

# Police Powers (Internally Concealed Drugs) Act 2001 No 31

[2001-31]



New South Wales

## Status Information

### Currency of version

Repealed version for 8 July 2003 to 30 November 2005 (accessed 18 November 2024 at 15:15)

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**

The Act was repealed by Sch 3 to the [Law Enforcement \(Powers and Responsibilities\) Act 2002 No 103](#) with effect from 1.12.2005.

### 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 1 December 2005

# Police Powers (Internally Concealed Drugs) Act 2001 No 31



New South Wales

## Contents

<b>Long title</b> .....	4
<b>Part 1 Preliminary</b> .....	4
1 Name of Act .....	4
2 Commencement .....	4
3 Definitions .....	4
4 Eligible judicial officers .....	7
5 Notes .....	8
<b>Part 2 Authority to carry out internal searches</b> .....	8
6 Act does not apply to persons under 10 .....	8
7 When may an internal search be carried out? .....	8
8 Police officer may detain suspect to request consent, or apply for order for, an internal search .....	8
9 Police officer may request consent of certain suspects for internal search .....	9
10 Matters that suspect must be informed of before giving consent to an internal search .....	9
11 Procedure after the carrying out of an internal search .....	10
<b>Part 3 Orders for carrying out internal searches</b> .....	10
12 Application for order for internal search .....	10
13 Procedure at hearing of application for order .....	11
14 Orders for internal search .....	12
<b>Part 4 The internal search</b> .....	13

15 Internal search.....	13
16 Conduct of internal search.....	13
17 Medical practitioner may take action to preserve suspect’s life.....	13
18 General rules for carrying out internal search.....	13
19 No questioning during internal search.....	14
20 Suspect must be cautioned before internal search.....	14
21 Internal searches not be carried out in cruel, inhuman or degrading manner.....	14
22 Medical practitioner or appropriately qualified person to prepare report.....	14
23 Suspect’s rights during detention.....	15
24 Interpreters.....	15
<b>Part 5 Miscellaneous.....</b>	<b>16</b>
25 Withdrawal of consent.....	16
26 Powers and entitlements of legal representatives and search friends.....	16
27 Recording of giving of information and suspect’s responses.....	16
28 Obligation of police officers relating to recordings.....	17
29 Material required to be made available to suspect.....	17
30 No charge for material.....	18
31 Proof of suspicion or belief.....	18
32 Proof of impracticability.....	18
33 Proof that time be disregarded.....	18
34 Proof of voluntary waiver of rights.....	18
35 Liability of medical practitioners and appropriately qualified persons.....	18
36 Medical practitioners and appropriately qualified persons not obliged to carry out internal searches.....	18
37 Relationship to Part 10A of the Crimes Act 1900.....	19
38 Detention orders.....	19
39 Restrictions on publication.....	20
40 Lists of search friends.....	21
41 Proceedings for offences.....	21
42 Regulations.....	21
43 Monitoring of Act by Ombudsman.....	21
44 Review of Act.....	22

# Police Powers (Internally Concealed Drugs) Act 2001 No 31



New South Wales

An Act with respect to searches for internally concealed prohibited drugs.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Police Powers (Internally Concealed Drugs) Act 2001*.

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

**Aboriginal legal aid organisation** means an organisation that provides legal assistance to Aboriginal persons or Torres Strait Islanders, being an organisation prescribed by the regulations for the purposes of this definition.

**Aboriginal person** means a person who:

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

**appropriately qualified person**, in relation to carrying out an internal search, means a person:

- (a) having suitable qualifications to carry out the internal search, or
- (b) qualified under the regulations to carry out the internal search.

**child** means a person who is at least 10 years of age but under 18 years of age.

**eligible judicial officer** means a judicial officer in relation to whom a consent under

section 4 (1) and a declaration under section 4 (2) are in force.

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

**function** includes a duty.

**incapable person** means an adult who:

- (a) is incapable of understanding the general nature and effect of an internal search of the person's body, or
- (b) is incapable of indicating whether he or she consents or does not consent to an internal search being carried out.

**informed consent** is defined in subsection (3).

**internal search** means any search of a person's body involving an ultrasound, MRI, X-ray, Cat scan or other form of medical imaging, but does not include a search of a person involving an intrusion into the person's body cavities.

**judicial officer** means a person who is:

- (a) a Judge of the Supreme Court, or
- (b) a Judge of the District Court, or
- (c) a Magistrate.

