise of powers at crime scene**

- (1) A police officer may exercise any of the crime scene powers set out in section 95 (1) (a)–(f) if:
  - (a) a crime scene has been established under this Part, and
  - (b) the police officer exercising the power suspects on reasonable grounds that it is necessary to do so to preserve evidence of the commission of an offence in relation to which the crime scene was established.
- (2) A police officer may exercise any of the other powers set out in section 95 (1), but only if:
  - (a) a crime scene has been established under this Part, and
  - (b) the police officer or another police officer applies for a crime scene warrant in respect of the crime scene, and
  - (c) the police officer suspects on reasonable grounds that it is necessary to immediately exercise the power to preserve evidence of the commission of an offence.
- (3) A police officer may exercise the crime scene powers conferred by this section for a period of not more than 3 hours, commencing when the crime scene is established, unless the police officer or another police officer obtains a crime scene warrant.
- (4) A police officer may exercise crime scene powers in relation to a crime scene whether or not the police officer is the person who established the crime scene.
- (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 a scene of crime officer, but only with the authority of the police officer who established the crime scene or is responsible for the crime scene at the time.

- (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.

### **93 Notice to senior police officer where warrant not required**

If a crime scene is established for a period of 3 hours or less (otherwise than by authority of a crime scene warrant), the police officer who establishes the crime scene must notify a senior police officer of that fact.

### **94 Crime scene warrants**

- (1) A police officer may apply to an authorised officer for a crime scene warrant if the police officer suspects on reasonable grounds that it is necessary for the police officer or another police officer to exercise crime scene powers at specified premises for the purpose of preserving, or searching for and gathering, evidence of the commission of:
- (a) a serious indictable offence, or
  - (b) an offence that is being, or was, or may have been, committed in connection with a traffic accident that has resulted in the death of or serious injury to a person.
- (2) The authorised officer may, if satisfied that there are reasonable grounds for doing so, issue a crime scene warrant authorising any police officer to enter premises, to establish a crime scene on the premises (if a crime scene has not already been established) and to exercise all reasonably necessary crime scene powers at, or in relation to, a specified crime scene.
- (3) A police officer may, in accordance with the warrant and this Part, exercise all reasonably necessary crime scene powers.
- (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 a scene of crime officer, but only with the authority of a police officer who is responsible for executing the warrant.

#### **Note 1—**

For provisions relating generally to applications for crime scene warrants and other matters, see section 59.

#### **Note 2—**

A police officer may be assisted in the exercise of crime scene powers—see section 71.

### **95 Crime scene powers**

- (1) A police officer may, in accordance with this Part and any relevant crime scene warrant, exercise the following functions at, or in relation to, a crime scene established under this Part:

- (a) direct a person to leave the crime scene or remove a vehicle, vessel or aircraft from the crime scene,
  - (b) remove from the crime scene a person who fails to comply with a direction to leave the crime scene or a vehicle, vessel or aircraft a person fails to remove from the crime scene,
  - (c) direct a person not to enter the crime scene,
  - (d) prevent a person from entering the crime scene,
  - (e) prevent a person from removing evidence from or otherwise interfering with the crime scene or anything in it and, for that purpose, detain and search the person,
  - (f) remove or cause to be removed an obstruction from the crime scene,
  - (g) perform any necessary investigation, including, for example, search the crime scene and inspect anything in it to obtain evidence of the commission of an offence,
  - (h) for the purpose of performing any necessary investigation, conduct any examination or process,
  - (i) open anything at the crime scene that is locked,
  - (j) take electricity, gas or any other utility, for use at the crime scene,
  - (k) direct the occupier of the premises or a person apparently involved in the management or control of the premises to maintain a continuous supply of electricity at the premises,
  - (l) photograph or otherwise record the crime scene and anything in it,
  - (m) seize and detain all or part of a thing that might provide evidence of the commission of an offence,
  - (n) dig up anything at the crime scene,
  - (o) remove wall or ceiling linings or floors of a building, or panels of a vehicle,
  - (p) any other function reasonably necessary or incidental to a function conferred by this subsection.
- (2) The power conferred by this section to seize and detain a thing includes:
- (a) a power to remove the thing from the crime scene when it is found, and
  - (b) a power to guard the thing in or on the crime scene.
- (3) Nothing in this Part prevents a police officer who is lawfully on premises from



exercising a crime scene power or doing any other thing, if the occupier of the premises consents.

**Note—**

Under section 99 a police officer may arrest and take before an authorised officer to be dealt with according to law any person found in or on the premises whom the police officer suspects on reasonable grounds of having committed an offence.

**95A Special arrangements for investigation of stolen vehicles**

- (1) A scene of crime officer may establish a crime scene in relation to a vehicle in a public place if:
  - (a) a vehicle has been reported as stolen by an owner or authorised user of the vehicle, and
  - (b) the scene of crime officer suspects on reasonable grounds that the vehicle in relation to which the crime scene is to be established is that stolen vehicle.
- (2) Sections 91 and 93 apply in relation to a crime scene established by a scene of crime officer under this section in the same way as they apply to a crime scene established by a police officer.
- (3) A scene of crime officer may exercise any investigatory powers in relation to the vehicle at the crime scene established under this section, without a warrant, if the scene of crime officer suspects on reasonable grounds that it is reasonably necessary to exercise the investigatory powers to preserve, or search for and gather, evidence of the theft of the vehicle.
- (4) A scene of crime officer does not require the authority of a police officer to exercise investigatory powers under this section.
- (5) A scene of crime officer may exercise the investigatory powers conferred by this section for a period of not more than 3 hours, commencing when the crime scene is established, unless a police officer obtains a crime scene warrant in respect of the crime scene.
- (6) This section does not prevent a scene of crime officer from exercising any power, or doing any other thing, in relation to a vehicle if the owner or authorised user of the vehicle consents.
- (7) For the purposes of this section, **investigatory powers** are the crime scene powers referred to in section 95 (1) (g)–(j) and (l)–(o), including section 95 (1) (p) as it applies to those powers.

**96 Obstruction or hindrance of person executing crime scene warrant**

- (1) A person must not, without reasonable excuse, obstruct or hinder a person executing

a crime scene warrant.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

- (2) A person must not, without reasonable excuse, fail or refuse to comply with a request made or direction given by a police officer pursuant to the exercise of crime scene powers at a crime scene.

Maximum penalty: 10 penalty units.

### **97 Search warrants not affected**

Nothing in this Part prevents a police officer from applying for a search warrant under Part 5, or exercising any other function under this Act at, or in relation to, a crime scene or affects the exercise of any such function.

### **98 Part does not confer additional entry powers**

Nothing in this Part (other than the provisions relating to crime scene warrants) confers on a police officer any additional power to enter premises or limits any power that a police officer has to enter premises.

## **Part 8 Powers relating to arrest**

### **Note—**

- 1** A police officer also has the power, under section 50 of the *Bail Act 1978*, to arrest a person who breaches bail undertakings or agreements, or who the police officer believes on reasonable grounds is about to do so.
- 2** Safeguards relating to arrests by police officers, including the requirement to state the reason for an arrest, are set out in Part 15.

### **99 Power of police officers to arrest without warrant** (cf *Crimes Act 1900*, s 352, Cth Act, s 3W)

- (1) A police officer may, without a warrant, arrest a person if:
- (a) the police officer suspects on reasonable grounds that the person is committing or has committed an offence, and
  - (b) the police officer is satisfied that the arrest is reasonably necessary for any one or more of the following reasons:
    - (i) to stop the person committing or repeating the offence or committing another offence,
    - (ii) to stop the person fleeing from a police officer or from the location of the offence,
    - (iii) to enable inquiries to be made to establish the person's identity if it cannot be readily established or if the police officer suspects on reasonable grounds that identity information provided is false,

- (iv) to ensure that the person appears before a court in relation to the offence,
- (v) to obtain property in the possession of the person that is connected with the offence,
- (vi) to preserve evidence of the offence or prevent the fabrication of evidence,
- (vii) to prevent the harassment of, or interference with, any person who may give evidence in relation to the offence,
- (viii) to protect the safety or welfare of any person (including the person arrested),
- (ix) because of the nature and seriousness of the offence.

- (2) A police officer may also arrest a person without a warrant if directed to do so by another police officer. The other police officer is not to give such a direction unless the other officer may lawfully arrest the person without a warrant.
- (3) A police officer who arrests a person under this section must, as soon as is reasonably practicable, take the person before an authorised officer to be dealt with according to law.

**Note—**

The police officer may discontinue the arrest at any time and without taking the arrested person before an authorised officer—see section 105.

- (4) A person who has been lawfully arrested under this section may be detained by any police officer under Part 9 for the purpose of investigating whether the person committed the offence for which the person has been arrested and for any other purpose authorised by that Part.
- (5) This section does not authorise a person to be arrested for an offence for which the person has already been tried.
- (6) For the purposes of this section, property is connected with an offence if it is connected with the offence within the meaning of Part 5.

**100 Power of other persons to arrest without warrant** (cf [Crimes Act 1900](#), s 352)

- (1) A person (other than a police officer) may, without a warrant, arrest a person if:
  - (a) the person is in the act of committing an offence under any Act or statutory instrument, or
  - (b) the person has just committed any such offence, or
  - (c) the person has committed a serious indictable offence for which the person has not been tried.

- (2) A person who arrests another person under this section must, as soon as is reasonably practicable, take the person, and any property found on the person, before an authorised officer to be dealt with according to law.

**101 Power to arrest with warrant** (cf common law)

- (1) A police officer acting in accordance with a warrant issued under any Act or law may arrest or deal with the person named in the warrant in accordance with the warrant.
- (2) The police officer may take action whether or not the warrant is in his or her possession.

**102 Power to arrest persons who are unlawfully at large** (cf [Crimes Act 1900](#), s 352AA)

- (1) A police officer may, with or without a warrant, arrest a person if the police officer suspects on reasonable grounds that the person is a person who is unlawfully at large.
- (2) A police officer who arrests a person under this section must, as soon as is reasonably practicable, take the person, and any property found on the person, before an authorised officer to be dealt with according to law.
- (3) The authorised officer may, by warrant, commit the person to a correctional centre, to be kept in custody under the same authority, and subject to the same conditions and with the benefit of the same privileges and entitlements, as would have applied to the person if the person had not been unlawfully at large.
- (4) In this section, a reference to a person unlawfully at large is a reference to a person who is at large (otherwise than because of escaping from lawful custody) at a time when the person is required by law to be in custody in a correctional centre.

**Note—**

Inmates of correctional centres who are unlawfully at large may also be arrested under section 39 of the [Crimes \(Administration of Sentences\) Act 1999](#).

**103 Warrant for arrest of person unlawfully at large** (cf [Crimes Act 1900](#), s 352AA)

- (1) A police officer may apply to an authorised officer for a warrant for the arrest of a person if the police officer suspects on reasonable grounds that the person is a person who is unlawfully at large.
- (2) The authorised officer may issue the warrant if satisfied that there are reasonable grounds for doing so.
- (3) The regulations may make provision for or with respect to the form of, and other requirements relating to, a warrant issued under this section.

**104 Power to arrest for interstate offences** (cf *Crimes Act 1900*, s 352A)

- (1) This section applies to an offence (an **interstate offence**):
  - (a) that is an offence against the law of a State (other than New South Wales) or a Territory, and
  - (b) that consists of an act or omission that, if it occurred in New South Wales, would constitute an indictable offence or an offence punishable by imprisonment for 2 years or more.
- (2) A police officer may, at any hour of the day or night and without a warrant, arrest a person if the police officer suspects on reasonable grounds that the person has committed an interstate offence.
- (3) A court:
  - (a) may discharge the person, or
  - (b) may:
    - (i) commit the person to custody, or
    - (ii) grant bail,pending the execution under a law of the Commonwealth of a warrant for the person's arrest or the person's earlier release from bail, or discharge from custody, under this section.
- (4) Except as provided by this section, a person arrested under this section for an interstate offence has the same rights, and is to be dealt with in the same way, as a person arrested for a similar offence committed in New South Wales. In particular:
  - (a) Parts 4, 9, 10 and 15 apply in respect of the person, and
  - (b) the *Bail Act 1978*, and the *Justices Act 1902*, with all necessary modifications, apply in relation to the granting of bail to the person and in relation to court proceedings under this section.
- (5) If a person has been committed to custody under subsection (3) and a warrant for the person's arrest is subsequently presented for execution, the person must be delivered in accordance with the terms of the warrant to the custody of the person executing it.
- (6) If a person arrested under this section has been granted bail, and subsequently, but before the person has complied with his or her bail undertaking, a warrant for the person's arrest is executed under a law of the Commonwealth, the person is taken at the time the warrant is executed to be released from that bail and to have complied with any condition or undertaking in relation to that bail at that time outstanding, not being a condition or undertaking with which the person has by that time failed,

without lawful excuse, to comply.

(7) If a person arrested under this section has been granted bail or is in custody, the person may be released from bail or discharged from custody if a warrant for the person's arrest is not executed within a reasonable time (not exceeding 7 days) after the arrest.

(8) In this section:

**court** means:

(a) the Court of Criminal Appeal, the Supreme Court, the Land and Environment Court, the Industrial Relations Commission, the District Court or the Local Court, or

(b) any other court that, or person who, exercises criminal jurisdiction.

#### **104A Arrest by commander of aircraft**

(1) The person in command of an aircraft may, on board the aircraft, with such assistance as is necessary, arrest without warrant a person whom he or she finds committing or reasonably suspects of having committed, or of having attempted to commit, an offence on or in relation to, or affecting the use of, an aircraft and that person in command or a person authorised by him or her for the purpose may hold the person so arrested in custody until he or she can be brought before an authorised officer to be dealt with according to law.

(2) The person in command of an aircraft may, where he or she considers it necessary so to do in order to prevent an offence on or in relation to, or affecting the use of, the aircraft or to avoid danger to the safety of the aircraft or of persons on board the aircraft, with such assistance as he or she thinks necessary:

(a) place a person who is on board the aircraft under restraint or in custody, or

(b) if the aircraft is not in the course of a flight, remove a person from the aircraft.

#### **105 Arrest may be discontinued**

(1) A police officer may discontinue an arrest at any time.

(2) Without limiting subsection (1), a police officer may discontinue an arrest in any of the following circumstances:

(a) if the arrested person is no longer a suspect or the reason for the arrest no longer exists for any other reason,

(b) if it is more appropriate to deal with the matter in some other manner, including, for example, by issuing a warning or caution or a penalty notice or court attendance notice or, in the case of a child, dealing with the matter under the [Young Offenders Act 1997](#).

- (3) A police officer may discontinue an arrest despite any obligation under this Part to take the arrested person before an authorised officer to be dealt with according to law.

#### **106 Person helping in covert operations not under arrest**

- (1) This section applies to covert investigations conducted by a police officer into whether a person other than a person who is in custody following an arrest has been involved in the commission of an offence or suspected offence.
- (2) For the purposes of this Part, if the person in custody following an arrest agrees voluntarily to take part in the covert investigation, the person ceases to be under arrest for the offence.
- (3) However, subsection (2) does not prevent the person from being rearrested for the offence.

#### **107 Part does not affect alternatives to arrest**

- (1) Nothing in this Part affects the power of a police officer to commence proceedings for an offence against a person otherwise than by arresting the person.
- (2) Nothing in this Part affects the power of a police officer to issue a warning or a caution or a penalty notice to a person.

#### **108 Part does not affect [Young Offenders Act 1997](#)**

Nothing in this Part requires a police officer to arrest a person under the age of 18 years if it is more appropriate to deal with the matter under the [Young Offenders Act 1997](#).

### **Part 8A Use of police in-car video equipment**

#### **108A Definitions**

- (1) In this Part:

**ICV equipment** means in-car video equipment, being equipment installed in a vehicle and capable of recording visual images and sound outside the vehicle (including by means of a microphone that is separate from the equipment and vehicle).

**police activities** means activities engaged in by a police officer while exercising any functions of a police officer.

**police vehicle** means a vehicle used or operated for the purposes of police activities.

**vehicle** includes a motorcycle or other cycle, and **driver** includes the rider of a motorcycle or other cycle.

- (2) A reference in this Part to the **driver** of a police vehicle includes, in the case of a

police vehicle that is not being driven, a reference to the police officer responsible for the use and operation of the vehicle as driver.

### **108B Police activities requiring use of ICV equipment**

For the purposes of this Part, the following police activities are ***police activities that require the use of ICV equipment***:

- (a) pursuing or otherwise following a vehicle with the intention of stopping or detaining the vehicle,
- (b) activities in relation to a vehicle that has been stopped or detained, or in relation to the driver or any occupant of the vehicle while in or about the vehicle (whether or not the vehicle was stopped or detained after being pursued or otherwise followed under paragraph (a)).

