

# Law Enforcement (Powers and Responsibilities) Amendment Act 2014 No 31

[2014-31]



New South Wales

## Status Information

### Currency of version

Repealed version for 2 November 2014 to 1 September 2016 (accessed 6 October 2024 at 19:18)

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—

- **Repeal**

This Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 2.9.2016.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 2 September 2016

# Law Enforcement (Powers and Responsibilities) Amendment Act 2014 No 31



New South Wales

## Contents

<b>Long title</b> .....	3
1 Name of Act .....	3
2 Commencement .....	3
<b>Schedule 1 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103 relating to investigations and questioning under Part 9</b> .....	3
<b>Schedule 2 (Repealed)</b> .....	6
<b>Schedule 3 Miscellaneous amendments to Law Enforcement (Powers and Responsibilities) Act 2002 No 103</b> .....	6
<b>Schedule 4 Amendment of Law Enforcement (Powers and Responsibilities) Regulation 2005</b> .....	16
<b>Schedule 5 Consequential amendment of other legislation</b> .....	17

# Law Enforcement (Powers and Responsibilities) Amendment Act 2014 No 31



New South Wales

An Act to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* in relation to police investigations and questioning, to safeguards relating to the exercise of police powers and to search and other police powers; and for other purposes.

## 1 Name of Act

This Act is the *Law Enforcement (Powers and Responsibilities) Amendment Act 2014*.

## 2 Commencement

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

## Schedule 1 Amendment of *Law Enforcement (Powers and Responsibilities) Act 2002 No 103* relating to investigations and questioning under Part 9

### [1] Section 109 Objects of Part

Insert at the end of section 109 (c):

, and

- (d) to provide for the rights of a suspect who is in the company of a police officer in connection with an investigative procedure but who is not so detained.

### [2] Section 110 Definitions

Insert in alphabetical order in section 110 (1):

***protected suspect*** means a person who is in the company of a police officer for the purpose of participating in an investigative procedure in connection with an offence if:

- (a) the person has been informed that he or she is entitled to leave at will, and
- (b) the police officer believes that there is sufficient evidence that the person has

committed the offence.

**[3] Section 110 (2) and (3)**

Omit the subsections.

**[4] Section 110 (5)**

Insert after section 110 (4):

- (5) For the purposes of this Part, a reference to the place where a protected suspect is detained is a reference to the place where the person is participating in the relevant investigative procedure.

**[5] Section 111 Persons to whom Part applies**

Insert “or who is a protected suspect in connection with an offence” after “under arrest by a police officer for an offence” in section 111 (1).

**[6] Section 112A**

Insert after section 112:

**112A Application of Part in connection with execution of search warrants**

- (1) This Part applies to a person in the company of a police officer for the purpose of an investigative procedure at premises that are being searched under a search warrant issued under this Act or under a provision specified in Schedule 2 if:
- (a) the person has been arrested and is in custody at those premises, or
  - (b) the person is at the premises and is a protected suspect.
- (2) For that purpose:
- (a) the functions of the custody manager under this Part are exercisable by a police officer who is at the premises but who is not connected with the investigation concerned and who does not participate in the execution of the search warrant, and
  - (b) the police officer exercising the functions of the custody manager is not required to comply with any obligation under this Part relating to communication with a friend, relative, guardian or independent person if the police officer suspects on reasonable grounds that doing so may result in bodily injury to any other person, and
  - (c) the custody record for the detained person or protected suspect may form part of a video recording of the execution of the search warrant, and

(d) this Part applies with such other modifications as are prescribed by the regulations.

**[7] Section 113 Effect of Part on other powers and duties**

Insert “or is a protected suspect” after “who is under arrest” in section 113 (2) (b).

**[8] Part 9, Division 2, heading**

Omit the heading. Insert instead:

Division 2 **Investigation and questioning powers—persons under arrest**

**[9] Section 115 Investigation period**

Omit “4 hours” from section 115 (2). Insert instead “6 hours”.

**[10] Section 116 Determining reasonable time**

Insert “(including any period during which the person was a protected suspect)” after “before and after the person is arrested” in section 116 (2) (j).

**[11] Section 118 Detention warrant to extend investigation period**

Omit “4 hours” from section 118 (1). Insert instead “6 hours”.

**[12] Section 118 (3)**

Omit “8 hours”. Insert instead “6 hours”.