**police station** includes:

- (a) a police station of a State or Territory, and
- (b) a building that is occupied by members of NSW Police and that is nominated by the Commissioner of Police for the purposes of this paragraph, and
- (c) a building occupied by the Australian Federal Police.

**prohibited drug** means a substance that is a prohibited drug within the meaning of the [Drug Misuse and Trafficking Act 1985](#).

**search friend** of a suspect means:

- (a) a parent or guardian of the suspect, or
- (b) a legal representative of the suspect, or
- (c) if the suspect is an Aboriginal person or a Torres Strait Islander and none of the previously mentioned persons is available—a representative of an Aboriginal legal aid organisation or a person whose name is on the relevant list maintained under section 40 who is chosen by, or is acceptable to, the suspect, or

(d) any other person chosen by, or acceptable to, the suspect.

**suspect** means a person whom a police officer suspects on reasonable grounds has swallowed or is internally concealing a prohibited drug that the suspect has in his or her possession for the purpose of committing an offence against the *Drug Misuse and Trafficking Act 1985* involving the supply of prohibited drugs.

**time out** means:

- (a) the time (if any) that is reasonably required to convey a suspect, in accordance with requirements of this Act, to the nearest police station, or to a hospital or other place where an internal search may be carried out,
- (b) any time that is reasonably spent waiting for a medical practitioner or appropriately qualified person to arrive at the hospital or other place where the internal search is to be carried out,
- (c) any time that is reasonably spent waiting for facilities or equipment that are needed to carry out the internal search to become available,
- (d) any time during which carrying out the internal search is suspended or delayed to allow the suspect, or someone else on the suspect's behalf, to communicate with a legal practitioner, friend, relative, parent, guardian, interpreter, medical practitioner or other person as provided by this Act,
- (e) any time during which carrying out the internal search is suspended or delayed to allow such a legal practitioner, friend, relative, parent, guardian, interpreter, medical practitioner or other person to arrive at the place where the internal search is to be carried out,
- (f) any time during which carrying out the internal search is suspended or delayed to allow the suspect to consult with a legal practitioner, friend, relative, parent, guardian, interpreter, medical practitioner or other person at the place where the internal search is to be carried out as provided by this Act,
- (g) any time during which carrying out the internal search is suspended or delayed to allow the suspect to receive medical attention,
- (h) any time during which carrying out the internal search is suspended or delayed to allow the suspect to recover from the effects of intoxication due to alcohol or another drug (or both),
- (i) any time during which carrying out the internal search is suspended or delayed to allow the suspect to rest or receive refreshments or to give the suspect access to toilet and other facilities,
- (j) any time during which carrying out the internal search is suspended or delayed at

the request of the suspect,

- (k) any time that is reasonably spent waiting for an eligible judicial officer to make an order as provided by this Act.

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

- (a) is a member of the Torres Strait Islander race of Australia, and
  - (b) identifies as an Torres Strait Islander, and
  - (c) is accepted by the Torres Strait Islander community as a Torres Strait Islander.
- (2) For the purposes of this Act, a person **informs** another person of a matter if the person informs the other person of the matter, through an interpreter if necessary, in a language (including sign language or braille) in which the other person is able to communicate with reasonable fluency.
- (3) A suspect gives **informed consent** to the carrying out of an internal search of the suspect if the suspect consents after a police officer:
- (a) asks the suspect to consent under section 9, and
  - (b) informs the suspect about the internal search in accordance with section 10, and
  - (c) gives the suspect a reasonable opportunity to communicate, or attempt to communicate, with a legal practitioner of the suspect's choice.

#### 4 Eligible judicial officers

- (1) A judicial officer may, by instrument in writing, consent to be nominated by the Attorney General under subsection (2).
- (2) The Attorney General may, by instrument in writing, declare judicial officers in relation to whom consents are in force under subsection (1) to be eligible judicial officers for the purposes of this Act.
- (3) An eligible judicial officer has, in relation to the exercise of a function conferred on an eligible judicial officer by this Act, the same protection and immunity as:
  - (a) in the case of a person who is a Judge of the Supreme Court—a Judge of the Supreme Court has in relation to proceedings in the Supreme Court, or
  - (b) in the case of a person who is a Judge of the District Court—a Judge of the District Court has in relation to proceedings in the District Court, or
  - (c) in the case of a person who is a Magistrate—a Magistrate has in relation to proceedings in a Local Court.
- (4) A judicial officer who has given consent under this section may, by instrument in

writing, revoke the consent.