### **108C Mandatory use of ICV equipment**

- (1) If a police vehicle is equipped with ICV equipment, the driver of the vehicle must ensure that while the vehicle is being used in the course of police activities that require the use of ICV equipment:
  - (a) the ICV equipment is operated for the purpose of recording a view from the police vehicle of those activities, and
  - (b) a conversation between the police officer and the driver or any occupant of a vehicle stopped or detained in the course of those activities is recorded by means of the ICV equipment.
- (2) The authority conferred by this section to record a conversation (the ***primary conversation***) extends to authorise the recording of another conversation the recording of which is incidental to the recording of the primary conversation or that is inadvertently or unexpectedly recorded in the course of recording the primary conversation.
- (3) Any failure to operate ICV equipment or to record a conversation as required by this section:
  - (a) does not of itself limit or otherwise affect the admissibility of evidence of any matter concerning the police activities to which the failure related, and
  - (b) does not of itself result in any such evidence being evidence improperly or unlawfully obtained,

but this subsection does not otherwise affect the operation of any rules as to admissibility of evidence.



**108D Person to be informed that conversation will be recorded**

- (1) A police officer who records a conversation between the police officer and another person under this Part must inform the person (either immediately before recording of the conversation commences or as soon as practicable after recording has commenced) that the conversation will be recorded using police in-car video equipment.
- (2) This section does not apply to the recording of a conversation inadvertently or unexpectedly or incidentally to the recording of another conversation.
- (3) Recording of a conversation does not require the consent of the person and the authority conferred by this Part is not affected by any objection or refusal to consent by the person to the recording.

**108E Recording not authorised after arrest**

- (1) A conversation between a police officer and a person must not be recorded under this Part after the person has been arrested.
- (2) This section does not apply to the recording of a conversation inadvertently or unexpectedly or during the period between the person's arrest and the first reasonably practicable opportunity to discontinue recording of the conversation.
- (3) This section applies only to the recording of the sounds of a conversation. It does not apply to the recording of visual images of the conversation.

**108F Operation of [Surveillance Devices Act 2007](#)**

The recording of a conversation as authorised or required by this Part by means of ICV equipment does not constitute the use of a listening device for the purposes of the [Surveillance Devices Act 2007](#).

**108G ICV recordings to be kept for 2 years**

The Commissioner of Police must ensure that recordings made under this Part are kept for at least 2 years after they are made.

**108H Corrupt disclosure and use of ICV recordings**

- (1) For the purposes of sections 62 (Corrupt disclosure and use of personal information by public sector officials) and 63 (Offering to supply personal information that has been disclosed unlawfully) of the [Privacy and Personal Information Protection Act 1998](#), an ICV recording constitutes personal information about another person.
- (2) In this section:

**ICV recording** means any recording of visual images or sound made pursuant to this Part and includes a copy of such a recording and any part of any such recording or

copy.

**Note—**

This section ensures that the protections against corrupt disclosure and use of personal information under the [Privacy and Personal Information Protection Act 1998](#) will apply to ICV recordings. The maximum penalty for offences under those provisions is 100 penalty units or imprisonment for 2 years, or both.

## **Part 9 Investigations and questioning**

### **Division 1 Preliminary**

#### **109 Objects of Part** (cf [Crimes Act 1900](#), s 354)

The objects of this Part are:

- (a) to provide for the period of time that a person who is under arrest may be detained by a police officer to enable the investigation of the person's involvement in the commission of an offence, and
- (b) to authorise the detention of a person who is under arrest for such a period despite any requirement imposed by law to bring the person before a Magistrate or other authorised officer or court without delay or within a specified period, and
- (c) to provide for the rights of a person so detained.

#### **110 Definitions** (cf [Crimes Act 1900](#), s 355)

(1) In this Part:

**detention warrant** means a warrant issued under section 118.

**investigation period** means the period provided for by section 115.

**permanent Australian resident** means a person resident in Australia whose continued presence in Australia is not subject to any limitation as to time imposed by or in accordance with law.

(2) A reference in this Part to a person who is under arrest or a person who is arrested includes a reference to a person who is in the company of a police officer for the purpose of participating in an investigative procedure, if:

- (a) the police officer believes that there is sufficient evidence to establish that the person has committed an offence that is or is to be the subject of the investigation, or
- (b) the police officer would arrest the person if the person attempted to leave, or
- (c) the police officer has given the person reasonable grounds for believing that the person would not be allowed to leave if the person wished to do so.

- (3) A person is not taken to be under arrest because of subsection (2) merely because the police officer is exercising a power under a law to detain and search the person or to require the person to provide information or to answer questions.
- (4) For the purposes of this Part, a person ceases to be under arrest for an offence if the person is remanded in respect of the offence.

**111 Persons to whom Part applies** (cf *Crimes Act 1900*, s 356)

- (1) This Part applies to a person, including a person under the age of 18 years, who is under arrest by a police officer for an offence. It is immaterial whether the offence concerned was committed before or after the commencement of this Part or within or outside the State.
- (2) This Part does not apply to a person who is detained under Part 16.

**112 Modification of application of Part to certain persons** (cf *Crimes Act 1900*, s 356A)

- (1) The regulations may make provision for or with respect to the modification of the application of this Part to:
  - (a) persons under the age of 18 years, or
  - (b) Aboriginal persons or Torres Strait Islanders, or
  - (c) persons of non-English speaking background, or
  - (d) persons who have a disability (whether physical, intellectual or otherwise).
- (2) Without limiting subsection (1), the regulations may provide for an investigation period for a person or class of persons referred to in that subsection that is shorter than the period provided for by section 115.

**113 Effect of Part on other powers and duties** (cf *Crimes Act 1900*, s 356B)

- (1) **Existing powers relating to arrest and other matters** This Part does not:
  - (a) confer any power to arrest a person, or to detain a person who has not been lawfully arrested, or
  - (b) prevent a police officer from asking or causing a person to do a particular thing that the police officer is authorised by law to ask or cause the person to do (for example, the power to require a person to submit to a breath analysis under Division 2 of Part 2 of Schedule 3 to the *Road Transport Act 2013*), or
  - (c) independently confer power to carry out an investigative procedure.
- (2) **Certain evidentiary matters and rights not affected** Nothing in this Part affects:
  - (a) the operation of:

(i) the following provisions of the *Evidence Act 1995*:

section 84 (Exclusion of admissions influenced by violence and certain other conduct)

section 85 (Criminal proceedings: reliability of admissions by defendants)

section 90 (Discretion to exclude admissions)

section 138 (Exclusion of improperly or illegally obtained evidence)

section 139 (Cautioning of persons), or

(ii) any other provision of that Act, or

(b) any law that permits or requires a person to be present at the questioning of another person who is under arrest (for example, the presence of a parent at the questioning by a police officer of the parent's child), or

(c) the right of a person to refuse to participate in any questioning of the person or any other investigative procedure unless the person is required by law to do so, or

(d) the right of a person to leave police custody if the person is not under arrest, or

(e) the rights of a person under the *Bail Act 1978*.

## **Division 2 Investigation and questioning powers**

### **114 Detention after arrest for purposes of investigation** (cf *Crimes Act 1900*, s 356C)

(1) A police officer may in accordance with this section detain a person, who is under arrest, for the investigation period provided for by section 115.

(2) A police officer may so detain a person for the purpose of investigating whether the person committed the offence for which the person is arrested.

(3) If, while a person is so detained, the police officer forms a reasonable suspicion as to the person's involvement in the commission of any other offence, the police officer may also investigate the person's involvement in that other offence during the investigation period for the arrest. It is immaterial whether that other offence was committed before or after the commencement of this Part or within or outside the State.

(4) The person must be:

(a) released (whether unconditionally or on bail) within the investigation period, or

(b) brought before an authorised officer or court within that period, or, if it is not practicable to do so within that period, as soon as practicable after the end of that

period.

- (5) A requirement in another Part of this Act, the *Bail Act 1978* or any other relevant law that a person who is under arrest be taken before a Magistrate or other authorised officer or court, without delay, or within a specified period, is affected by this Part only to the extent that the extension of the period within which the person is to be brought before such a Magistrate or officer or court is authorised by this Part.
- (6) If a person is arrested more than once within any period of 48 hours, the investigation period for each arrest, other than the first, is reduced by so much of any earlier investigation period or periods as occurred within that 48 hour period.
- (7) The investigation period for an arrest (the **earlier arrest**) is not to reduce the investigation period for a later arrest if the later arrest relates to an offence that the person is suspected of having committed after the person was released, or taken before a Magistrate or other authorised officer or court, in respect of the earlier arrest.

**115 Investigation period** (cf *Crimes Act 1900*, s 356D)

- (1) The investigation period is a period that begins when the person is arrested and ends at a time that is reasonable having regard to all the circumstances, but does not exceed the maximum investigation period.
- (2) The maximum investigation period is 4 hours or such longer period as the maximum investigation period may be extended to by a detention warrant.

**116 Determining reasonable time** (cf *Crimes Act 1900*, s 356E)

- (1) In determining what is a reasonable time for the purposes of section 115 (1), all the relevant circumstances of the particular case must be taken into account.
- (2) Without limiting the relevant circumstances that must be taken into account, the following circumstances (if relevant) are to be taken into account:
  - (a) the person's age, physical capacity and condition and mental capacity and condition,
  - (b) whether the presence of the person is necessary for the investigation,
  - (c) the number, seriousness and complexity of the offences under investigation,
  - (d) whether the person has indicated a willingness to make a statement or to answer any questions,
  - (e) the time taken for police officers connected with the investigation (other than police officers whose particular knowledge of the investigation, or whose particular skills, are necessary to the investigation) to attend at the place where the person is being detained,

- (f) whether a police officer reasonably requires time to prepare for any questioning of the person,
  - (g) the time required for facilities for conducting investigative procedures in which the person is to participate (other than facilities for complying with section 281 of the *Criminal Procedure Act 1986*) to become available,
  - (h) the number and availability of other persons who need to be questioned or from whom statements need to be obtained,
  - (i) the need to visit the place where any offence concerned is believed to have been committed or any other place reasonably connected with the investigation of any such offence,
  - (j) the time during which the person is in the company of a police officer before and after the person is arrested,
  - (k) the time taken to complete any searches or other investigative procedures that are reasonably necessary to the investigation (including any search of the person or any other investigative procedure in which the person is to participate),
  - (l) the time required to carry out any other activity that is reasonably necessary for the proper conduct of the investigation.
- (3) In any criminal proceedings in which the reasonableness of any period of time that a person was detained under this Part is at issue, the burden lies on the prosecution to prove on the balance of probabilities that the period of time was reasonable.

**117 Certain times to be disregarded in calculating investigation period** (cf *Crimes Act 1900*, s 356F)

- (1) The following times (to the extent that those times are times during which any investigative procedure in which a person who is detained under this Part is to participate is reasonably suspended or deferred) are not to be taken into account in determining how much of an investigation period has elapsed:
- (a) any time that is reasonably required to convey the person from the place where the person is arrested to the nearest premises where facilities are available for conducting investigative procedures in which the person is to participate,
  - (b) any time that is reasonably spent waiting for the arrival at the place where the person is being detained of police officers, or any other persons prescribed by the regulations, whose particular knowledge of the investigation, or whose particular skills, are necessary to the investigation,
  - (c) any time that is reasonably spent waiting for facilities for complying with section 281 of the *Criminal Procedure Act 1986* to become available,

- (d) any time that is required to allow the person (or someone else on the person's behalf) to communicate with a friend, relative, guardian, independent person, Australian legal practitioner or consular official,
  - (e) any time that is required to allow such a friend, relative, guardian, independent person, Australian legal practitioner or consular official to arrive at the place where the person is being detained,
  - (f) any time that is required to allow the person to consult at the place where the person is being detained with such a friend, relative, guardian, independent person, Australian legal practitioner or consular official,
  - (g) any time that is required to arrange for and to allow the person to receive medical attention,
  - (h) any time that is required to arrange for the services of an interpreter for the person and to allow the interpreter to arrive at the place where the person is being detained or become available by telephone for the person,
  - (i) any time that is reasonably required to allow for an identification parade to be arranged and conducted,
  - (j) any time that is required to allow the person to rest or receive refreshments or to give the person access to toilet and other facilities as referred to in section 130,
  - (k) any time that is required to allow the person to recover from the effects of intoxication due to alcohol or another drug or a combination of drugs,
  - (l) any time that is reasonably required to prepare, make and dispose of any application for a detention warrant or any application for a search warrant or crime scene warrant that relates to the investigation,
  - (m) any time that is reasonably required to carry out charging procedures in respect of the person,
  - (n) any time that is reasonably required to carry out a forensic procedure on the person under the *Crimes (Forensic Procedures) Act 2000*, or to prepare, make and dispose of an application for an order for the carrying out of such a procedure.
- (2) In any criminal proceedings in which the question of whether any particular time was a time that was not to be taken into account because of this section is at issue, the burden lies on the prosecution to prove on the balance of probabilities that the particular time was a time that was not to be taken into account.

**118 Detention warrant to extend investigation period** (cf *Crimes Act 1900*, s 356G)

- (1) A police officer may, before the end of the investigation period, apply to an authorised officer for a warrant to extend the maximum investigation period beyond 4 hours.

- (2) The person to whom an application for a detention warrant relates, or the person's legal representative, may make representations to the authorised officer about the application.
- (3) The authorised officer may issue a warrant that extends the maximum investigation period by up to 8 hours.
- (4) The maximum investigation period cannot be extended more than once.
- (5) An authorised officer must not issue a warrant to extend the maximum investigation period unless satisfied that:
  - (a) the investigation is being conducted diligently and without delay, and
  - (b) a further period of detention of the person to whom the application relates is reasonably necessary to complete the investigation, and
  - (c) there is no reasonable alternative means of completing the investigation otherwise than by the continued detention of the person, and
  - (d) circumstances exist in the matter that make it impracticable for the investigation to be completed within the 4-hour period.
- (6) As soon as reasonably practicable after a detention warrant is issued, the custody manager for the person to whom the warrant relates:
  - (a) must give the person a copy of the warrant, and
  - (b) must orally inform the person of the nature of the warrant and its effect.

### **119 Detention warrants**

- (1) An application for a detention warrant may be made by the applicant in person or by telephone.

**Note—**

For provisions relating generally to applications for detention warrants and other matters, see section 59.

- (2) In any criminal proceedings, the burden lies on the prosecution to prove on the balance of probabilities that the warrant was issued.
- (3) In the case of an application made for a detention warrant by telephone, the applicant for the warrant must, within one day after the day on which the warrant is issued, give or transmit to the authorised officer concerned an affidavit setting out the information on which the application was based that was given to the authorised officer when the application was made.

### **120 Information in application for detention warrant** (cf *Crimes Act 1900*, s 356I)

- (1) An authorised officer must not issue a detention warrant unless the application for the



warrant includes the following information:

- (a) the nature of any offence under investigation,
  - (b) the general nature of the evidence on which the person to whom the application relates was arrested,
  - (c) what investigation has taken place and what further investigation is proposed,
  - (d) the reasons for believing that the continued detention of the person is reasonably necessary to complete the investigation,
  - (e) the extent to which the person is co-operating in the investigation,
  - (f) if a previous application for the same, or substantially the same, warrant was refused, details of the previous application and of the refusal and any additional information required,
  - (g) any other information required by the regulations.
- (2) The applicant must provide (either orally or in writing) such further information as the authorised officer requires concerning the grounds on which the detention warrant is being sought.
- (3) Nothing in this section requires an applicant for a detention warrant to disclose the identity of a person from whom information was obtained if the applicant is satisfied that to do so might jeopardise the safety of any person.

**121 Detention after arrest for purposes of investigation may count towards sentence** (cf [Crimes Act 1900](#), s 356W)

In passing sentence on a person convicted of an offence, a court may take into account any period during which the person was detained under this Part in respect of the offence and may reduce the sentence it would otherwise have passed.

### **Division 3 Safeguards relating to persons in custody for questioning**

**122 Custody manager to caution, and give summary of Part to, detained person** (cf [Crimes Act 1900](#), s 356M)

- (1) As soon as practicable after a person who is detained under this Part (a **detained person**) comes into custody at a police station or other place of detention, the custody manager for the person must orally and in writing:
- (a) caution the person that the person does not have to say or do anything but that anything the person does say or do may be used in evidence, and
  - (b) give the person a summary of the provisions of this Part that is to include reference to the fact that the maximum investigation period may be extended

beyond 4 hours by application made to an authorised officer and that the person, or the person's legal representative, may make representations to the authorised officer about the application.