**[13] Section 118 (4A)**

Insert after section 118 (4):

(4A) When determining an application for a detention warrant, the authorised officer is to take into account any period for which the person to whom the application relates was a protected suspect in relation to the investigation.

**[14] Section 118 (5) (d)**

Omit “4-hour”. Insert instead “6-hour”.

**[15] Section 120 Information in application for detention warrant**

Insert after section 120 (1) (c):

(c1) the period (if any) during which the person has been a protected suspect in relation to the investigation,

**[16] Part 9, Division 3, heading**

Omit the heading. Insert instead:

Division 3 **Safeguards relating to persons under arrest and protected suspects**

**[17] Section 122 Custody manager to caution, and give summary of Part to, person under arrest or protected suspect**

Insert “or after a person becomes a protected suspect” after “detention” in section 122 (1).

**[18] Section 122 (1) (b)**

Omit the paragraph. Insert instead:

(b) give the person a summary of the provisions of this Part in the form prescribed by the regulations.

**[19] Sections 123, 124 (1), 125 (1), 126, 127, 128 (1), 129, 130 and 131**

Insert “or protected suspect” and “or protected suspect’s” after “detained person” and “detained person’s”, respectively, wherever occurring.

## **Schedule 2 (Repealed)**

## **Schedule 3 Miscellaneous amendments to [Law Enforcement \(Powers and Responsibilities\) Act 2002 No 103](#)**

**[1] Section 3 Interpretation**

Insert in alphabetical order in section 3 (1):

***body cavities*** of a person do not include the person’s mouth.

***transgender person*** means a person (whether or not the person is a person whose sex is altered under Part 5A of the [Births, Deaths and Marriages Registration Act 1995](#) or under the corresponding provisions of a law of another Australian jurisdiction):

- (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 the person is, or was, in fact a transgender person.

**[2] Section 3 (1), definitions of “frisk search” and “ordinary search”**

Omit the definitions.

**[3] Section 3 (2A)**

Insert after section 3 (2):

(2A) In this Act, a reference:

(a) to a member of the opposite sex of a person means, if the person is a transgender person, a member of the opposite sex to the sex with which the transgender person identifies, and

(b) to a member of the same sex as a person means, if the person is a transgender person, a member of the same sex as the sex with which the transgender person identifies.

**[4] Sections 11, 13A, 21A (1), 23A (1), 26, 87L (1) and 142 (1) (e)**

Omit “request” wherever occurring. Insert instead “require”.

**[5] Sections 12, 13B, 15, 16, 17 (1), 19, 27 (a), 87L (2) and (4) and 143 (2)**

Omit “requested” wherever occurring. Insert instead “required”.

**[6] Sections 12, 13, 13B, 13C, 15 (1), 16 (1), 18, 21A (3), 23A (3), 27 (b), 87L (2) and (3), 96 (2) and 143 (2) and (3)**

Omit “request” wherever occurring. Insert instead “requirement”.

**[7] Section 14 Power of police officer to require disclosure of driver or passenger identity**

Omit “make any one or more of the following requests” from section 14 (1).

Insert instead “do any one or more of the following”.

**[8] Section 14 (1) (a)**

Omit “a request that the driver of the vehicle”.

Insert instead “require the driver of the vehicle to”.

**[9] Section 14 (1)**

Omit “the request” wherever occurring. Insert instead “the requirement”.

**[10] Section 14 (1)**

Omit “under this Division” wherever occurring.

**[11] Section 14 (1) (b)**

Omit “a request that any passenger in or on the vehicle”.

Insert instead “require any passenger in or on the vehicle to”.

**[12] Section 14 (1) (c)**

Omit “a request that any owner of the vehicle (who was or was not the driver or a passenger)”.

Insert instead “require any owner of the vehicle (who was or was not the driver or a passenger) to”.

**[13] Section 19B Failure to remove face covering**

Omit “a request made to the person under section 14 (Power of police officer to request disclosure of driver or passenger identity)” from paragraph (a) of the penalty in section 19B (1).

Insert instead “a requirement under section 14”.

**[14] Sections 21A (1) (a) and 23A (1) (a)**

Insert “to enable it to be searched” after “mouth” wherever occurring.

**[15] Section 24 Power to carry out search of person in lawful custody after arrest**

Omit “(whether at a police station or at any other place)”.

Insert instead “after arrest”.