- (5) The Attorney General may, by instrument in writing, amend or revoke a declaration under this section.

## **5 Notes**

Notes included in this Act do not form part of this Act.

## **Part 2 Authority to carry out internal searches**

### **6 Act does not apply to persons under 10**

This Act does not authorise the carrying out of an internal search on a person who is under 10 years of age.

### **7 When may an internal search be carried out?**

A medical practitioner or appropriately qualified person is authorised to carry out an internal search in accordance with this Act if:

- (a) a suspect (other than a child or incapable person)—with the written informed consent of the suspect, or
- (b) a suspect who is a child or incapable person—by order of an eligible judicial officer under section 14, or
- (c) a suspect who has refused consent—by order of an eligible judicial officer under section 14.

### **8 Police officer may detain suspect to request consent, or apply for order for, an internal search**

- (1) A police officer may detain a person for the purpose of requesting the person to consent to, or for the purpose of making an application for an order for, an internal search of the person, if the police officer:
  - (a) is satisfied that the person is a suspect, and
  - (b) has reasonable grounds to believe that the internal search is likely to produce evidence confirming that the person has committed or is committing an offence under the *Drug Misuse and Trafficking Act 1985* involving the supply of a prohibited drug, and
  - (c) is satisfied that the detention is justified in all the circumstances.
- (2) A person detained under this section must be taken as soon as practicable to a police station.
- (3) A person must not be detained under this section:



- (a) if the person is under arrest—for a period of more than 2 hours after the expiration of the investigation period provided for by section 356D of the *Crimes Act 1900*, or
  - (b) if the person is not under arrest—for a period of more than 2 hours after the person is detained under this section.
- (4) In working out any period of time for the purposes of subsection (3), any time out is to be disregarded.
- (5) A police officer exercising a power under this section in relation to a person must produce identification as such an officer if requested by the person to do so (unless the police officer is in uniform).

### **9 Police officer may request consent of certain suspects for internal search**

- (1) A police officer may request a suspect (other than a child or incapable person) who is detained under section 8 to consent to an internal search.
- (2) The police officer must inform the suspect as required by section 10 before making the request.
- (3) The police officer must not ask a suspect who is an Aboriginal person or Torres Strait Islander to consent to an internal search unless:
- (a) a search friend of the suspect is present, or
  - (b) the suspect has expressly and voluntarily waived his or her right to have a search friend present.
- (4) Despite subsection (3), a search friend may be excluded from the presence of the suspect if a police officer has reasonable grounds to believe that the presence of the search friend could be prejudicial to the prevention, detection or investigation of, or dealing with, any contravention or possible contravention of the law.
- (5) If the suspect consents to the internal search the police officer must, as soon as practicable, arrange for the search to be carried out.
- (6) If the suspect does not consent to the internal search:
- (a) the suspect must (unless otherwise in custody) be released immediately, or
  - (b) an application must, as soon as practicable, be made under section 12 for an order for the carrying out of the search.

### **10 Matters that suspect must be informed of before giving consent to an internal search**

A police officer who asks a suspect (other than a child or incapable person) for consent to carry out an internal search must (personally or in writing) inform the suspect of the following matters:

- (a) that the giving of information under this section, and the giving of consent (if any) by the suspect, is being or will be recorded by electronic means, or in writing, and that the suspect has a right to be given an opportunity to hear or view the recording as provided by section 28,
- (b) the kinds of procedures that can be used to carry out an internal search,
- (c) that if the internal search reveals the presence of matter that could be drugs in the suspect's body the suspect may be detained at a hospital or the surgery or other practising rooms of a medical practitioner for a period of up to 48 hours for the purpose of obtaining evidence against the suspect that might be used in a court of law,
- (d) that the internal search will be carried out by a medical practitioner or appropriately qualified person,
- (e) that the suspect may ask for a medical practitioner of his or her choice to be present while the internal search is carried out,
- (f) if the police officer believes on reasonable grounds that the suspect is an Aboriginal person or a Torres Strait Islander, that the suspect's search friend may be present while the search is carried out,
- (g) that the suspect may refuse to consent to the carrying out of the internal search,
- (h) that, if the suspect does not consent, an application may be made to an eligible judicial officer for an order authorising the carrying out of the internal search.