- (2) The giving of a caution does not affect a requirement of any law that a person answer questions put by, or do things required by, a police officer.
- (3) After being given the information referred to in subsection (1) orally and in writing, the person is to be requested to sign an acknowledgment that the information has been so given.

**123 Right to communicate with friend, relative, guardian or independent person and Australian legal practitioner** (cf *Crimes Act 1900*, s 356N)

- (1) Before any investigative procedure in which a detained person is to participate starts, the custody manager for the person must inform the person orally and in writing that he or she may:
  - (a) communicate, or attempt to communicate, with a friend, relative, guardian or independent person:
    - (i) to inform that person of the detained person's whereabouts, and
    - (ii) if the detained person wishes to do so, to ask the person communicated with to attend at the place where the person is being detained to enable the detained person to consult with the person communicated with, and
  - (b) communicate, or attempt to communicate, with an Australian legal practitioner of the person's choice and ask that Australian legal practitioner to do either or both of the following:
    - (i) attend at the place where the person is being detained to enable the person to consult with the Australian legal practitioner,
    - (ii) be present during any such investigative procedure.
- (2) If the person wishes to make any communication referred to in subsection (1), the custody manager must, as soon as practicable:
  - (a) give the person reasonable facilities to enable the person to do so, and
  - (b) allow the person to do so in circumstances in which, so far as is practicable, the communication will not be overheard.
- (3) The custody manager must defer for a reasonable period any investigative procedure in which the person is to participate:
  - (a) to allow the person to make, or attempt to make, a communication referred to in subsection (1), and

- (b) if the person has asked any person so communicated with to attend at the place where the person is being detained:
  - (i) to allow the person communicated with to arrive at that place, and
  - (ii) to allow the person to consult with the person communicated with at that place.
- (4) If the person has asked a friend, relative, guardian or independent person communicated with to attend at the place where the person is being detained, the custody manager must allow the person to consult with the friend, relative, guardian or independent person in private and must provide reasonable facilities for that consultation.
- (5) If the person has asked an Australian legal practitioner communicated with to attend at the place where the person is being detained, the custody manager must:
  - (a) allow the person to consult with the Australian legal practitioner in private and must provide reasonable facilities for that consultation, and
  - (b) if the person has so requested, allow the Australian legal practitioner to be present during any such investigative procedure and to give advice to the person.
- (6) Anything said by the Australian legal practitioner during any such investigative procedure is to be recorded and form part of the formal record of the investigation.
- (7) An investigative procedure is not required to be deferred under subsection (3) (b) (i) for more than 2 hours to allow a friend, relative, guardian, independent person or Australian legal practitioner that the person has communicated with to arrive at the place where the person is being detained.
- (8) An investigative procedure is not required to be deferred to allow the person to consult with a friend, relative, guardian, independent person or Australian legal practitioner who does not arrive at the place where the person is being detained within 2 hours after the person communicated with the friend, relative, guardian, independent person or Australian legal practitioner. This does not affect the requirement to allow an Australian legal practitioner to be present during an investigative procedure and to give advice to the person.
- (9) The duties of a custody manager under this section owed to a detained person who is not an Australian citizen or a permanent Australian resident are in addition to the duties of the custody manager owed to the person under section 124.
- (10) After being informed orally and in writing of his or her rights under this section, the person is to be requested to sign an acknowledgment that he or she has been so informed.

**124 Right of foreign national to communicate with consular official** (cf [Crimes Act 1900](#), s

356O)

- (1) This section applies to a detained person who is not an Australian citizen or a permanent Australian resident.
- (2) Before any investigative procedure in which a person to whom this section applies is to participate starts, the custody manager for the person must inform the person orally and in writing that he or she may:
  - (a) communicate, or attempt to communicate, with a consular official of the country of which the person is a citizen, and
  - (b) ask the consular official to attend at the place where the person is being detained to enable the person to consult with the consular official.
- (3) If the person wishes to communicate with such a consular official, the custody manager must, as soon as practicable:
  - (a) give the person reasonable facilities to enable the person to do so, and
  - (b) allow the person to do so in circumstances in which, so far as is practicable, the communication will not be overheard.
- (4) The custody manager must defer for a reasonable period any investigative procedure in which the person is to participate:
  - (a) to allow the person to make, or attempt to make, the communication referred to in subsection (2), and
  - (b) if the person has asked any consular official so communicated with to attend at the place where the person is being detained:
    - (i) to allow the consular official to arrive at that place, and
    - (ii) to allow the person to consult with the consular official.
- (5) If the person has asked a consular official communicated with to attend at the place where the person is being detained, the custody manager must allow the person to consult with the consular official in private and must provide reasonable facilities for that consultation.
- (6) An investigative procedure is not required to be deferred under subsection (4) (b) (i) for more than 2 hours to allow a consular official that the person has communicated with to arrive at the place where the person is being detained.
- (7) An investigative procedure is not required to be deferred to allow the person to consult with a consular official who does not arrive at the place where the person is being detained within 2 hours after the person communicated with the consular official.

- (8) After being informed orally and in writing of his or her rights under this section, the person is to be requested to sign an acknowledgment that he or she has been so informed.
- (9) This section does not apply if the custody manager did not know, and could not reasonably be expected to have known, that the person is not an Australian citizen or a permanent Australian resident.

**125 Circumstances in which certain requirements need not be complied with** (cf *Crimes Act 1900*, s 356P)

- (1) A requirement imposed on a custody manager under section 123 relating to a friend, relative, guardian or independent person need not be complied with if the custody manager believes on reasonable grounds that doing so is likely to result in:
  - (a) an accomplice of the detained person avoiding arrest, or
  - (b) the concealment, fabrication, destruction or loss of evidence or the intimidation of a witness, or
  - (c) hindering the recovery of any person or property concerned in the offence under investigation, or
  - (d) bodily injury being caused to any other person.
- (2) Further, in the case of a requirement that relates to the deferral of an investigative procedure, a requirement imposed on a custody manager under section 123 relating to a friend, relative, guardian or independent person need not be complied with if the custody manager believes on reasonable grounds that the investigation is so urgent, having regard to the safety of other persons, that the investigative procedure should not be deferred.

**126 Provision of information to friend, relative or guardian** (cf *Crimes Act 1900*, s 356Q)

- (1) The custody manager for a detained person must inform the person orally of any request for information as to the whereabouts of the person made by a person who claims to be a friend, relative or guardian of the detained person.
- (2) The custody manager must provide, or arrange for the provision of, that information to the person who made the request unless:
  - (a) the detained person does not agree to that information being provided, or
  - (b) the custody manager believes on reasonable grounds that the person requesting the information is not a friend, relative or guardian of the detained person, or
  - (c) the custody manager believes on reasonable grounds that doing so is likely to result in:

- (i) an accomplice of the detained person avoiding arrest, or
- (ii) the concealment, fabrication, destruction or loss of evidence or the intimidation of a witness, or
- (iii) hindering the recovery of any person or property concerned in the offence under investigation, or
- (iv) bodily injury being caused to any other person.

**127 Provision of information to certain other persons** (cf *Crimes Act 1900*, s 356R)

- (1) The custody manager for a detained person must inform the person orally of any request for information as to the whereabouts of the person made by a person who claims to be:
  - (a) an Australian legal practitioner representing the detained person, or
  - (b) in the case of a detained person who is not an Australian citizen or a permanent Australian resident, a consular official of the country of which the detained person is a citizen, or
  - (c) a person (other than a friend, relative or guardian of the detained person) who is in his or her professional capacity concerned with the welfare of the detained person.
- (2) The custody manager must provide, or arrange for the provision of, that information to the person who made the request unless:
  - (a) the detained person does not agree to that information being provided, or
  - (b) the custody manager believes on reasonable grounds that the person requesting the information is not the person who he or she claims to be.

**128 Provision of interpreter** (cf *Crimes Act 1900*, s 356S)

- (1) The custody manager for a detained person must arrange for an interpreter to be present for the person in connection with any investigative procedure in which the person is to participate if the custody manager has reasonable grounds for believing that the person is unable:
  - (a) because of inadequate knowledge of the English language, to communicate with reasonable fluency in English, or
  - (b) because of any disability, to communicate with reasonable fluency.
- (2) The custody manager must ensure that any such investigative procedure is deferred until the interpreter arrives.

- (3) However, the custody manager need not:
  - (a) arrange for an interpreter to be present if the custody manager believes on reasonable grounds that the difficulty of obtaining an interpreter makes compliance with the requirement not reasonably practicable, or
  - (b) defer any such investigative procedure if the custody manager believes on reasonable grounds that the urgency of the investigation, having regard to the safety of other persons, makes such deferral unreasonable.
- (4) If an interpreter is not available to be present for the person in connection with any investigative procedure in which the person is to participate, the custody manager must instead arrange for a telephone interpreter for the person.
- (5) The custody manager must ensure that any such investigative procedure is deferred until a telephone interpreter is available.
- (6) However, the custody manager need not:
  - (a) arrange for a telephone interpreter if the custody manager believes on reasonable grounds that the difficulty of obtaining such an interpreter makes compliance with the requirement not reasonably practicable, or
  - (b) defer any such investigative procedure if the custody manager believes on reasonable grounds that the urgency of the investigation, having regard to the safety of other persons, makes such deferral unreasonable.

**129 Right to medical attention** (cf [Crimes Act 1900](#), s 356T)

The custody manager for a detained person must arrange immediately for the person to receive medical attention if it appears to the custody manager that the person requires medical attention or the person requests it on grounds that appear reasonable to the custody manager.

**130 Right to reasonable refreshments and facilities** (cf [Crimes Act 1900](#), s 356U)

- (1) The custody manager for a detained person must ensure that the person is provided with reasonable refreshments and reasonable access to toilet facilities.
- (2) The custody manager for a detained person must ensure that the person is provided with facilities to wash, shower or bathe and (if appropriate) to shave if:
  - (a) it is reasonably practicable to provide access to such facilities, and
  - (b) the custody manager is satisfied that the investigation will not be hindered by providing the person with such facilities.

**131 Custody records to be maintained** (cf *Crimes Act 1900*, s 356V)

- (1) The custody manager for a detained person must open a custody record in the form prescribed by the regulations for the person.
- (2) The custody manager must record the following particulars in the custody record for the person:
  - (a) the date and time:
    - (i) the person arrived at the police station or other place where the custody manager is located, and
    - (ii) the person came into the custody manager's custody,
  - (b) the name and rank of the arresting officer and any accompanying officers,
  - (c) the grounds for the person's detention,
  - (d) details of any property taken from the person,
  - (e) if the person participates in any investigative procedure, the time the investigative procedure started and ended,
  - (f) details of any period of time that is not to be taken into account under section 117,
  - (g) if the person is denied any rights under this Part, the reason for the denial of those rights and the time when the person was denied those rights,
  - (h) the date and time of, and reason for, the transfer of the person to the custody of another police officer,
  - (i) details of any application for a detention warrant and the result of any such application,
  - (j) if a detention warrant is issued in respect of the person, the date and time a copy of the warrant was given to the person and the person was informed of the nature of the warrant and its effect,
  - (k) the date and time the person is released from detention,
  - (l) any other particulars prescribed by the regulations.
- (3) The custody manager is responsible for the accuracy and completeness of the custody record for the person and must ensure that the custody record (or a copy of it) accompanies the person if the person is transferred to another location for detention.
- (4) The recording of any matters referred to in this section must be made contemporaneously with the matter recorded in so far as it is practicable to do so.



- (5) As soon as practicable after the person is released or taken before a Magistrate or authorised officer or court, the custody manager must ensure that a copy of the person's custody record is given to the person.

## Division 4 Regulations

### 132 Regulations (cf *Crimes Act 1900*, s 356X)

The regulations may make provision for or with respect to the following:

- (a) guidelines to be observed by police officers regarding the exercise of functions conferred or imposed on police officers (including custody managers) by this Part,
- (b) police officers who may act as custody managers,
- (c) the keeping of records relating to persons who are detained under this Part, including the formal record of the conduct of investigative procedures in which such persons participate.

## Part 10 Other powers relating to persons in custody and to other offenders

### Note—

For searches of persons in custody, see Division 2 of Part 4.

## Division 1 Taking of identification particulars from persons in custody

### 133 Power to take identification particulars (cf *Crimes Act 1900*, s 353A)

- (1) A police officer may take or cause to be taken all particulars that are necessary to identify a person who is in lawful custody for any offence.
- (2) If the person is over the age of 14 years, the particulars may include the person's photograph, finger-prints and palm-prints.
- (3) This section does not authorise a police officer to take from any person, or to require any person to provide, any sample of the person's hair, blood, urine, saliva or other body tissue or body fluid.
- (4) Subsection (3) does not affect a police officer's power to take any such sample, or to require the provision of any such sample, for the purposes of, and in accordance with the requirements of, any other Act or law.

### Note—

See, for example, the powers conferred by the *Crimes (Forensic Procedures) Act 2000*.

### 134 Orders for the taking of identification particulars (cf *Crimes Act 1900*, s 353A)

- (1) A court that finds an offence to which this section applies to have been proven against

a person may order the person to present himself or herself in accordance with the terms of the order and submit to the taking, by the officer in charge of the police station specified in the order, of all particulars as are necessary to identify the person.

- (2) The particulars may include the person's photograph, finger-prints and palm-prints.
- (3) The order is to contain a warning to the person that a failure or refusal to comply may result in the person's arrest.
- (4) A person who does not present himself or herself in accordance with the terms of the order may, at the direction of the officer in charge of the police station, be arrested without a warrant and taken into custody for such time as is reasonably necessary for the taking of particulars in accordance with the order.
- (5) This section applies to the following offences:
  - (a) any indictable offence,
  - (b) an offence under section 117 of the *Road Transport Act 2013* (or a former corresponding provision within the meaning of that Act) of driving a motor vehicle on a road or road related area negligently occasioning death, negligently occasioning grievous bodily harm, furiously or recklessly or at a speed or in a manner that is dangerous to the public,
  - (c) an offence under any of the following provisions of the *Road Transport Act 2013* (or any former corresponding provisions within the meaning of that Act):
    - (i) section 110 (1), (2), (3) (a) or (b), (4) (a) or (b) or (5) (a) or (b),
    - (ii) section 112 (1) (a) or (b),
    - (iii) section 118,
    - (iv) section 146,
    - (v) clause 16 (1) (b) of Schedule 3,
    - (vi) clause 17 (1) or 18 (1) of Schedule 3,
  - (c1) an offence under section 5 or 6 of the *Prevention of Cruelty to Animals Act 1979*,
  - (d) an offence prescribed, or of a kind or description prescribed, by the regulations.

**135 Lawful custody of persons other than police officers** (cf *Crimes Act 1900*, s 353A)

- (1) A reference in this Division to lawful custody is a reference to lawful custody of the police or other authority.
- (2) If a person is in lawful custody in a place other than a police station, the powers under section 133 or 134 of a police officer may be exercised by the person in charge of the

place or by another person who is normally supervised by that person.

- (3) The consent of the person in lawful custody is not required for the doing of anything under section 133 or 134.

**136 Identification particulars of children under 14 years** (cf *Crimes Act 1900*, s 353AA)

- (1) This section applies to a child under the age of 14 years who is in lawful custody for an offence.
- (2) A person must not take a photograph or the finger-prints or palm-prints of a child except in accordance with this section. Nothing in this section, however, prevents the taking of any child's photograph, finger-prints or palm-prints in accordance with the order of a court under section 134.
- (3) A police officer of the rank of sergeant or above may, in respect of a child, apply:
- (a) to the Children's Court, or
  - (b) if it is not possible to apply to the Children's Court within 72 hours after the taking of the child into custody, to an authorised officer,
- for an order authorising, for the purpose only of identifying the child, the taking of the child's photograph, finger-prints and palm-prints.
- (4) The Children's Court or authorised officer may hear the application and may make the order sought in the application.
- (5) In determining whether to make the order, the Children's Court or authorised officer is to take into account the following:
- (a) the seriousness of the circumstances surrounding the offence,
  - (b) the best interests of the child,
  - (c) the child's ethnic and cultural origins,
  - (d) so far as they can be ascertained, any wishes of the child with respect to whether the order should be granted,
  - (e) any wishes expressed by the parent or guardian of the child with respect to whether the order should be granted.
- (6) A child must not be held in custody for the purpose only of an application being made under this section.