**[16] Section 24 (2)**

Insert at the end of section 24:

- (2) Any such search may be carried out at a police station or other place of detention or immediately before or during transportation of the person to or from a police station or other place of detention.

**[17] Section 26 Power to search for knives and other dangerous implements**

Omit “frisk search” from section 26 (1) and (1A) wherever occurring.

Insert instead “search of the person”.

**[18] Section 28 Power to confiscate knives and other dangerous implements**

Omit “requests” from section 28 (3). Insert instead “requires”.

**[19] Part 4, Divisions 2 and 3 (as amended by this Schedule)**

Renumber Division 2 as Division 3 and Division 3 as Division 2.

Renumber sections 23, 23A and 24 as sections 27, 28 and 28A, respectively, and amend any cross-references in transferred Division 2 accordingly.

Renumber sections 25–28 as sections 23–26, respectively, and amend any cross-references in transferred Division 3 accordingly.

**[20] Section 29**

Omit the section. Insert instead:

**29 Application of Division**

- (1) This Division applies to any search of a person carried out by a police officer under this Act, except as otherwise provided by this Act or the regulations.
- (2) This Division also applies to any search of a person that is carried out by a police officer after obtaining the person’s consent to carry out the search. In that case:
  - (a) the purpose of the search is the purpose for which the police officer obtained consent to search, and
  - (b) a general consent to the carrying out of a search is not consent to carry out a strip search unless the person consents to the carrying out of a strip search.

**[21] Section 30**

Omit the section. Insert instead:

**30 Searches generally**

In conducting the search of a person, a police officer may:

- (a) quickly run his or her hands over the person’s outer clothing, and
- (b) require the person to remove his or her coat or jacket or similar article of clothing and any gloves, shoes, socks and hat (but not, except in the case of a strip search, all of the person’s clothes), and
- (c) examine anything in the possession of the person, and

- (d) pass an electronic metal detection device over or in close proximity to the person's outer clothing or anything removed from the person, and
- (e) do any other thing authorised by this Act for the purposes of the search.

**[22] Section 31**

Omit the section. Insert instead:

**31 Strip searches**

A police officer may carry out a strip search of a person if:

- (a) in the case where the search is carried out at a police station or other place of detention—the police officer suspects on reasonable grounds that the strip search is necessary for the purposes of the search, or
- (b) in the case where the search is carried out in any other place—the police officer suspects on reasonable grounds that the strip search is necessary for the purposes of the search and that the seriousness and urgency of the circumstances make the strip search necessary.

**[23] Sections 32 (1)-(6) and (10) and 33 (1)**

Omit "or other person" and "or person" wherever occurring.

**[24] Section 32 Preservation of privacy and dignity during search**

Omit section 32 (7). Insert instead:

- (7) A search must be conducted by a police officer of the same sex as the person searched.
- (7A) However, if a police officer of the same sex as the person who is to be searched is not immediately available, a police officer may delegate the power to conduct the search to another person who is:
  - (a) of the same sex as the person to be searched, and
  - (b) of a class of persons prescribed by the regulations for the purposes of this subsection.

The search by that other person is to be conducted under the direction of the police officer and in accordance with provisions of this Act applying to searches conducted by police officers.

**[25] Section 32 (8A)**

Insert after section 32 (8):

(8A) Subsection (8) does not prevent the asking of questions that only relate to issues of personal safety associated with the search.

**[26] Section 32 (11), definition of “transgender person”**

Omit the definition.

**[27] Section 33 Rules for conduct of strip searches**

Insert “Subsection (1) (b) does not prevent any such person who is of the opposite sex to the person being searched from being present during the search.” after “being present.” in section 33 (2).

**[28] Section 33 (3) and (3A)**

Omit section 33 (3). Insert instead:

- (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 be conducted:
- (a) in the presence of a parent or guardian of the person being searched, or
  - (b) if that is not acceptable to the person, in the presence of another person who is not a police officer and who is capable of representing the interests of the person being searched and whose presence is acceptable to that person.
- (3A) Subsection (3) does not apply if a police officer suspects on reasonable grounds that:
- (a) delaying the search is likely to result in evidence being concealed or destroyed, or
  - (b) an immediate search is necessary to protect the safety of a person.
- In such a case, the police officer must make a record of the reasons for not conducting the search in the presence of a parent or guardian, or other person capable of representing the interests, of the person being searched.