#### **11 Procedure after the carrying out of an internal search**

- (1) If an internal search carried out on a suspect does not reveal the presence in the suspect's body of any matter that, in the opinion of the person carrying out the search, could be drugs, the suspect must (unless otherwise in custody) be released immediately.
- (2) If an internal search carried out on a suspect reveals the presence in the suspect's body of any matter that, in the opinion of the person carrying out the search, could be drugs the suspect may be detained at a hospital or the surgery or other practising rooms of a medical practitioner for a period not exceeding 48 hours (or such longer period as may be extended by a detention order under section 38) after the carrying out of the internal search.

### **Part 3 Orders for carrying out internal searches**

#### **12 Application for order for internal search**

- (1) A police officer may apply to an eligible judicial officer for an order authorising:

- (a) an internal search of a suspect, and
  - (b) the detention of the suspect for the purposes of the internal search being carried out.
- (2) An application for an order must:
- (a) be in writing, and
  - (b) be supported by evidence dealing with the matters referred to in section 8, and
  - (c) be made in the presence of the suspect (subject to any contrary order made by the eligible judicial officer).

### **13 Procedure at hearing of application for order**

- (1) An order may only be made in the presence of the suspect concerned, subject to any contrary order made by the eligible judicial officer.
- (2) A suspect who is:
  - (a) a child, or
  - (b) an incapable person,must have a search friend and may also be represented by a legal practitioner.
- (3) If the applicant for the order believes on reasonable grounds that the suspect is an Aboriginal person or a Torres Strait Islander not covered by subsection (2), the suspect:
  - (a) must have a search friend, and
  - (b) may also be represented by a legal practitioner.
- (4) Subsection (3) (a) does not apply if the suspect expressly and voluntarily waives his or her right to have a search friend present.
- (5) Any other suspect (including a suspect covered by subsection (2)) may be represented by a legal practitioner.
- (6) The suspect or his or her representative:
  - (a) may cross-examine the applicant for the order, and
  - (b) may, with the leave of the eligible judicial officer, call or cross-examine any other witness, and
  - (c) may address the eligible judicial officer.
- (7) An eligible judicial officer must not give leave under subsection (6) (b) unless the

eligible judicial officer is of the opinion that there are substantial reasons why, in the interests of justice, the witness should be called or cross-examined.

- (8) Despite subsections (2) and (3), the suspect's search friend may be excluded from the hearing if the search friend unreasonably interferes with or obstructs the hearing of the application.

#### **14 Orders for internal search**

- (1) An eligible judicial officer may make an order:
- (a) authorising an internal search of a suspect, and
  - (b) the detention of the suspect for a period not exceeding 24 hours for the purposes of the internal search being carried out.
- (2) An eligible judicial officer may make an order for the internal search of a suspect only if the eligible judicial officer is satisfied that:
- (a) the person is a suspect, and
  - (b) there are reasonable grounds to believe that the internal search is likely to produce evidence confirming that the person has committed or is committing an offence under the *Drug Misuse and Trafficking Act 1985* relating to the supply of a prohibited drug, and
  - (c) the making of the order is justified in all the circumstances.
- (3) An eligible judicial officer must not make an order for an internal search if for any reason an internal search cannot safely be carried out on the suspect (for example, because it would endanger the physical health of the suspect if such a search were carried out).
- (4) Without limiting subsection (3), an eligible judicial officer must not make an order for an internal search of a child involving electromagnetic radiation or radiography if satisfied that such a procedure has been carried out on the child under this Act on 2 or more occasions in the previous 2 years unless the eligible judicial officer considers that exceptional circumstances exist that otherwise justify the making of the order.
- (5) If the eligible judicial officer does not make such an order, the eligible judicial officer must (unless the suspect is otherwise in custody) order that the suspect be released immediately.
- (6) If an eligible judicial officer makes an order under this section in respect of a suspect who the eligible judicial officer is satisfied is an Aboriginal person or a Torres Strait Islander, a child or an incapable person, the eligible judicial officer must appoint a person (not being a police officer) to represent the suspect's interests as a search friend in relation to this Act.

- (7) A person must not be appointed as a search friend if the applicant for the order under this section satisfies the eligible judicial officer that there are reasonable grounds to believe that the appointment of the person as a search friend could be prejudicial to the prevention, detection or investigation of, or dealing with, any contravention or possible contravention of the law.