**137 Destruction of certain identification particulars relating to children** (cf *Crimes Act 1900*, s 353AB)

- (1) If a court finds an offence alleged against a child who has had the child's photograph,

finger-prints and palm-prints taken in accordance with this Part not proved, the court must cause to be served on:

- (a) the child, and
- (b) if practicable, the parents or guardian of the child, and
- (c) any other person who has the care of the child,

a notice stating that if the child or they so desires or desire, the court will order that the photograph, finger-prints and palm-prints, and any other prescribed records (other than the records of the court), relating to the alleged offence be destroyed and the court may make the order accordingly.

(2) In this section:

**prescribed records** means records of the kind prescribed for the purposes of section 38 (1) of the *Children (Criminal Proceedings) Act 1987*.

### **137A Destruction of finger-prints and palm-prints (adults and children)**

- (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.
- (2) For the purposes of this section, an offence is **not proven** if:
  - (a) the person is found not guilty or is acquitted of the offence, or
  - (b) the conviction of the person for the offence is quashed, and an acquittal is entered, on appeal, or
  - (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.
- (3) A request under this section is to be made by application in writing.
- (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.
- (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.
- (6) This section does not require the destruction of any court records.

- (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*.
- (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.

**137B Extension of period at the end of which finger-prints and palm-prints may be destroyed**

- (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.
- (2) An application for an extension may be made by a police officer or the Director of Public Prosecutions.
- (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.
- (4) A Magistrate to whom an application is made is not to grant an extension unless:
  - (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
  - (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.
- (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.
- (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).

**Division 2 Examination of persons in custody**

**138 Power to examine person in custody** (cf *Crimes Act 1900*, s 353A (2))

- (1) A medical practitioner acting at the request of a police officer of the rank of sergeant or above, and any person acting in good faith in aid of the medical practitioner and under his or her direction, may examine a person in lawful custody for the purpose of obtaining evidence as to the commission of an offence if:

- (a) the person in custody has been charged with an offence, and
  - (b) there are reasonable grounds for believing that an examination of the person may provide evidence as to the commission of the offence.
- (2) A reference in this section to lawful custody is a reference to lawful custody of the police or other authority.
- (3) If a person is in lawful custody in a place other than a police station, the powers under subsection (1) of a police officer may be exercised by the person in charge of the place or by another person who is normally supervised by that person.
- (4) The consent of the person in lawful custody is not required for the doing of anything under subsection (1).

### **Division 3 Taking of identification particulars from other offenders**

**Note—**

Sections 138A, 138B and 138C are transferred from Part 10 of the [Crimes Act 1900](#).

#### **138A Taking of finger-prints and palm-prints from persons issued penalty notices**

- (1) A police officer who serves a penalty notice on a person under the [Criminal Procedure Act 1986](#) may (whether before or after the penalty notice has been served) require the person to submit to having his or her finger-prints or palm-prints, or both, taken and may, with the person's consent, take the person's finger-prints or palm-prints, or both.
- (2) A requirement under this section must not be made of a person who is under the age of 18 years and any such person is not required to comply with a requirement under this section.
- (3) The Commissioner must ensure that a finger-print or palm-print taken under this section is destroyed:
- (a) on payment of the penalty under the penalty notice, or
  - (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
  - (c) if the penalty notice is withdrawn.

#### **138B Taking of finger-prints and palm-prints from persons required to attend court**

- (1) A police officer who serves a court attendance notice personally on a person who is not in lawful custody for an offence may require the person to submit to having his or her finger-prints or palm-prints, or both, taken and may, with the person's consent, take the person's finger-prints or palm-prints, or both.

- (2) A requirement under this section must not be made of a person who is under the age of 18 years and any such person is not required to comply with a requirement under this section.

**138C Safeguards for exercise of powers to obtain finger-prints and palm-prints without arrest**

- (1) A police officer must, at the time of exercising a power to require finger-prints or palm-prints, or both, to be taken under section 138A or 138B, provide the person subject to the exercise of the power with the following:
  - (a) evidence that the police officer is a police officer (unless the police officer is in uniform),
  - (b) the name of the police officer and his or her place of duty,
  - (c) the reason for the exercise of the power,
  - (d) a warning that, if the person fails to comply with the requirement, the person may be arrested for the offence concerned and that, while in custody, the person's finger-prints and palm-prints may be taken without the person's consent.
- (2) If 2 or more police officers are exercising a power, only one officer present is required to comply with this section.
- (3) However, if a person asks another police officer present for information as to the name of the police officer and his or her place of duty, the police officer must give to the person the information requested.

**Division 4 Testing of certain offenders for intoxication**

**138D Persons to whom Division applies and purpose of exercise of powers**

- (1) This Division applies to a person who has been arrested by a police officer:
  - (a) for an alleged offence under section 25A (2) of the *Crimes Act 1900*, or
  - (b) for any other offence that involves the assault of another person if the police officer believes that the person would be liable to be charged with an offence under section 25A (2) of the *Crimes Act 1900* if the other person dies.
- (2) A police officer may exercise the powers conferred by this Division for the purpose of confirming whether the person had consumed or taken alcohol, a drug or other intoxicating substance before the alleged offence and the likely amount consumed or taken.

**138E Definitions**

In this Division, ***breath test***, ***breath analysis*** and other words and expressions used in

this Division and in Schedule 3 to the [Road Transport Act 2013](#) have the same meanings as they have in that Schedule.

**138F Breath testing and breath analysis for presence of alcohol**

- (1) A police officer may require a person to whom this Division applies to undertake a breath test, either at or near the scene of the alleged offence or at a police station or other place at which the person is detained in connection with the alleged offence.
- (2) A police officer may require a person to whom this Division applies to undertake a breath analysis at a police station or other place at which the person is detained in connection with the alleged offence.
- (3) A breath test or breath analysis may only be required to be undertaken under this section within 2 hours after the commission of the alleged offence.
- (4) The following provisions of Schedule 3 to the [Road Transport Act 2013](#) apply in relation to a breath test or breath analysis under this section (with any necessary or prescribed modifications):
  - (a) the police officers authorised to carry out a breath analysis,
  - (b) the provision of a statement to the person undertaking the breath analysis as to the concentration of alcohol determined by the analysis,
  - (c) the issue of evidentiary certificates relating to the breath analysis,
  - (d) any other provisions prescribed by the regulations.
- (5) Evidence of the presence or concentration of any alcohol in an accused's breath as determined by a breath analysis carried out in accordance with this section may be used only in proceedings for an offence under section 25A (2) of the [Crimes Act 1900](#).

**138G Blood and urine samples for analysis for presence of alcohol or drugs**

- (1) A police officer may require a person to whom this Division applies to provide samples of the person's blood and urine (taken by an authorised sample taker) at a police station or other place at which the person is detained in connection with the alleged offence.
- (2) A blood or urine sample may only be required to be provided under this section if the person has refused to undertake (or cannot be required to undertake) a breath analysis pursuant to a requirement under section 138F or if the police officer has a reasonable belief that the person is under the influence of a substance other than alcohol. The person may also request that blood or urine samples be taken under this section if the person has undertaken such a breath analysis.
- (3) A blood or urine sample may only be required to be provided under this section within



4 hours after the commission of the alleged offence.

- (4) A person may be taken to and detained at a hospital for the purpose of the taking of a blood or urine sample required to be provided under this section.
- (5) The following provisions of Schedule 3 to the *Road Transport Act 2013* apply in relation to blood or urine samples taken under this section (with any necessary or prescribed modifications):
  - (a) the procedures for taking the blood or urine samples,
  - (b) the procedures for analysing the blood or urine samples (including the independent analysis of a portion of a blood or urine sample at the request of the person providing the sample),
  - (c) offences relating to sample handling and the use of samples,
  - (d) the issue of evidentiary certificates relating to the blood or urine samples and their analysis,
  - (e) the protection from liability of authorised sample takers in relation to the taking of blood or urine samples,
  - (f) any other provisions prescribed by the regulations.
- (6) Evidence of the presence or concentration of any alcohol, drug or other substance in an accused's blood or urine as determined by an analysis carried out in accordance with this section may be used only in proceedings for an offence under section 25A (2) of the *Crimes Act 1900*.

### **138H Offences relating to testing**

- (1) A person who refuses to provide a blood or urine sample pursuant to a requirement under section 138G is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.

- (2) It is a defence to a prosecution for an offence under subsection (1) if the person was unable on medical grounds to comply with the requirement.
- (3) A person who commits an offence under the provisions of Schedule 3 to the *Road Transport Act 2013* that are applied by this Division is taken to be guilty of an offence under this Division.

## Part 11 Drug detection powers

### Division 1 Drug premises

#### 139 Definitions (cf *Police Powers (Drug Premises) Act 2001*, s 3)

(1) In this Division:

**cultivation by enhanced indoor means**, in relation to a prohibited plant, has the same meaning as in the *Drug Misuse and Trafficking Act 1985*.

**drug premises** means any premises that are used for either or both of the following:

(a) the unlawful supply or manufacture of prohibited drugs,

(b) the unlawful cultivation of prohibited plants by enhanced indoor means.

**lookout**, in relation to premises, means a person who is in the vicinity of the premises for the purpose of communicating to any person on the premises to warn the person of impending police action.

**money** includes any valuable thing or security for money.

**occupier** of premises includes the lessee or sublessee who is not the owner of the premises.

**owner** of premises includes any person:

(a) who is entitled to freehold possession of the premises, or

(b) who is in actual receipt of, or entitled to receive, or if the premises were let to a tenant, would be entitled to receive, the rents and profits of the premises.

**prohibited drug** does not include cannabis leaf, cannabis oil or cannabis resin.

(2) A reference in this Division to an offence includes a reference to an offence that there are reasonable grounds for believing has been, is being, or is to be, committed (as the case requires).

(3) For the purposes of this Division, a thing is connected with a particular offence if it is:

(a) a thing with respect to which the offence has been committed, or

(b) a thing that will provide evidence of the commission of the offence, or

(c) a thing that was used, or is intended to be used, in or in connection with the commission of an offence.

#### 140 Issue of search warrant—suspected drug premises (cf *Police Powers (Drug Premises) Act*

2001, s 5)

- (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.
- (2) An authorised officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any police officer to enter and search the premises.

**141 Execution of search warrant** (cf *Police Powers (Drug Premises) Act 2001*, s 6)

For the purposes of executing a search warrant issued under this Division in respect of premises, a police officer may:

- (a) pass through, from, over or along any other land or building for the purpose of entering the premises, and
- (b) break open doors, windows or partitions, and
- (c) do such other acts as may be necessary.

**142 Search and arrest of persons pursuant to search warrant** (cf *Police Powers (Drug Premises) Act 2001*, s 7)

- (1) A police officer executing a search warrant issued under this Division may:
  - (a) search any person on the premises, and
  - (b) arrest or otherwise proceed against any person on the premises, and
  - (c) seize and detain any firearm or other thing found on the premises that the police officer has reasonable grounds for believing is connected with an offence, and
  - (d) without limiting paragraph (c), seize any prohibited drug, prohibited plant and money found on the premises and any syringe or other thing that is kept or used in connection with, or that relates to, any activity prohibited by or under the *Drug Misuse and Trafficking Act 1985*, and
  - (e) request any person on the premises to disclose his or her identity.
- (2) The power conferred by subsection (1) to seize and detain a thing includes:
  - (a) power to remove the thing from the premises where it is found, and
  - (b) power to guard the thing in or on those premises.

**143 Obstructing police officer executing search warrant** (cf *Police Powers (Drug Premises) Act*

2001, s 9)

- (1) If a police officer is authorised under this Division to enter any premises, a person must not:
  - (a) wilfully prevent the officer from entering or re-entering those premises or any part of those premises, or
  - (b) wilfully obstruct or delay the officer from entering or re-entering those premises or any part of those premises, or
  - (c) give an alarm or cause an alarm to be given for the purpose of:
    - (i) notifying another person of the presence of the officer, or
    - (ii) obstructing or delaying the officer from entering or re-entering those premises or any part of those premises.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) A person on premises who is requested by a police officer in accordance with this Division and section 201 to disclose his or her identity must not, without reasonable excuse, fail or refuse to comply with the request.

Maximum penalty: 50 penalty units.

- (3) A person must not, without reasonable excuse, in response to a request made by a police officer in accordance with this Division:
  - (a) give a name that is false in a material particular, or
  - (b) give an address other than the person's full and correct address.

Maximum penalty: 50 penalty units.

**144 Application of other laws** (cf *Police Powers (Drug Premises) Act 2001*, s 18)

This Division does not limit the operation of the *Disorderly Houses Act 1943* or any other law of the State relating to the entry into, and carrying out of searches on, premises.

## **Division 2 Use of drug detection dogs**

**145 Meaning of "general drug detection"** (cf *Police Powers (Drug Detection Dogs) Act 2001*, s 5)

For the purposes of this Division:

**general drug detection** is the detection of prohibited drugs or plants in the possession or control of a person, except during a search of a person that is carried out after a police officer reasonably suspects that the person is committing a drug offence.

**146 General authority to use drug detection dogs** (cf *Police Powers (Drug Detection Dogs) Act*

2001, s 4)

- (1) If a police officer is authorised to search a person for the purpose of detecting a drug offence, the officer is entitled to use a dog for that purpose.
- (2) A police officer is, for the purpose of detecting a drug offence, entitled to be accompanied by a dog under the officer's control if the officer is entitled to enter, or be in or on, particular premises in the exercise of the officer's functions.
- (3) Neither the State nor a police officer is liable to any action, liability, claim or demand merely because a dog entered, or was in or on, premises as provided by this section.

**147 Use of dogs for general drug detection authorised** (cf *Police Powers (Drug Detection Dogs) Act 2001*, s 6)

A police officer is authorised to use a dog to carry out general drug detection, but only as provided by this Division.

**148 General drug detection with dogs in authorised places** (cf *Police Powers (Drug Detection Dogs) Act 2001*, s 7)

- (1) A police officer may, without a warrant, use a dog to carry out general drug detection in relation to the following persons:
  - (a) persons at, or seeking to enter or leave, any part of premises being used for the consumption of liquor that is sold at the premises (other than any part of premises being used primarily as a restaurant or other dining place),
  - (b) persons at, or seeking to enter or leave, a public place at which a sporting event, concert or other artistic performance, dance party, parade or other entertainment is being held,
  - (c) persons on, or seeking to enter or leave, a public passenger vehicle that is travelling on a route prescribed by the regulations, or a station, platform or stopping place on any such route,
  - (d) persons at, or seeking to enter or leave, any part of premises that the officer is authorised to enter under the *Tattoo Parlours Act 2012* to carry out general drug detection using a dog,
  - (e) persons at any public place in the Kings Cross precinct (being the area including and bounded by the parts of streets specified in Schedule 2 to the *Liquor Act 2007*).
- (2) In this section:

**public passenger vehicle** means a train, light rail vehicle or bus that is used to provide a public passenger service.

- (3) A reference in this section to Schedule 2 to the *Liquor Act 2007* is a reference to that Schedule as in force on the commencement of this subsection.

**149 General drug detection with dogs by warrant** (cf *Police Powers (Drug Detection Dogs) Act 2001*, s 8)

- (1) A police officer may use a dog to carry out general drug detection if authorised to do so by a warrant under this section.
- (2) A police officer who has reasonable grounds for believing that the persons at any public place may include persons committing drug offences may apply to an authorised officer for a warrant under this section.
- (3) An authorised officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a warrant authorising any police officer to use a dog to carry out general drug detection in the public place during the period or periods specified in the warrant.
- (4) An application for a warrant under this section must disclose whether any general drug detection to be carried out under the warrant will be part of a covert police operation.

**150 Provisions relating to general drug detection** (cf *Police Powers (Drug Detection Dogs) Act 2001*, s 9)

- (1) A police officer carrying out general drug detection under this Division is to take all reasonable precautions to prevent the dog touching a person.
- (2) A police officer is required to keep a dog under control when the officer is using the dog to carry out general drug detection under this Division.
- (3) General drug detection under this Division may be carried out as part of a covert police operation, but only if it is authorised by a warrant under this Division.
- (4) The provisions of this Division do not affect:
- (a) the search of a person whom a police officer reasonably suspects is committing a drug offence, or
  - (b) any search of premises that does not involve a search of persons in or on the premises.
- (5) Nothing in this Division confers on a police officer a power:
- (a) to enter any premises that the officer is not otherwise authorised to enter, or
  - (b) to detain a person who the officer is not otherwise authorised to detain.