**[29] Section 34A**

Insert after section 34:

### **34A Searches carried out with consent**

- (1) A police officer may search a person with the person's consent but only if the police officer has sought the person's consent before carrying out the search.
- (2) A police officer must, before carrying out any such consensual search, provide the person with:
  - (a) evidence that the police officer is a police officer (unless the police officer is in uniform), and
  - (b) the name of the police officer and his or her place of duty.

### **[30] Section 54 Issue of notice to produce documents**

Omit section 54 (1). Insert instead:

- (1) An eligible issuing officer to whom an application for a notice to produce documents is made may, if satisfied that there are reasonable grounds for doing so, issue the notice to produce documents.

### **[31] Section 82 Entry by invitation**

Insert "or (3A)" after "subsection (3)" in section 82 (2) (b).

### **[32] Section 82 (3A)-(3C)**

Insert after section 82 (3):

- (3A) A police officer who has entered a dwelling in accordance with subsection (1) may remain in the dwelling and exercise any of the following powers until such time as a warrant is issued under section 83 in relation to the dwelling:
  - (a) direct a person to leave, or not to enter, the dwelling,
  - (b) remove from the dwelling a person who fails to comply with a direction to leave the dwelling,
  - (c) prevent a person from entering the dwelling,
  - (d) prevent a person from removing evidence from or otherwise interfering with the dwelling or anything in it and, for that purpose, detain and search the person.
- (3B) Such a power may be exercised only if the police officer suspects on reasonable grounds that:
  - (a) a domestic violence offence is being, or may have been recently, committed in the dwelling, and

(b) the exercise of the power is necessary to preserve evidence of the commission of the offence.

(3C) A police officer may exercise a power under subsection (3A) even though an occupier of the dwelling expressly refuses authority to the police officer to remain in the dwelling.

**[33] Section 83 Warrant where entry denied or authority to remain refused**

Insert “or is expressly refused authority to remain in a specified dwelling by an occupier of the dwelling” after “dwelling” in section 83 (1) (a).

**[34] Section 83 (1) (b) (ii)**

Insert “, or to remain in the dwelling,” after “immediately”.

**[35] Section 83 (2) (a)**

Insert “or remain in” after “enter”.

**[36] Section 84 Obstruction or hindrance of person executing warrant or exercising power under this Part**

Insert “or a police officer who is exercising a power under this Part” after “this Part”.

**[37] Section 91 Establishment of crime scene**

Insert after section 91 (3):

(4) Subsection (3) does not prevent a subsequent crime scene being established on the same premises in a 24 hour period for the purposes of investigating a separate offence that is not related to the offence in respect of which the initial crime scene was established.

**[38] Section 92 Exercise of powers at crime scene**

Omit “(a)-(f)” from section 92 (1). Insert instead “(a)-(l)”.

**[39] Section 92 (3)**

Omit “3 hours”.

Insert instead “4 hours (or not more than 6 hours in the case of a crime scene established in a rural area prescribed by the regulations)”.

**[40] Section 92 (5A)**

Insert after section 92 (5):

(5A) A police officer may, in exercising crime scene powers conferred by subsection (1) at a crime scene, open a thing that is locked only if it is possible to do so without causing any damage to the thing or the lock.

**[41] Section 93 Notice to senior police officer where warrant not required**

Omit "3 hours or less".

Insert instead "4 hours or less or for a period of 6 hours or less in the case of a rural area referred to in section 92 (3)".

**[42] Section 94 Crime scene warrants**

Insert after section 94 (2):

(2A) A crime scene warrant may, if a crime scene in relation to an offence is established on more than one set of premises, apply to each of those sets of premises.

**[43] Section 94A**

Insert after section 94:

**94A Application by occupier for review by authorised officer of crime scene warrant**

- (1) This section applies to crime scene warrants issued in relation to premises that are not a public place.
- (2) The occupier of premises in respect of which a crime scene warrant is issued may apply to an authorised officer for a review of the grounds on which the warrant was issued.
- (3) Any such application for a review of a crime scene warrant does not stay the operation of the warrant.
- (4) After reviewing the grounds on which the crime scene warrant was issued, the authorised officer to whom an application for review is made may:
  - (a) by order in writing, revoke the crime scene warrant, or
  - (b) refuse to revoke the warrant.

**[44] Section 95 Crime scene powers**

Insert "Any such consent must, as far as is reasonably practicable, be in writing." after "consents." in section 95 (3).