## **Part 4 The internal search**

### **15 Internal search**

- (1) An internal search is to be carried out by a medical practitioner or an appropriately qualified person.
- (2) If the suspect is an Aboriginal person or a Torres Strait Islander or a child or incapable person, the search is to be carried out in the presence of the search friend appointed by the eligible judicial officer under section 14 (5).
- (3) The search is to be carried out at:
- (a) a hospital, or
  - (b) the surgery or other practising rooms of a medical practitioner.

### **16 Conduct of internal search**

A medical practitioner or appropriately qualified person may, in carrying out an internal search under this Act, use any medical procedure or apparatus that the medical practitioner or appropriately qualified person considers to be reasonably safe in the circumstances.

### **17 Medical practitioner may take action to preserve suspect's life**

- (1) A medical practitioner may take such measures in relation to a suspect detained under this Act, including removal to another place, as the medical practitioner considers necessary because the suspect's life is at risk, including measures involving surgical incision or exploration.
- (2) While the suspect is being so removed to a place, and while he or she is at that place:
- (a) he or she may be detained under this subsection, and
  - (b) time is not to be taken to run under an order under this Act.

### **18 General rules for carrying out internal search**

An internal search:

- (a) must be carried out in circumstances affording reasonable privacy to the suspect, and
- (b) must not be carried out in the presence or view of a person (other than the police

officer having custody of the suspect) whose presence is not necessary for the purposes of the internal search or required or permitted by another provision of this Act, and

- (c) must not involve the removal of more clothing than is necessary for the carrying out of the internal search, and
- (d) must not involve more visual inspection than is necessary for the carrying out of the internal search.

### **19 No questioning during internal search**

- (1) An internal search must not be carried out while a suspect is being questioned. If questioning has not been completed before an internal search is to be carried out, it must be suspended while the internal search is carried out.
- (2) In this section, a reference to questioning of a suspect is a reference to questioning the suspect, or carrying out an investigation (in which the suspect participates), to investigate the involvement (if any) of the suspect in any offence relating to the supply of prohibited drugs (including an offence for which the suspect is not in custody).

### **20 Suspect must be cautioned before internal search**

Before anyone starts to carry out an internal search on a suspect, a police officer must caution the suspect that he or she does not have to say anything while the search is carried out but that anything the person does say may be used in evidence.

**Note—**

A failure to caution a suspect may result in evidence that is obtained being inadmissible—see section 138 of the [Evidence Act 1995](#).

### **21 Internal searches not be carried out in cruel, inhuman or degrading manner**

Nothing in this Act authorises the carrying out of an internal search in a cruel, inhuman or degrading manner but the carrying out of an internal search on a suspect in accordance with this Act is not of itself taken to be cruel, inhuman or degrading to the suspect.

### **22 Medical practitioner or appropriately qualified person to prepare report**

- (1) As soon as practicable after completing an internal search under this Act, the medical practitioner or practitioners involved or the appropriately qualified person must give the Commissioner of Police a written report in the form approved by the Commissioner.
- (2) The report must indicate whether the internal search involved the use of electromagnetic radiation or radiography.
- (3) This section is not limited by any law relating to privilege or confidentiality.

- (4) In any proceedings under this Act, a report given to the Commissioner of Police under this section is proof (unless evidence is adduced to the contrary) of the facts stated in the report.

### **23 Suspect's rights during detention**

- (1) A person detained under this Act may at any time:
- (a) consult a legal practitioner, or
  - (b) except as provided by subsection (3), communicate with another person.
- (2) If a person detained under this Act wishes to consult a legal practitioner, a police officer must, if reasonably practicable, arrange for the person to consult a legal practitioner of the person's choice.
- (3) A police officer may stop a person so detained from communicating with another person (other than a legal practitioner) if the officer believes on reasonable grounds that such communication should be stopped in order to:
- (a) safeguard the processes of law enforcement, or
  - (b) protect the life and safety of any person.