## Division 3

### 151-184 (Repealed)

## Part 12 Powers relating to vehicles and traffic

### Note—

See the [Road Transport Act 2013](#) for particular police powers relating to:

- (a) traffic accidents, speed measuring devices, forfeiture of prohibited speed measuring evasion articles, random breath testing and other testing and other traffic-related matters, and
- (b) production of driver licences and disclosure of identity, suspension of licences and seizure of motor vehicles.

## Division 1 Regulation of traffic

### 185 Police may give reasonable directions for traffic regulation

A police officer may give reasonable directions for the safe and efficient regulation of traffic to any person driving a motor vehicle or riding a motorcycle on or near a road or road related area.

### Note—

Rule 304 of the [Road Rules 2008](#) makes it an offence to fail to obey a reasonable direction for the safe and efficient regulation of traffic given to a person by a police officer.

### 186 Police may temporarily close road or road related area to traffic (cf [Road Transport \(Safety and Traffic Management\) Act 1999](#), s 74)

(1) A police officer may:

- (a) close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose, and
- (b) prevent the traffic of any vehicles, persons or animals in or on any road or road related area closed to traffic under paragraph (a) or under the authority of any other Act.

(2) A person must not, without reasonable excuse, fail or refuse to comply with any direction of a police officer given in pursuance of a power conferred by this section.

Maximum penalty: 20 penalty units.

## Division 2 Other police powers relating to vehicles

### 187 Use of tyre deflation devices (cf [Road Transport \(General\) Act 1999](#), s 51)

(1) The Commissioner may authorise the use by police officers of a device (a **tyre deflation device**) that causes the deflation of the tyres of a vehicle:

- (a) to enable police to stop or assist in the stopping of a vehicle in connection with

the pursuit of the vehicle by police, or

(b) to enable police to prevent the use of the vehicle by a person for the purpose of escaping from lawful custody or avoiding arrest.

(2) Provision made by or under an Act that would operate to prohibit or restrict the placement or deployment on or near a road or road related area of a tyre deflation device does not apply to the placing or deploying of a tyre deflation device by a police officer acting in the exercise of his or her duties.

**188 Power of entry for tracing stolen motor vehicles or trailers or their parts** (cf *Road Transport (General) Act 1999*, s 50)

(1) A police officer authorised to do so by the Commissioner may:

(a) enter, at any time, any premises or place on which the business of carrying out repairs, resulting from accidents, to damaged motor vehicles or trailers is ordinarily carried on, and

(b) inspect any motor vehicle or trailer (or part of a motor vehicle or trailer) that is found by the officer in or on those premises or that place for the purpose of ascertaining whether or not it is a stolen motor vehicle or trailer or part.

(2) A person must not wilfully delay or obstruct a police officer in the exercise of the authority conferred by subsection (1).

Maximum penalty: 20 penalty units.

### **Division 3 Powers to prevent intoxicated drivers from driving**

**189 Power to prevent driving by persons who are under the influence of alcohol or other drugs** (cf *Road Transport (Safety and Traffic Management) Act 1999*, s 30)

(1) If a police officer is of the opinion that a person who is driving (or about to drive) a motor vehicle is under the influence of alcohol or any other drug, or a combination of drugs, the police officer may:

(a) prohibit the person from driving the vehicle while the person is under the influence of alcohol or that other drug or a combination of drugs, and

(b) require the person to immediately hand over all ignition or other keys of the motor vehicle in the person's actual possession:

(i) to the police officer, or

(ii) to another person in the company of the person who the police officer is satisfied is responsible and capable of exercising proper control of the motor vehicle, and



- (c) take such other steps as, in the opinion of the police officer, are necessary in order:
  - (i) to immobilise the motor vehicle, or
  - (ii) to remove the motor vehicle to a place of safety and detain it at that place.
- (2) If the police officer is of the opinion that the person concerned is under the influence of alcohol, the person is entitled to request that the person undergo a breath test in order to determine whether or not the person is under the influence of alcohol. If such a request is made, the police officer may not take any action under subsection (1) until the person undergoes the breath test.
- (3) Despite subsection (2), a police officer may take action under subsection (1) if the police officer reasonably suspects that the person is likely to abscond before undergoing the breath test.
- (4) Subsection (1) does not authorise the confiscation of any keys, or the immobilisation, removal or detention of any motor vehicle, for any period that is longer than necessary in the circumstances and in the interest of the person driving (or about to drive) or of any other person or of the public.

**189A Power to prevent persons who are under the influence of alcohol or other drugs supervising learner drivers**

- (1) If a police officer is of the opinion that a person who was occupying a seat in a motor vehicle next to a holder of a learner licence while the holder of the learner licence was driving (or about to drive) the motor vehicle is under the influence of alcohol or any other drug, or a combination of drugs, the police officer may prohibit the person from occupying a seat in a motor vehicle next to a holder of a learner licence while the person is under the influence of alcohol or that other drug or a combination of drugs.
- (2) If the police officer is of the opinion that the person concerned is under the influence of alcohol, the person is entitled to request that the person undergo a breath test in order to determine whether or not the person is under the influence of alcohol. If such a request is made, the police officer may not take any action under subsection (1) until the person undergoes the breath test.
- (3) Despite subsection (2), a police officer may take action under subsection (1) if the police officer reasonably suspects that the person is likely to abscond before undergoing the breath test.

**189B Power to prevent driving by persons who have failed oral fluid test or refused or failed to undergo oral fluid test or refused to provide oral fluid sample**

- (1) A police officer may exercise the powers referred to in subsection (2) in respect of a person who is driving (or about to drive) a motor vehicle if the person has:

- (a) undergone an oral fluid test and the test has indicated that one or more prescribed illicit drugs may be present in the person's oral fluid, or
- (b) refused or failed to undergo an oral fluid test, or
- (c) refused or failed to provide an oral fluid sample in accordance with the directions of a police officer.

(2) A police officer may:

- (a) prohibit the person from driving a motor vehicle for a period of 24 hours, and
- (b) require the person to immediately hand over all ignition or other keys of the motor vehicle in the person's actual possession:
  - (i) to the police officer, or
  - (ii) to another person in the company of the person whom the police officer is satisfied is responsible and capable of exercising proper control of the motor vehicle, and
- (c) take such other steps as, in the opinion of the police officer, are necessary in order:
  - (i) to immobilise the motor vehicle, or
  - (ii) to remove the motor vehicle to a place of safety and detain it at that place.

(3) In this section:

**oral fluid test** has the same meaning as in Schedule 3 to the [Road Transport Act 2013](#).

**prescribed illicit drug** has the same meaning as in the [Road Transport Act 2013](#).

**189C Power to prevent persons who have failed oral fluid test or refused or failed to undergo oral fluid test or refused to provide oral fluid sample supervising learner drivers**

- (1) A police officer may exercise the power referred to in subsection (2) in respect of a person who was occupying a seat in a motor vehicle next to a holder of a learner licence while the holder of the learner licence was driving (or about to drive) the motor vehicle if the person has:
  - (a) undergone an oral fluid test and the test has indicated that one or more prescribed illicit drugs may be present in the person's oral fluid, or
  - (b) refused or failed to undergo an oral fluid test, or
  - (c) refused or failed to provide an oral fluid sample in accordance with the directions

of a police officer.

(2) A police officer may prohibit the person from occupying a seat in a motor vehicle next to a holder of a learner licence for a period of 24 hours.

(3) In this section:

**oral fluid test** has the same meaning as in Schedule 3 to the *Road Transport Act 2013*.

**prescribed illicit drug** has the same meaning as in the *Road Transport Act 2013*.

**190 Detention of keys or vehicles may be continued** (cf *Road Transport (Safety and Traffic Management) Act 1999*, s 30)

(1) It is lawful for a police officer to retain any keys that are confiscated under section 189 or 189B, or for any motor vehicle to be immobilised or detained under either of those sections, until such time as:

(a) the return of the keys or the motor vehicle is requested by:

(i) in relation to a power exercised by a police officer under section 189—any person, or

(ii) in relation to a power exercised by a police officer under section 189B—any person (other than the person referred to in section 189B (1)), and

(b) the police officer to whom the request is made:

(i) is satisfied that the person making the request is capable of exercising proper control of the motor vehicle, or

(ii) is informed by a medical practitioner (not being the person making the request) that the person making the request is not under the influence of alcohol or any other drug.

(2) However, the person making the request is entitled to possession of the keys or motor vehicle concerned only if the police officer is satisfied that the person is entitled to lawful possession of the motor vehicle.

(3) If the keys or motor vehicle are not returned within 24 hours after such a request is made, the person may apply to the Local Court for an order for the keys or motor vehicle to be returned to the person.

**191 Offence to contravene prohibition or requirement** (cf *Road Transport (Safety and Traffic Management) Act 1999*, s 30)

(1) A person must not:

(a) fail or refuse to comply with any prohibition or requirement made by a police

officer under this Division, or

- (b) attempt in any manner to obstruct a police officer in the exercise of any power conferred on the police officer under this Division.

Maximum penalty: 10 penalty units.

- (2) A court may find a person guilty of an offence under this section only if the court is satisfied that the police officer had reasonable grounds for believing that, in the circumstances, the action taken by the police officer was necessary in the interests of the person or of any other person or of the public.

**192 Expenses incurred in connection with Division** (cf [Road Transport \(Safety and Traffic Management\) Act 1999](#), s 30)

Any expenses incurred in connection with the immobilisation, removal or detention of a motor vehicle under this Division may be recovered from the person who was driving (or about to drive) the vehicle, or from the owner of the vehicle, as a debt in a court of competent jurisdiction.

## **Part 13 Use of dogs to detect firearms and explosives**

**193 Definitions** (cf [Firearms Act 1996](#), s 72A)

In this Part:

**general firearms or explosives detection** is the detection or tracking of firearms or explosives, including live or spent ammunition or any residue from a firearm or explosive, in a public place (including in any vehicle in a public place or in the possession of a person who is in a public place).

**relevant firearms or explosives offence** means an offence under the [Firearms Act 1996](#) or any other Act involving the possession or use of a firearm or explosive.

**194 Part does not confer power of entry or detention** (cf [Firearms Act 1996](#), s 72B)

Nothing in this Part confers on a police officer a power:

- (a) to enter any premises that the officer is not otherwise authorised to enter, or
- (b) to detain a person whom the officer is not otherwise authorised to detain.

**195 General authority to use dogs for detecting firearms or explosives** (cf [Firearms Act 1996](#), s 72C)

- (1) If a police officer is authorised to search a person for the purpose of detecting a relevant firearms or explosives offence, the officer is entitled to use a dog for that purpose.

- (2) A police officer is, for the purpose of detecting a relevant firearms or explosives offence, entitled to be accompanied by a dog under the officer's control if the officer is entitled to enter, or be in or on, particular premises in the exercise of the officer's functions.
- (3) Neither the State nor a police officer is liable to any action, liability, claim or demand merely because a dog entered, or was in or on, premises as provided by subsection (2).

**196 General firearms or explosives detection using dogs** (cf *Firearms Act 1996*, s 72D)

- (1) A police officer is authorised to use a dog to carry out general firearms or explosives detection without a warrant.
- (2) A police officer carrying out general firearms or explosives detection under this section is to take all reasonable precautions to prevent the dog touching a person.
- (3) A police officer is required to keep a dog under control when the officer is using the dog to carry out general firearms or explosives detection under this section.
- (4) The provisions of this section do not affect the search of a person whom a police officer reasonably suspects is committing a relevant firearms or explosives offence.

## Part 14 Powers to give directions

**Note—**

Safeguards relating to the exercise of the power to give a direction are set out in Part 15.

**197 Directions generally relating to public places** (cf *Summary Offences Act 1988*, s 28F)

- (1) A police officer may give a direction to a person in a public place if the police officer believes on reasonable grounds that the person's behaviour or presence in the place (referred to in this Part as **relevant conduct**):
  - (a) is obstructing another person or persons or traffic, or
  - (b) constitutes harassment or intimidation of another person or persons, or
  - (c) is causing or likely to cause fear to another person or persons, so long as the relevant conduct would be such as to cause fear to a person of reasonable firmness, or
  - (d) is for the purpose of unlawfully supplying, or intending to unlawfully supply, or soliciting another person or persons to unlawfully supply, any prohibited drug, or
  - (e) is for the purpose of obtaining, procuring or purchasing any prohibited drug that it would be unlawful for the person to possess.

- (2) A direction given by a police officer under this section must be reasonable in the circumstances for the purpose of:
  - (a) reducing or eliminating the obstruction, harassment, intimidation or fear, or
  - (b) stopping the supply, or soliciting to supply, of the prohibited drug, or
  - (c) stopping the obtaining, procuring or purchasing of the prohibited drug.
- (3) The other person or persons referred to in subsection (1) need not be in the public place but must be near that place at the time the relevant conduct is being engaged in.
- (4) For the purposes of subsection (1) (c), no person of reasonable firmness need actually be, or be likely to be, present at the scene.

### **198 Move on directions to intoxicated persons in public places**

- (1) A police officer may give a direction to an intoxicated person who is in a public place to leave the place and not return for a specified period if the police officer believes on reasonable grounds that the person's behaviour in the place as a result of the intoxication (referred to in this Part as **relevant conduct**):
  - (a) is likely to cause injury to any other person or persons, damage to property or otherwise give rise to a risk to public safety, or
  - (b) is disorderly.
- (2) A direction given by a police officer under this section must be reasonable in the circumstances for the purpose of:
  - (a) preventing injury or damage or reducing or eliminating a risk to public safety, or
  - (b) preventing the continuance of disorderly behaviour in a public place.
- (3) The period during which a person may be directed not to return to a public place is not to exceed 6 hours after the direction was given.
- (4) The other person or persons referred to in subsection (1) (a) need not be in the public place but must be near that place at the time the relevant conduct is being engaged in.
- (5) For the purposes of this section, a person is **intoxicated** if:
  - (a) the person's speech, balance, co-ordination or behaviour is noticeably affected, and
  - (b) it is reasonable in the circumstances to believe that the affected speech, balance, co-ordination or behaviour is the result of the consumption of alcohol or any drug.

### **198A Giving of directions to groups of persons**

- (1) A police officer may give a direction under this Part to persons comprising a group.
- (2) In any such case, the police officer is not required to repeat the direction, or to repeat the information and warning referred to in section 201, to each person in the group.
- (3) However, just because the police officer is not required to repeat any such direction, information or warning does not in itself give rise to any presumption that each person in the group has received the direction, information or warning.

### **199 Failure to comply with direction** (cf [Summary Offences Act 1988](#), s 28F)

- (1) A person must not, without reasonable excuse, refuse or fail to comply with a direction given in accordance with this Part.

Maximum penalty: 2 penalty units.

- (2) A person is not guilty of an offence under this section unless it is established that the person persisted, after the direction concerned was given, to engage in the relevant conduct or any other relevant conduct.

### **200 Limitation on exercise of police powers** (cf [Summary Offences Act 1988](#), s 28G)

This Part does not authorise a police officer to give directions in relation to:

- (a) an industrial dispute, or
- (b) an apparently genuine demonstration or protest, or
- (c) a procession, or
- (d) an organised assembly.

## **Part 15 Safeguards relating to powers**

### **Note—**

- 1 For safeguards relating to property seized or confiscated by police, see Part 17.
- 2 For other requirements relating to personal searches, see Part 4.

### **201 Supplying police officer's details and giving warnings** (cf [Crimes Act 1900](#), s 563, [Police Powers \(Vehicles\) Act 1998](#), s 6)

- (1) A police officer must provide the person subject to the exercise of a power referred to in subsection (3) with the following:
  - (a) evidence that the police officer is a police officer (unless the police officer is in uniform),
  - (b) the name of the police officer and his or her place of duty,

(c) the reason for the exercise of the power.

(d) (Repealed)

(2) A police officer must comply with subsection (1) in relation to a power referred to in subsection (3) (other than subsection (3) (g), (i) or (j)):

(a) if it is practicable to do so, before or at the time of exercising the power, or

(b) if it is not practicable to do so before or at that time, as soon as is reasonably practicable after exercising the power.

(2A) A police officer must comply with subsection (1) in relation to a power referred to in subsection (3) (g), (i) or (j) before exercising the power, except as otherwise provided by subsection (2B).

(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:

(a) if it is practicable to do so, before or at the time of exercising the power, or

(b) if it is not practicable to do so, as soon as is reasonably practicable after exercising the power.

(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:

(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

(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.

(2D) In addition, if a police officer exercises a power that involves the making of a direction under section 198 on the grounds that a person is intoxicated and disorderly in a public place, the police officer must provide the person the subject of the direction with a warning that it is an offence to be intoxicated and disorderly in that or any other public place at any time within 6 hours after the direction is given.