**[45] Section 95 (4)**

Insert after section 95 (3) (before the note):

- (4) The occupier of premises may consent to the exercise of crime scene powers on the premises only if the occupier is, before giving consent, informed by a police officer of the following:
  - (a) the crime scene powers proposed to be exercised on the premises,
  - (b) the reasons for exercising those powers,
  - (c) the right of the occupier to refuse consent.

**[46] Section 108E Recording not authorised after arrest**

Omit the section.

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

Insert “(including the recording of a conversation between police officers by means of ICV equipment)” after “ICV equipment”.

**[48] Part 10, note**

Omit “Division 2” from the note to the Part. Insert instead “Division 3”.

**[49] Section 137C**

Insert after section 137B:

**137C Commissioner may order destruction of identification particulars**

- (1) The Commissioner may, in such cases as the Commissioner considers it to be appropriate, order the destruction of any photograph, finger-prints or palm-prints of a person that have been taken under this Division in relation to an offence.
- (2) This section does not affect any requirement under this Division relating to the destruction of a person’s photograph, finger-prints or palm-prints.

**[50] Part 12, heading and note**

Omit the heading and the note to the Part. Insert instead:

Part 12 **Miscellaneous police powers relating to vehicles and traffic**

**[51] Sections 187 (1) and 188 (1)**

Insert “of Police” after “Commissioner” wherever occurring.

**[52] Sections 189B (3) and 189C (3)**

Omit “to the *Road Transport Act 2013*” from the definition of **oral fluid test** wherever occurring.

**[53] Sections 189B (3) and 189C (3)**

Omit the definition of **prescribed illicit drug** wherever occurring.

**[54] Part 12 (as amended by this Schedule)**

Omit the Part.

Transfer the Part to the *Road Transport Act 2013* as Part 5.5, renumber sections 185–192 of the transferred Part as sections 148A–148K and amend any cross-references in the transferred Part accordingly.

**[55] Section 200A**

Insert after section 200:

**200A Code of practice**

- (1) The regulations may prescribe a code of practice relating to the exercise of powers by police officers under this Part and the rights of persons to whom directions are given under this Part.
- (2) The exercise of powers by police officers under this Part is subject to any such code of practice.

**Schedule 4 Amendment of Law Enforcement (Powers and Responsibilities) Regulation 2005**

**[1] Clause 8A**

Insert after clause 8:

**8A Receipts for things seized under covert search warrant**

- (1) A person who seizes a thing while executing a covert search warrant must, at the time the occupier’s notice under section 67 of the Act is served (the **time of notification**) on the person who was the occupier of the subject premises at the time the warrant was executed, provide the occupier of the premises with a receipt acknowledging seizure of the thing.
- (2) However, any such receipt is not required to be provided at the time of notification if an eligible issuing officer issues a certificate to the effect that:

- (a) the receipt contains matter:
  - (i) that could disclose a person's identity, and
  - (ii) that, if disclosed, is likely to jeopardise that or any other person's safety, or
- (b) the receipt contains matter that, if disclosed, may seriously compromise the investigation of any matter.

**[2] Clause 10 Keeping and inspection of records**

Insert "or 8A" after "clause 8" in clause 10 (1) (d).

**[3] Clause 10 (7)**

Insert after clause 10 (6):

- (7) In the case of a crime scene warrant under Part 7 of the Act that relates to more than one set of premises, subclause (6) (a) authorises the occupier of premises, or a person acting on behalf of the occupier, to inspect only so much of the documents as relate to the premises of the occupier.

**[4] Schedule 1 Forms**

Insert in Form 19 at the end of the matter appearing under the heading "**Challenging the issue or execution of the warrant**":

Under section 94A of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) you have, if you are the occupier of private premises, the right to apply to an authorised officer to have the warrant reviewed.

**[5] Schedule 1, Form 20**

Insert after item 4:

\*4A *[To be completed in the case of a crime scene warrant.]* The warrant was executed in relation to *[Specify address of premises in relation to which crime scene warrant was executed.]*

## **Schedule 5 Consequential amendment of other legislation**

### **5.1-5.3**

(Repealed)

## **5.4 Crimes (Forensic Procedures) Act 2000 No 59**

### **Section 3 Interpretation**

Omit section 3 (2).

### **5.5-5.13**

(Repealed)