**Note—**

See section 9 of the [Summary Offences Act 1988](#).

(3) This section applies to the exercise of the following powers (whether or not conferred



by or under this Act):

- (a) a power to search or arrest a person,
- (b) a power to search a vehicle, vessel or aircraft,
- (c) a power to enter premises (not being a public place),
- (d) a power to search premises (not being a public place),
- (e) a power to seize any property,
- (f) a power to stop or detain a person (other than a power to detain a person under Part 16) or a vehicle, vessel or aircraft,
- (g) a power to request a person to disclose his or her identity or the identity of another person (including a power to require the removal of a face covering for identification purposes),
- (h) a power to establish a crime scene at premises (not being a public place),
- (i) a power to give a direction to a person,
- (j) a power under section 21A to request a person to open his or her mouth or shake or move his or her hair,
- (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.

(3AA) Despite subsection (3), this section does not apply to the exercise of a power to enter premises or to search premises or a vehicle, vessel or aircraft that is conferred by a covert search warrant.

(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.

(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.

(5) However, if a person asks another police officer present for information as to the name of the police officer and his or her place of duty, the police officer must give to the person the information requested.

(6) This section does not apply to the exercise of a power that is conferred by an Act or regulation specified in Schedule 1.

**Note—**

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.

## **202, 203 (Repealed)**

### **204 Detention period for search limited**

A police officer who detains a vehicle, vessel or aircraft for a search must not detain the vehicle, vessel or aircraft any longer than is reasonably necessary for the purpose.

## **Part 16 Powers relating to detention of intoxicated persons**

### **205 Definitions** (cf *Intoxicated Persons Act 1979*, s 3)

In this Part:

**authorised place of detention** means:

- (a) a police station, or
- (b) a detention centre within the meaning of the *Children (Detention Centres) Act 1987* approved for the time being by the Minister for the purposes of this Part as an authorised place of detention.

**detention officer** means a police officer, a correctional officer (within the meaning of the *Crimes (Administration of Sentences) Act 1999*) or a person in charge of or employed in a detention centre (within the meaning of the *Children (Detention Centres) Act 1987*).

**intoxicated person** means a person who appears to be seriously affected by alcohol or another drug or a combination of drugs.

**public place** includes a school.

**responsible person** includes any person who is capable of taking care of an intoxicated person including:

- (a) a friend or family member, or
- (b) an official or member of staff of a government or non-government organisation or facility providing welfare or alcohol or other drug rehabilitation services.

### **206 Detention of intoxicated persons** (cf *Intoxicated Persons Act 1979*, s 5)

- (1) A police officer may detain an intoxicated person found in a public place who is:
  - (a) behaving in a disorderly manner or in a manner likely to cause injury to the person or another person or damage to property, or
  - (b) in need of physical protection because the person is intoxicated.
- (2) A police officer is not to detain a person under this section because of behaviour that

constitutes an offence under any law.

(2A) However, a police officer may detain an intoxicated person under this section even if behaviour constitutes an offence under section 9 of the *Summary Offences Act 1988* if the detention is not for the purpose of taking proceedings for the offence.

**Note—**

Section 9 of the *Summary Offences Act 1988* makes it an offence for a person who is the subject of a move on direction to be intoxicated and disorderly in a public place. Part 8 of this Act would apply to a person who is arrested for such an offence and detained for the purpose of taking proceedings for the offence.

- (3) An intoxicated person detained by a police officer under this Part is to be taken to, and released into the care of, a responsible person willing immediately to undertake the care of the intoxicated person.
- (4) An intoxicated person detained by a police officer under this Part may be taken to and detained in an authorised place of detention if:
- (a) it is necessary to do so temporarily for the purpose of finding a responsible person willing to undertake the care of the intoxicated person, or
  - (b) a responsible person cannot be found to take care of the intoxicated person or the intoxicated person is not willing to be released into the care of a responsible person and it is impracticable to take the intoxicated person home, or
  - (c) the intoxicated person is behaving or is likely to behave so violently that a responsible person would not be capable of taking care of and controlling the intoxicated person.
- (5) An intoxicated person detained under this Part may be detained under such reasonable restraint as is necessary to protect the intoxicated person and other persons from injury and property from damage.
- (6) This section does not authorise a responsible person into whose care an intoxicated person is released to detain the intoxicated person.

**207 Detention of persons in authorised places of detention** (cf *Intoxicated Persons Act 1979*, s 5)

- (1) An intoxicated person who is detained in an authorised place of detention under this Part may be detained there by any detention officer.
- (2) An intoxicated person who is detained in an authorised place of detention under this Part:
- (a) must be given a reasonable opportunity by the person in charge of that place to contact a responsible person, and
  - (b) must, as far as is reasonably practicable, be kept separately from any person

detained at that place in connection with the commission or alleged commission of an offence, and

- (c) if the intoxicated person is apparently under the age of 18 years—must, as far as is reasonably practicable, be kept separately from any person over that age detained at that place, and
- (d) must not be detained in a cell at that place unless it is necessary to do so or unless it is impracticable to detain the person elsewhere at that place, and
- (e) must be provided with necessary food, drink, bedding and blankets appropriate to the person's needs, and
- (f) must be released as soon as the person ceases to be an intoxicated person.

**208 Searching detained persons** (cf *Intoxicated Persons Act 1979*, s 6)

- (1) A police officer or other detention officer by whom an intoxicated person is detained under this Part may search the intoxicated person and may take possession of any personal belongings found in the person's possession.
- (2) A person is entitled to the return of the personal belongings taken from the person under subsection (1) when the person ceases to be detained under this Part.

**209 Records**

- (1) A record, containing the particulars prescribed by the regulations, must be made by:
  - (a) any police officer who detains an intoxicated person under this Part and takes the person to an authorised place of detention, and
  - (b) the person in charge of an authorised place of detention where an intoxicated person is detained (or a person authorised to do so by that person in charge), and
  - (c) a person who, under this Part, searches a detained person.
- (2) A person who has custody of a record required to be made by this section must retain the record for a period of 3 years after it is made.
- (3) A person who has the custody of a record made under this section must, when required to do so by a person authorised by the Minister for the purposes of this subsection, make it available for inspection by that person.
- (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.

**210 Police officers and others not liable for certain acts or omissions** (cf *Intoxicated Persons*

[Act 1979](#), s 8)

No action lies against any police officer, any detention officer or any other person in respect of anything done or omitted to be done by the police officer, detention officer or any such other person in good faith in the execution or purported execution of this Part.

## **Part 16A Powers relating to fortified premises**

### **210A Definitions**

In this Part:

**fortification** means any security measure that involves a structure or device forming part of, or attached to, premises that:

- (a) is intended or designed to prevent or impede police access to the premises, or
- (b) has, or could have, the effect of preventing or impeding police access to the premises and is excessive for the particular type of premises.

**fortification removal order** has the meaning given by section 210B.

### **210B Fortification removal order**

- (1) The Local Court may, on application by the Commissioner, make an order (a **fortification removal order**) directing a person named in the order (being an owner or occupier of the premises) to remove or modify any fortifications at the premises, as specified in the order, within a period specified in the order.
- (2) The Local Court is to make a fortification removal order only if satisfied that there are fortifications at the premises concerned and that:
  - (a) the fortifications have been constructed or put in place in contravention of the [Environmental Planning and Assessment Act 1979](#), or
  - (b) there are reasonable grounds to believe that the premises are being used, have been used or are likely to be used:
    - (i) for or in connection with the commission of a serious indictable offence, or
    - (ii) to conceal evidence of a serious indictable offence, or
    - (iii) to keep the proceeds of a serious indictable offence.
- (3) A fortification removal order must state the general grounds on which the order is made.
- (4) If the owner or occupier required by a fortification removal order to remove or modify fortifications did not appear, or was not represented, before the Local Court on the making of the order, the Commissioner is to cause a copy of the order to be served:

- (a) personally on the owner or occupier named in the order, or
  - (b) if personal service cannot be effected promptly, by causing a copy of the order to be affixed to or near the entrance of the premises.
- (5) Part 4 of the *Local Court Act 2007* applies, subject to any modifications provided for by this Part or by the regulations, to proceedings for a fortification removal order under this Part.

**Note—**

Section 70 of the *Local Court Act 2007* provides for appeals in relation to matters dealt with under Part 4 of that Act.

**210C Application for fortification removal order**

- (1) An application for a fortification removal order is to be made by the Commissioner by issuing and filing an application notice in accordance with Part 4 of the *Local Court Act 2007*.
- (2) Despite section 49 of that Act, the application notice must be served:
  - (a) personally on the respondent, or
  - (b) if personal service cannot be effected promptly, by causing a copy of the application notice to be affixed to or near the entrance of the premises.
- (3) Section 51 of the *Local Court Act 2007* does not apply to proceedings for a fortification removal order.

**210D Enforcement of fortification removal order**

- (1) If the fortifications to which a fortification removal order applies are not removed or modified in accordance with a fortification removal order within the period required by the order or, if that period is extended or further extended by the Commissioner under this Part, within the extended period, the Commissioner may cause the fortifications to be removed or modified to the extent required by the order in accordance with this section.
- (2) For that purpose, the Commissioner, or any police officer authorised by the Commissioner, may do any one or more of the following:
  - (a) enter the premises without a warrant,
  - (b) use such force as is reasonably necessary for the purpose of entering the premises,
  - (c) make use of such assistants as the Commissioner or police officer considers necessary to remove or modify the fortifications,
  - (d) seize anything required to be removed for the purpose of complying with the

order,

(e) do anything else it is reasonably necessary to do to remove or modify the fortifications to the extent required by the order.

(3) The Commissioner may recover the costs incurred by the Commissioner under this section, as a debt in any court of competent jurisdiction, from any person who caused the fortifications to be constructed or put in place.

(4) Before premises are first entered under this section, the Commissioner must cause a notice to be prepared that:

(a) contains a summary of the fortification removal order, and

(b) specifies the intention of the Commissioner to enter, or to authorise entry, to the premises to cause the fortifications to be removed or modified in accordance with the order on or from a date specified in the order (***the enforcement date***).

(5) A copy of the notice must be served, not less than 7 days before the enforcement date:

(a) personally on the occupier of the premises, or

(b) if personal service cannot be effected promptly, by causing a copy of the notice to be affixed to or near the entrance to the premises.

#### **210E Hindering removal or modification of fortifications**

(1) A person must not do anything with the intention of preventing, obstructing or hindering the removal or modification of fortifications in accordance with a fortification removal order.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

(2) Subsection (1) applies to the removal or modification of fortifications by a person who is, or is acting for or on the instructions of, an owner or occupier of the premises, or a person who is acting under section 210D.

#### **210F Liability for damage**

(1) No action lies against the Crown or any person for damage to property resulting from the enforcement of a fortification removal order.

(2) However, an owner of premises may recover the reasonable costs associated with repair or replacement of property damaged as a result of creation of fortifications or enforcement of a fortification removal order as a debt from any person who caused the fortifications to be constructed or put in place.

### **210G Extension of order**

The Commissioner may extend or further extend the period for compliance with a fortification removal order if, before the end of the period allowed for compliance with the order, an application is made by the owner or occupier of the premises specified in the order for an extension.

### **210H Withdrawal of order**

- (1) If the Commissioner decides that a fortification removal order will not be enforced, the Commissioner is to lodge a notice (a ***withdrawal notice***) with the court that made the fortification removal order that:
  - (a) identifies the fortification removal order and the premises to which it relates, and
  - (b) states that the Commissioner has decided the fortification removal order will not be enforced.
- (2) The fortification removal order ceases to have effect when the withdrawal notice is lodged with the court.
- (3) A copy of the withdrawal notice is to be served:
  - (a) personally on the owner or occupier named in the fortification removal order, or
  - (b) if personal service cannot be effected promptly, by causing a copy of the withdrawal notice to be affixed to or near the entrance of the premises.

### **210I Application of planning controls**

A consent or approval under the [Environmental Planning and Assessment Act 1979](#) is not required to carry out any work required to be carried out to comply with or enforce a fortification removal order.

### **210J Delegation**

The Commissioner may delegate a function conferred on the Commissioner by this Part, other than this power of delegation, to a Deputy Commissioner of Police or an Assistant Commissioner of Police.

## **Part 17 Property in police custody**

### **Division 1 Confiscated knives and other dangerous articles and implements**

#### **211 Application of Division** (cf [Summary Offences Act 1988](#), s 28B)

- (1) This Division applies to the following:
  - (a) a dangerous article seized under this Act,



- (b) a dangerous implement seized or confiscated under this Act,
- (c) an explosive, explosive precursor or dangerous good to which section 31 of the *Explosives Act 2003* applies that is seized under Division 1 of Part 4 of this Act.

(2) If provision is made by or under any other Act for the seizure or confiscation of a dangerous article or a dangerous implement to which this Division applies, the article or implement is to be dealt with as so provided and the provisions of this Division do not apply to the confiscation.

**212 Application for return of seized dangerous articles or confiscated dangerous implements** (cf *Summary Offences Act 1988*, s 28C)

- (1) The person from whom a dangerous article or dangerous implement is seized or confiscated or its owner may, within 28 days after it is seized or confiscated, apply to the Local Area Commander of Police in the area in which it was seized or confiscated for its return.
- (2) An application for the return of the article or implement must be in writing and state why the article or implement should in all the circumstances be returned.
- (3) If the person seeking the return of the article or implement is under the age of 18 years, the application for its return may be made only by a parent or guardian of the person, or a person who has lawful care or custody of the person, on his or her behalf.
- (4) The Local Area Commander is not required to return an article or implement if:
  - (a) proceedings have been commenced against the person in respect of the article or implement and the proceedings have not been withdrawn or finally determined by the person's having been found not guilty of the offence, or
  - (b) the person making the application, or on whose behalf an application is made, is the subject of a firearms prohibition order under the *Firearms Act 1996*, or
  - (c) possession of the article or implement would otherwise constitute an offence.

**213 Appeals to Local Court against refusals to return seized or confiscated dangerous articles or dangerous implements** (cf *Summary Offences Act 1988*, s 28D)

- (1) If the Local Area Commander of Police fails or refuses to return a seized or confiscated dangerous article or dangerous implement at the expiration of 28 days after it is seized or confiscated to a person who has made an application for its return under this Division, the person may appeal against the failure or refusal to the Local Court within a further 28 days.
- (2) On hearing such an appeal, the Local Court may order that the article or implement:
  - (a) be forfeited to the Crown, or

(b) be returned to the applicant or some other appropriate person.

(3) The Local Court may not order that the article or implement be returned to the person if proceedings have been commenced against a person in respect of the article or implement and the proceedings have not been withdrawn or finally determined by the person's having been found not guilty of the offence.

**214 Forfeiture of seized dangerous articles and confiscated dangerous implements** (cf *Summary Offences Act 1988*, s 28E)

(1) A seized dangerous article or confiscated dangerous implement is forfeited to the Crown:

(a) if an application for the return of the article or implement is not made within 28 days after it is seized or confiscated—at the expiration of that period, or

(b) in a case where such an application is made within that period and the article or implement is not returned within that period:

(i) if an appeal under this Division is not made within the period permitted by this Division—at the expiration of that period, or

(ii) if an appeal under this Division is made within the period permitted by this Division—when an order made by the Local Court that the article or implement be forfeited to the Crown takes effect.

(2) The Local Area Commander of Police (or such other person as the Commissioner may direct) may dispose of an article or implement forfeited to the Crown under this section in accordance with the directions of the Commissioner.

(3) In this section, a reference to the disposal of an article or implement includes a reference to its destruction.

(4) The proceeds of any sale of an article or implement disposed of under this section are to be paid to the Treasurer for payment into the Consolidated Fund.

## **Division 2 Other property in police custody**

### **215 Definitions**

In this Division:

**livestock** means animals (including birds and fish).

**ownership** of livestock includes any form of lawful entitlement.

### **216 Application to property**

(1) This Division applies to the following property:

- (a) property that is in the custody of a police officer or member of the NSW Police Force in connection with an offence, whether or not proceedings for the offence have been commenced,
  - (b) property that is lawfully in the custody of a police officer or member of the NSW Police Force other than in connection with an offence.
- (2) However, this Division does not apply to the following property:
- (a) a dangerous article or dangerous implement to which Division 1 applies,
  - (b) livestock to which section 19 of the *Stock Diseases Act 1923* applies.

### **217 Right to inspect seized documents**

Unless a Magistrate otherwise orders, a police officer who, in exercising a function conferred by or under this Act, seizes a document must allow a person who would be entitled to the document:

- (a) to inspect it at any reasonable times and from time to time, and
- (b) to take extracts from or make copies of it.

### **218 Return of seized things**

(1) A police officer who, in exercising a function conferred by or under this Act, seizes a thing or has custody of other property to which this Division applies must return the thing to the owner or person who had lawful possession of the thing before it was seized or came into custody if the officer is satisfied that:

- (a) its retention as evidence is not required, and
- (b) it is lawful for the person to have possession of the thing.

(2) This section is subject to any order made under section 219.

### **219 Disposal of property on application to court**

(1) A court may, on application by any person, make an order that property to which this Division applies:

- (a) be delivered to the person who appears to be lawfully entitled to the property, or
- (b) if that person cannot be ascertained, be dealt with as the court thinks fit.

(2) In determining an application the court may do any one or more of the following things:

- (a) adjust rights to property as between people who appear to be lawfully entitled to the same property or the same or different parts of property (including adjusting

rights by extinguishing, whether in whole or in part, any interests in the property of such persons),

- (b) make a finding or order as to the ownership and delivery of property,
- (c) make a finding or order as to the liability for and payment of expenses incurred in keeping property in police custody,
- (d) order, if the person who is lawfully entitled to the property cannot be ascertained, that the property be forfeited to the Crown,
- (e) make any necessary incidental or ancillary orders.

(3) Property ordered to be forfeited to the Crown:

- (a) in the case of money, is to be paid to the Treasurer for payment into the Consolidated Fund, or
- (b) in any other case, may be sold by or on behalf of the Commissioner at public auction and the proceeds of sale are to be paid to the Treasurer for payment into the Consolidated Fund.

(4) If the property is not money or is not fit or suitable for sale, or fails to sell at public auction, it is to be disposed of in accordance with the directions of the Commissioner.

(5) An order under subsection (2) (a) that provides for the extinguishment, whether in whole or in part, of any interest in property operates to extinguish the interest according to its tenor.

## **220 Disposal of property connected with an offence after determination of proceedings**

(1) Property that is in the custody of a police officer or member of the NSW Police Force in connection with an offence and that is not delivered to the person lawfully entitled to it (by virtue of section 218, an order of a court under this Division or otherwise) within 1 month after determination of proceedings against a person for an offence connected with the property, or within 1 month after the police officer determines that it is no longer required for use as evidence, is to be dealt with in accordance with subsection (2).

(2) The property:

- (a) in the case of money, is to be paid to the Treasurer for payment into the Consolidated Fund, or
- (b) in any other case, may be sold by or on behalf of the Commissioner at public auction and the proceeds of sale are to be paid to the Treasurer for payment into the Consolidated Fund.

(3) If the property is not money or is not fit or suitable for sale, or fails to sell at public

auction, it is to be disposed of in accordance with the directions of the Commissioner.

**221 Disposal of unclaimed property not connected with an offence**

- (1) Property that is lawfully in the custody of a police officer or a member of the NSW Police Force other than in connection with an offence and that is not delivered to the person lawfully entitled to it (by virtue of section 218, an order of a court under this Division or otherwise) may be dealt with in accordance with this section.
- (2) The Commissioner may use any such property for the purposes of an integrity testing program conducted under section 207A of the *Police Act 1990*.
- (3) The property:
  - (a) in the case of money, is to be paid to the Treasurer for payment into the Consolidated Fund, or
  - (b) in any other case, may be sold at public auction by the Commissioner and the proceeds of sale are to be paid to the Treasurer for payment into the Consolidated Fund.
- (4) If the property is not money or is not fit or suitable for sale, or fails to sell at public auction, it is to be disposed of in accordance with the directions of the Commissioner.

**222 Procedure where no dispute as to ownership of livestock and owner known** (cf *Criminal Procedure Act 1986*, s 140)

- (1) A police officer may deliver livestock at any time before the determination of proceedings against a person for an offence concerning the livestock to a person who the officer believes on reasonable grounds is the owner of the livestock if there does not appear to the officer to be any dispute as to ownership of the livestock.
- (2) Livestock is not to be delivered until a suitable record of the livestock has been made for evidentiary purposes. The record is to include a valuation of the livestock made by a competent valuer.
- (3) Expenses incurred in keeping the livestock in police custody, in making the record and in obtaining the valuation under subsection (2) are to be borne by the Commissioner.

**223 Procedure where no dispute as to ownership of livestock but owner not known** (cf *Criminal Procedure Act 1986*, s 141)

- (1) A police officer may apply to a court at any time before the determination of proceedings against a person for an offence concerning livestock for an order to sell the livestock at public auction if, after making reasonable inquiries, there does not appear to the officer to be any dispute as to the ownership of the livestock but the officer does not know who or where the owner is.

- (2) The court may make an order for the sale of the livestock at public auction but must not make such an order unless it is satisfied that 28 days notice of the intention to make the application for the order has been given:
  - (a) to any person who, in the court's opinion, may be an owner of the livestock, and
  - (b) in a newspaper circulating throughout the State.
- (3) In making an order for the sale of livestock, the court must specify the amount that is to be deducted from the proceeds of sale and paid to the Commissioner in reimbursement of the expenses incurred by the Commissioner in keeping the livestock in police custody. Expenses incurred in keeping the livestock in police custody for the first 28 days are to be borne by the Commissioner.
- (4) Livestock must not be sold following an order of the court until a suitable record of the livestock has been made for evidentiary purposes. The record need not include a valuation of the livestock.
- (5) The proceeds of sale of the livestock (after deducting, to the extent of the funds available, and paying to the Commissioner any amount specified by the court) together with a copy of the record made under this section are to be forwarded to the Treasurer and the proceeds are to be paid into the Consolidated Fund.

**224 Procedure if there is a dispute as to ownership of livestock** (cf [Criminal Procedure Act 1986](#), s 142)

- (1) A police officer may apply to a court at any time before the determination of proceedings against a person for an offence concerning livestock for an order to sell the livestock at public auction if there is a dispute as to the ownership of livestock and:
  - (a) no party to the dispute undertakes to pay the expenses of keeping the livestock in police custody, or
  - (b) a party who has given such an undertaking fails to comply with the undertaking.
- (2) The court may make an order for the sale of the livestock at public auction or it may make an order that one or more of the parties disputing ownership pay the expenses of keeping the livestock in police custody in such proportions as it determines.
- (3) The court must not make an order for the sale of the livestock at public auction unless it is satisfied that 28 days notice of the intention to make the application for the order has been given:
  - (a) to any person who, in the court's opinion, may be an owner of the livestock, and
  - (b) in a newspaper circulating throughout the State.

- (4) In making an order for the sale of the livestock, the court must specify the amount that is to be deducted from the proceeds of the sale and paid to the Commissioner in reimbursement of the expenses incurred by the Commissioner in keeping the livestock in police custody.
- (5) Livestock must not be sold following an order of the court until a suitable record of the livestock has been made for evidentiary purposes. The record need not include a valuation of the livestock.
- (6) The owner of the livestock is (except insofar as a court otherwise determines) entitled to recover, jointly or severally, from the other parties to the dispute the expenses incurred by the owner in keeping the livestock in police custody.
- (7) The proceeds of the sale of the livestock (after deducting, to the extent of the funds available, and paying to the Commissioner any amount specified by the court) together with a copy of the record made under this section are to be forwarded to the Treasurer to be paid into the Consolidated Fund.

**225 Disposition of benefit derived from livestock** (cf [Criminal Procedure Act 1986](#), s 143)

Any income or benefit derived from livestock while in police custody (such as offspring born during custody or, in the case of poultry, eggs) is to be held or applied on behalf of the owner of the livestock.

**226 Notification of right to recover proceeds of sale** (cf [Criminal Procedure Act 1986](#), s 144)

If, at the time at which livestock are sold in accordance with section 223:

- (a) the parties disputing ownership of the livestock have not resolved their dispute, and
- (b) a court has not determined who the owner of the livestock is,

a police officer is required to notify each such party of the rights of the owner under section 225.

**227 Livestock provisions in addition to other provisions**

Sections 222–226 are in addition to the other provisions of this Division relating to property.

**228 Application to Treasurer for recovery of money or proceeds of sale**

A person who is lawfully entitled to any property that has been dealt with in accordance with section 219, 220, 221 or 222–226 may recover from the Treasurer the money or proceeds of sale held by the Treasurer. This Act authorises the Treasurer to pay the amount out of the Consolidated Fund (which is appropriated to the necessary extent).

## **229 Courts having jurisdiction under this Division**

- (1) The court to which an application under this Division may be made is:
  - (a) the Local Court, if the estimated value of the property (or the amount of the money) does not exceed \$100,000, or
  - (b) the District Court, if the estimated value of the property (or the amount of the money) exceeds \$100,000 but does not exceed \$250,000, or
  - (c) the Supreme Court, if the estimated value of the property (or the amount of the money) exceeds \$250,000.
- (2) Despite subsection (1), a court that is dealing with an offence may deal with an application relating to property connected with that offence even though the value of the property exceeds or is less than the amount specified by subsection (1) in relation to that court.

## **Part 18 Use of force**

### **230 Use of force generally by police officers**

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

### **231 Use of force in making an arrest**

A police officer or other person who exercises a power to arrest another person may use such force as is reasonably necessary to make the arrest or to prevent the escape of the person after arrest.

## **Part 19 Miscellaneous**

### **232 Protection of police acting in execution of warrant** (cf [Police Act 1990](#), s 215)

- (1) If any proceedings (whether criminal or not) are brought against any police officer for anything done or purportedly done by the police officer in execution of a warrant (whether issued under this or any other Act or law), or a notice to produce documents issued under this Act, the police officer is not to be convicted or held liable merely because:
  - (a) there was an irregularity or defect in the issuing of the warrant or notice, or
  - (b) the person who issued the warrant or notice lacked the jurisdiction to do so.
- (2) In any such proceedings, the court must acquit the police officer or dismiss the proceedings if the police officer:



- (a) produces the warrant or notice, and
- (b) proves that the signature on the warrant or notice is that of the person whose signature it purports to be, and
- (c) proves that such a person has the reputation of being, and acts as, a person who has the jurisdiction to issue the warrant or notice, and
- (d) the act complained of was done in execution of the warrant or notice.

**233 Admissibility of evidence of searches** (cf *Summary Offences Act 1988*, s 28H)

Evidence of a thing discovered during or as a result of a search carried out in accordance with this 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 given for the search.

**234 Proceedings for offences**

Proceedings for an offence against this Act or the regulations are to be dealt with summarily by the Local Court.

**235 Penalty notices**

- (1) A police officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and

(c) prescribe different amounts of penalties for different offences or classes of offences.

(7) The amount of penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.

(8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

### **236 Onus of proof of reasonable excuse**

The onus of proof of reasonable excuse in proceedings for an offence against this Act or the regulations lies on the person accused of the offence.

### **237 Commissioner's instructions**

(1) The instructions to members of the NSW Police Force issued under section 8 (4) of the [Police Act 1990](#) may include instructions and guidelines with respect to the exercise by police officers, and other members of the NSW Police Force, of functions conferred by or under this Act.

(2) The Commissioner may not issue an instruction or guideline under the [Police Act 1990](#) that is inconsistent with this Act and any instruction or guideline is, to the extent to which it is inconsistent with this Act, of no effect.

### **238 Regulations**

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units or, in the case of a regulation made under Division 1 or 3 of Part 11, 50 penalty units.

### **239 Repeals**

The Acts set out in Schedule 3 are repealed.

### **240 (Repealed)**

### **241 Savings and transitional provisions**

Schedule 5 has effect.

### **242 Monitoring of operation of certain provisions of Act by Ombudsman**

(1) The Ombudsman must inspect the records of the NSW Police Force, the New South Wales Crime Commission and the Police Integrity Commission under Part 5 in relation to covert search warrants every 12 months after the commencement of this

subsection for the purpose of ascertaining whether or not the requirements of that Part (in so far as it relates to covert search warrants) are being complied with.

- (2) For that purpose, the Ombudsman may require the Commissioner of Police, the Commissioner for the New South Wales Crime Commission and the Commissioner for the Police Integrity Commission to provide access to the relevant records.
- (3) The Ombudsman must, as soon as practicable after the expiration of each year after the commencement of subsection (1) (as substituted by the *Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Act 2009*), prepare a report of the Ombudsman's work and activities under subsection (1) and furnish a copy of the report to the Attorney General and the Minister for Police.
- (3A) The Ombudsman must inspect the records of the NSW Police Force under Part 5 in relation to criminal organisation search warrants every 2 years after the commencement of this subsection for the purpose of ascertaining whether or not the requirements of that Part (in so far as they relate to criminal organisation search warrants) are being complied with.
- (3B) For that purpose, the Ombudsman may require the Commissioner of Police to provide access to the relevant records.
- (3C) The Ombudsman must, as soon as practicable after the expiration of each 2 years after the commencement of subsection (3A), prepare a report of the Ombudsman's work and activities under that subsection and furnish a copy of the report to the Attorney General and the Minister for Police.
- (4) The Attorney General is to lay (or cause to be laid) a copy of the report under subsection (3) or (3C) before both Houses of Parliament as soon as practicable after the Attorney General receives the report.
- (5) If a House of Parliament is not sitting when the Attorney General seeks to lay a report before it, the Attorney General may present copies of the report to the Clerk of the House concerned.
- (6) The report:
  - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk of the House, and
  - (c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and
  - (d) is to be recorded:
    - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the

Legislative Council, and

(ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,

on the first sitting day of the House after receipt of the report by the Clerk.

**242A Annual reports to be given to Attorney General and Minister for Police**

- (1) The Commissioner of Police, the Commissioner for the New South Wales Crime Commission and the Commissioner for the Police Integrity Commission must each report annually on the exercise of powers under Part 5 with respect to covert search warrants by police officers and staff members of the New South Wales Crime Commission and Police Integrity Commission, respectively.
- (1A) The Commissioner of Police must report annually on the exercise of powers under Part 5 with respect to criminal organisation search warrants by police officers.
- (2) Each report is to be provided, within 4 months after each 30 June, to the Minister for Police and the Attorney General.
- (3) The report under subsection (1) is to specify the following matters in relation to the year ended on that 30 June:
  - (a) the number of applications for covert search warrants made under Part 5 and the number of those applications granted,
  - (b) the number of applications for telephone covert search warrants and the number of those applications granted,
  - (c) the number of covert search warrants executed,
  - (d) the number of covert search warrants under which any things were seized,
  - (e) the number of covert search warrants under which any things were placed in substitution for seized things,
  - (f) the number of covert search warrants under which any things were returned or retrieved,
  - (g) the number of covert search warrants under which the powers referred to in sections 75A and 75B were exercised,
  - (h) the number of covert search warrants under which any things were tested,
  - (i) the number of arrests made in connection with searchable offences in respect of which covert search warrants were executed and the number of those arrests that have led to the laying of charges in relation to the searchable offences concerned,

- (j) the number of complaints that are made under any Act about conduct relating to the execution of a covert search warrant by an executing officer and the number of those complaints that are, or have been, the subject of an investigation under any Act,
  - (k) any other matters requested by the Minister for Police or the Attorney General.
- (3A) The report under subsection (1A) is to specify the following matters in relation to the year ended on that 30 June:
- (a) the number of applications for criminal organisation search warrants made under Part 5 and the number of those applications granted,
  - (b) the number of applications for telephone criminal organisation search warrants and the number of those applications granted,
  - (c) the number of criminal organisation search warrants executed,
  - (d) the number of criminal organisation search warrants under which any things were seized,
  - (e) the number of criminal organisation search warrants under which the powers referred to in sections 75A and 75B were exercised,
  - (f) the number of criminal organisation search warrants under which any things were tested,
  - (g) the number of arrests made in connection with searchable offences in respect of which criminal organisation search warrants were executed and the number of those arrests that have led to the laying of charges in relation to the searchable offences concerned,
  - (h) the number of complaints that are made under any Act about conduct relating to the execution of a criminal organisation search warrant by an executing officer and the number of those complaints that are, or have been, the subject of an investigation under any Act,
  - (i) any other matters requested by the Minister for Police or the Attorney General.
- (4) The reports may be combined with any other annual report of the NSW Police Force, the New South Wales Crime Commission or the Police Integrity Commission.
- (5) The reports are to be tabled in each House of Parliament as soon as practicable after they are received by the Attorney General.

**242B Monitoring of operation of Division 4 of Part 3 by Ombudsman**

- (1) For the period of 12 months after the commencement of Division 4 of Part 3, the

Ombudsman is to keep under scrutiny the exercise of the functions conferred on police officers under that Division.

- (2) For that purpose, the Ombudsman may require the Commissioner of Police to provide information about the exercise of those functions.
- (3) The Ombudsman must, as soon as practicable after the expiration of that 12-month period, prepare a report of the Ombudsman's work and activities under this section and furnish a copy of the report to the Minister, the Minister for Police and Emergency Services and the Commissioner of Police.
- (4) The Ombudsman may in the report identify, and include recommendations for consideration by the Minister about, amendments that might appropriately be made to Division 4 of Part 3 with respect to the exercise of functions conferred on police officers under that Division.
- (5) The Ombudsman may at any time make a special report on any matter arising out of the operation of Division 4 of Part 3 to the Minister.
- (6) The Minister is to lay (or cause to be laid) a copy of any report made or furnished to the Minister under this section before both Houses of Parliament as soon as practicable after the Minister receives the report.
- (7) If a House of Parliament is not sitting when the Minister seeks to furnish a report to it, the Minister may present copies of the report to the Clerk of the House concerned.
- (8) A report presented to the Clerk of a House:
  - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk of the House, and
  - (c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and
  - (d) is to be recorded:
    - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and
    - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

### **243 Review of Act**

- (1) The Attorney General and the Minister for Police are to review this Act to determine

whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

- (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.

**Note—**

1 December 2005 is the date on which this Act, other than Part 8A, commenced.

- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

## **Schedule 1 Acts not affected by this Act**

(Section 5 (1))

*Bail Act 1978 No 161*  
*Casino Control Act 1992 No 15*  
*Children and Young Persons (Care and Protection) Act 1998 No 157*  
*Children (Care and Protection) Act 1987 No 54*  
*Children (Criminal Proceedings) Act 1987 No 55*  
*Children (Protection and Parental Responsibility) Act 1997 No 78*  
*Crimes Act 1900 No 40*  
*Crimes (Administration of Sentences) Act 1999 No 93*  
*Crimes (Forensic Procedures) Act 2000 No 59*  
*Criminal Procedure Act 1986 No 209*  
*Drug Misuse and Trafficking Act 1985 No 226*  
*Heavy Vehicle (Adoption of National Law) Act 2013*  
*Heavy Vehicle National Law (NSW)*  
*Law Enforcement and National Security (Assumed Identities) Act 2010*  
*Law Enforcement (Controlled Operations) Act 1997 No 136*  
*Liquor Act 2007 No 90*  
*Mental Health Act 2007*  
*Registered Clubs Act 1976 No 31*  
*Road Obstructions (Special Provisions) Act 1979 No 9*  
*Road Transport Act 2013*  
*State Emergency and Rescue Management Act 1989 No 165*  
*State Emergency Service Act 1989 No 164*  
*Surveillance Devices Act 2007*  
*Telecommunications (Interception) (New South Wales) Act 1987 No 290*  
*Wool, Hide and Skin Dealers Act 1935 No 40*  
*Young Offenders Act 1997 No 54*

## **Schedule 2 Search warrants under other Acts**

(Section 59 (1) (b))

*Adoption Act 2000*, sections 79B and 202A  
*Agricultural Industry Services Act 1998*, section 41  
*Animal Diseases (Emergency Outbreaks) Act 1991*, section 48

*Animal Research Act 1985*, section 51  
*Apprenticeship and Traineeship Act 2001*, section 68  
*Assisted Reproductive Technology Act 2007*, section 52  
*Associations Incorporation Act 2009*, section 87  
*Boarding Houses Act 2012*, section 78  
*Building Professionals Act 2005*, section 57  
*Charitable Fundraising Act 1991*, section 29  
*Children and Young Persons (Care and Protection) Act 1998*, section 233  
*Children (Interstate Transfer of Offenders) Act 1988*, section 16  
*Classification (Publications, Films and Computer Games) Enforcement Act 1995*, section 55  
*Commercial Agents and Private Inquiry Agents Act 2004*, section 34  
*Community Services (Complaints, Reviews and Monitoring) Act 1993*, section 18  
*Companion Animals Act 1998*, section 69D  
*Confiscation of Proceeds of Crime Act 1989*, section 36  
*Contaminated Land Management Act 1997*, section 84  
*Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010*, section 90  
*Conveyancers Licensing Act 2003*, section 150  
*Co-operatives Act 1992*, section 381  
*Crime Commission Act 2012*, section 17  
*Criminal Assets Recovery Act 1990*, section 38  
*Deer Act 2006*, section 21  
*Electricity (Consumer Safety) Act 2004*, section 42  
*Electricity Supply Act 1995*, sections 63 and 63W  
*Entertainment Industry Act 2013*, section 28  
*Environmental Planning and Assessment Act 1979*, section 118K  
*Environmentally Hazardous Chemicals Act 1985*, section 46  
*Exhibited Animals Protection Act 1986*, section 42  
*Fair Trading Act 1987*, section 19A  
*Fines Act 1996*, section 76  
*Fire Brigades Act 1989*, section 22D  
*First Home Owner Grant Act 2000*, section 41  
*Fisheries Management Act 1994*, sections 214 and 260  
*Fitness Services (Pre-paid Fees) Act 2000*, section 12  
*Food Act 2003*, section 39  
*Forestry Act 2012*, section 76  
*Game and Feral Animal Control Act 2002*, section 42  
*Gaming and Liquor Administration Act 2007*, section 27  
*Gas Supply Act 1996*, section 64  
*Gene Technology (GM Crop Moratorium) Act 2003*, section 29  
*Guardianship Act 1987*, sections 12 and 102  
*Health Care Complaints Act 1993*, section 34  
*Health Practitioner Regulation National Law (NSW)*, section 164B  
*Hemp Industry Act 2008*, section 28  
*Home Building Act 1989*, section 126  
*Human Tissue Act 1983*, section 33G  
*Independent Commission Against Corruption Act 1988*, section 40  
*Industrial Relations Act 1996*, section 388  
*Legal Profession Act 2004*



*Local Government Act 1993*, section 201  
*Lotteries and Art Unions Act 1901*, section 21E  
*Mining Act 1992*, section 248F  
*Motor Dealers Act 1974*, section 53AA  
*Motor Vehicle Repairs Act 1980*, section 75A  
*National Parks and Wildlife Act 1974*, section 164  
*Non-Indigenous Animals Act 1987*, section 24  
*Noxious Weeds Act 1993*, section 52  
*Offshore Minerals Act 1999*, section 382  
*Passenger Transport Act 1990*, section 46V  
*Payroll Tax Rebate Scheme (Disability Employment) Act 2011*, section 42  
*Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011*, section 52  
*Pesticides Act 1999*, section 35  
*Petroleum (Onshore) Act 1991*, section 104  
*Plumbing and Drainage Act 2011*, section 35  
*Poisons and Therapeutic Goods Act 1966*, section 43A  
*Police Integrity Commission Act 1996*, section 45  
*Poultry Meat Industry Act 1986*, section 161  
*Prevention of Cruelty to Animals Act 1979*, section 27  
*Property, Stock and Business Agents Act 2002*, section 209  
*Protection of the Environment Operations Act 1997*, section 199  
*Public Health Act 2010*, section 109  
*Public Health (Tobacco) Act 2008*, section 48  
*Public Lotteries Act 1996*, section 72  
*Radiation Control Act 1990*, section 16  
*Residential Tenancies Act 2010*, section 200  
*Restricted Premises Act 1943*, section 13  
*Retirement Villages Act 1999*, section 196E  
*Rice Marketing Act 1983*, section 138  
*Road Transport Act 2013*, section 255  
*Road Transport (Vehicle and Driver Management) Act 2005*, section 157  
*Roads Act 1993*, section 174  
*Royal Commission (Police Service) Act 1994*, section 15  
*Rural Fires Act 1997*, section 33C  
*Security Industry Act 1997*, Part 3B  
*Smoke-free Environment Act 2000*, section 16  
*Stock Medicines Act 1989*, section 51  
*Summary Offences Act 1988*, section 21  
*Swimming Pools Act 1992*, section 29  
*Tattoo Parlours Act 2012*, section 30B  
*Taxation Administration Act 1996*, section 77  
*Totalizator Act 1997*, section 95  
*Tow Truck Industry Act 1998*, section 83  
*Unlawful Gambling Act 1998*, section 40  
*Valuers Act 2003*, section 36  
*Water Industry Competition Act 2006*, section 80  
*Water Management Act 2000*, section 339C  
*Wool, Hide and Skin Dealers Act 2004*, section 34

*Work Health and Safety Act 2011*, section 167

*Workplace Injury Management and Workers Compensation Act 1998*, section 238A

## **Schedule 3 Repeals**

(Section 239)

*Intoxicated Persons Act 1979* No 67

*Police Powers (Drug Detection Dogs) Act 2001* No 115

*Police Powers (Drug Premises) Act 2001* No 30

*Police Powers (Internally Concealed Drugs) Act 2001* No 31

*Police Powers (Vehicles) Act 1998* No 166

*Search Warrants Act 1985* No 37

## **Schedule 4 (Repealed)**

## **Schedule 5 Savings, transitional and other provisions**

(Section 241)

## **Part 1 General**

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Crimes Legislation Further Amendment Act 2003* (but only to the extent that it amends this Act)

*Law Enforcement Legislation Amendment (Public Safety) Act 2005*

*Crimes Legislation Amendment (Gangs) Act 2006*

*Police Powers Legislation Amendment Act 2006*

*APEC Meeting (Police Powers) Act 2007*

*Law Enforcement (Powers and Responsibilities) Amendment Act 2007*

*Law Enforcement and Other Legislation Amendment Act 2007*

*Summary Offences and Law Enforcement Legislation Amendment (Laser Pointers) Act 2008* (but only to the extent that it amends this Act)

*Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Act 2009*

*Criminal Organisations Legislation Amendment Act 2009*

*Identification Legislation Amendment Act 2011*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of this Act**

### **2 Definitions**

In this Schedule:

**repealed provision** means a provision repealed by Schedule 3 or 4.

### **3 General savings**

- (1) Any act, matter or thing done or omitted to be done under a repealed provision and having any force or effect immediately before the commencement of a provision of this Act that replaces the repealed provision is, on that commencement, taken to be done under a corresponding provision of this Act.
- (2) Subclause (1) does not apply:
  - (a) to the extent that its application would be inconsistent with another provision of this Schedule or a provision of a regulation in force under clause 1, or
  - (b) to the extent that its application would be inappropriate in a particular case.

### **4 Construction of references to repealed provisions**

- (1) Except as provided by this clause, a reference in any other Act, in any instrument made under any other Act or any other instrument of any other kind to a repealed provision is to be read as a reference to the provision of this Act that, having regard to the nature of the reference and the context in which the reference occurs, most nearly corresponds to the repealed provision.
- (2) The regulations may provide that a reference in any such instrument or a specified instrument to a repealed provision is to be read as a reference to another specified instrument (or a specified provision of such an instrument).

## 5 References to authorised justices

A reference in any other Act, in any instrument made under any other Act or any other instrument of any other kind to an authorised justice under the [Search Warrants Act 1985](#) is to be read as a reference to an authorised officer within the meaning of this Act.

## 6 Property currently held in police custody

Any property held in police custody immediately before the commencement of this clause is to be dealt with in accordance with the appropriate provisions of Part 17.

## 7 Monitoring of certain powers by Ombudsman

- (1) The following provisions (the **monitoring provisions**) are taken to continue in force and to apply as provided by this clause:
  - (a) section 72E, [Firearms Act 1996](#),
  - (b) section 13, [Police Powers \(Drug Detection Dogs\) Act 2001](#),
  - (c) section 21, [Police Powers \(Drug Premises\) Act 2001](#),
  - (d) section 43, [Police Powers \(Internally Concealed Drugs\) Act 2001](#),
  - (e) section 16, [Police Powers \(Vehicles\) Act 1998](#).
- (2) The Ombudsman may, in respect of the period referred to in a monitoring provision, exercise functions under that monitoring provision relating to the powers conferred on police by, or the operation of:
  - (a) provisions that are referred to in the monitoring provision, and
  - (b) any provisions of this Act that re-enact the provisions so referred to.

## Part 3 Provisions consequent on enactment of [Crimes Legislation Further Amendment Act 2003](#)

### 8 Extension of telephone crime scene warrants

Section 73, as amended by the [Crimes Legislation Further Amendment Act 2003](#), extends to telephone crime scene warrants issued before the commencement of the amendments to that section made by that Act.

## Part 4 Provisions consequent on enactment of [Police Powers Legislation Amendment Act 2006](#)

### 9 Destruction of finger-prints and palm-prints

- (1) Section 137A, as inserted by the [Police Powers Legislation Amendment Act 2006](#), extends to finger-prints and palm-prints taken before the commencement of that

section.

- (2) In section 138A (3), a reference to finger-prints and palm-prints taken under section 138A includes a reference to finger-prints and palm-prints taken under section 353AC of the *Crimes Act 1900* before that section was transferred to this Act.

## **Part 5 Provisions consequent on enactment and repeal of *APEC Meeting (Police Powers) Act 2007***

### **10 Definitions**

In this Part:

**APEC Act** means the *APEC Meeting (Police Powers) Act 2007*.

**APEC meeting** has the same meaning as it had in the APEC Act immediately before its repeal.

**Police Minister** means the Minister administering the *Police Act 1990*.

### **11 Effect of repeal of APEC Act**

- (1) The repeal of the APEC Act does not affect the continued operation in relation to matters arising before the repeal of that Act of:
- (a) section 8 (Orders under Part not open to challenge) of that Act, or
  - (b) any other exemption or immunity from, or limitation of, liability under that Act,
- as in force before that repeal.

**Note—**

The APEC Act is to be repealed on 13 September 2007 by section 41 of that Act.

- (2) The provisions of subclause (1) are in addition to, and do not derogate from, section 30 of the *Interpretation Act 1987*.

**Note—**

Section 30 of the *Interpretation Act 1987* provides that the repeal of an Act or statutory rule does not, among other things, affect the previous operation of the Act or statutory rule or anything duly suffered, done or commenced under the Act or statutory rule or affect any right, privilege, obligation or liability acquired, accrued or incurred under the Act or statutory rule.

### **12 Report on APEC Act by Commissioner of Police**

- (1) The Commissioner of Police is to report to the Attorney General and Police Minister on the exercise of powers by police officers under the APEC Act. The report is to be provided within 3 months after the repeal of that Act.
- (2) The report is to specify the following matters:

- (a) the terms of any order designating an area to be an additional declared area or a restricted area and the period during which it had effect,
- (b) a general description of the powers exercised pursuant to the APEC Act and the manner in which they were exercised,
- (c) a description of the result of the exercise of those powers,
- (d) the number of complaints that are made under any Act about conduct relating to the exercise of any power conferred on police officers by the APEC Act and the number of those complaints that are, or have been, the subject of an investigation under any Act,
- (e) any other matters requested by the Attorney General or the Police Minister.

### **13 Review of APEC Act by Attorney General and Police Minister**

- (1) The Attorney General and the Police Minister are to review the APEC Act to determine whether the policy objectives of that Act were met and whether the terms of that Act remain appropriate for future meetings or events comparable to an APEC meeting.
- (2) The review is to be undertaken as soon as possible after the Commissioner has provided the Attorney General and the Police Minister with the Commissioner's report on the APEC Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within the period of 6 months after the repeal of the APEC Act.
- (4) If a House of Parliament is not sitting when the Attorney General or Police Minister seeks to table the report, the Attorney General or Police Minister may present the report to the Clerk of the House concerned.
- (5) The report:
  - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk of the House, and
  - (c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and
  - (d) is to be recorded:
    - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
    - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,

on the first sitting day of the House after receipt of the report by the Clerk.

## **Part 6 Provisions consequent on enactment of [Law Enforcement \(Powers and Responsibilities\) Amendment Act 2007](#)**

### **14 Changes to search warrant provisions**

An amendment made to Part 5 by the [Law Enforcement \(Powers and Responsibilities\) Amendment Act 2007](#) does not apply to a warrant issued before the commencement of the amendment.

## **Part 7 Provisions consequent on enactment of [Law Enforcement \(Powers and Responsibilities\) Amendment \(Search Powers\) Act 2009](#)**

### **15 Definition**

In this Part:

**amending Act** means the [Law Enforcement \(Powers and Responsibilities\) Amendment \(Search Powers\) Act 2009](#).

### **16 Changes to search warrant provisions**

A provision of Part 5, as amended by the amending Act, does not apply to or in respect of a search warrant issued before the commencement of the amendment of that provision. Part 5, as in force immediately before the amendment, continues to apply to and in respect of such a search warrant.