### **24 Interpreters**

- (1) If:
- (a) a police officer proposes to take an action listed in subsection (2), and
  - (b) the police officer believes on reasonable grounds that the suspect is unable, because of inadequate knowledge of the English language or a physical disability, to communicate orally with reasonable fluency in the English language,
- the police officer must, before taking the proposed action:
- (c) arrange for the presence of an interpreter to assist the suspect to communicate, and defer taking the proposed action until the interpreter is present, or
  - (d) if it is not reasonably practicable for an interpreter to be present, arrange for the assistance of an interpreter by means of an audio link facility.
- (2) The actions are as follows:
- (a) asking a suspect to consent to an internal search,
  - (b) applying to an eligible judicial officer for the carrying out of an internal search on a suspect,
  - (c) cautioning a suspect,

(d) arranging for the carrying out of an internal search on a suspect,

(e) giving a suspect an opportunity to hear or view an audio or video recording made under this Act.

(3) In this section:

**audio link facility** means a facility (including telephone) that enables audio communication between persons at different places.

## Part 5 Miscellaneous

### 25 Withdrawal of consent

If a person expressly withdraws consent to the carrying out of an internal search under this Act (or if the withdrawal of such consent can reasonably be inferred from the person's conduct) before or during the carrying out of the internal search:

- (a) the internal search is to be treated from the time of the withdrawal as an internal search for which consent has been refused, and
- (b) the internal search is not to proceed except by order of an eligible judicial officer under this Act.

### 26 Powers and entitlements of legal representatives and search friends

(1) A request or objection that may be made by a suspect under this Act may be made on the suspect's behalf by:

- (a) in any case—the suspect's legal representative, or
- (b) if the suspect is a child or an incapable person—a search friend of the suspect, or
- (c) if a police officer believes on reasonable grounds that the suspect is an Aboriginal person or a Torres Strait Islander—a search friend of the suspect.

(2) If:

- (a) a provision of this Act requires a suspect to be informed of a matter, and
- (b) a search friend or legal representative of the suspect is present when the suspect is to be so informed,

the search friend or legal representative must also be informed of the matter.

### 27 Recording of giving of information and suspect's responses

(1) The police officer who asks a suspect to consent to an internal search must, if practicable, ensure that the giving of the information about the proposed internal search and the suspect's responses (if any) are recorded by electronic means.



- (2) If recording the giving of the information and the suspect's responses (if any) by electronic means is not practicable, the police officer must ensure that a written record of the giving of the information and the suspect's responses (if any) is made, and that a copy of the record is made available to the suspect.

## **28 Obligation of police officers relating to recordings**

- (1) If a recording is made as required by a provision of this Act, a police officer must ensure that:
- (a) if an audio recording only or a video recording only is made—the suspect concerned is given the opportunity to listen to or view the recording, and
  - (b) if both an audio recording and a video recording are made:
    - (i) the suspect is given an opportunity to listen to the audio recording, and
    - (ii) the suspect is given an opportunity to view the video recording, and
  - (c) in any case, if a transcript of the recording is made—a copy of the transcript is made available to the suspect.
- (2) If a police officer is required to ensure that a suspect is given an opportunity to view an audio or video recording made under this Act, the police officer must ensure that the same opportunity is given to:
- (a) in any case—the suspect's legal representative, and
  - (b) if the suspect is a child or an incapable person—a search friend of the suspect, and
  - (c) if the police officer believes on reasonable grounds that the suspect is an Aboriginal person or a Torres Strait Islander—a search friend of the suspect.
- (3) Subsection (2) (b) and (c) does not apply if the suspect expressly and voluntarily waived his or her right to have a search friend present.

## **29 Material required to be made available to suspect**

Without limiting the way in which material that must be made available to a suspect under this Act may be made available, it:

- (a) may be sent to the suspect at his or her last known address (if any), or to the suspect's legal representative (if any) at his or her last known address, or
- (b) if there is no known address as mentioned in paragraph (a), may be made available for collection by the suspect, at the police station where the police officer who detained the suspect under section 8 was based at the time of detention.

### **30 No charge for material**

If a provision of this Act requires material of any kind to be given to a suspect, or an opportunity to view a video recording to be given to a suspect, the material or the opportunity to view the video recording must be given without charge.

### **31 Proof of suspicion or belief**

In any proceedings, the burden lies on the prosecution to prove on the balance of probabilities that a police officer had a belief on reasonable grounds, or suspected on reasonable grounds, as to a matter referred to in this Act.

### **32 Proof of impracticability**

In any proceedings, the burden lies on the prosecution to prove on the balance of probabilities that it was not practicable to do something required by this Act to be done if practicable.

### **33 Proof that time be disregarded**

In any proceedings, the burden lies on the prosecution to prove on the balance of probabilities that any particular time was covered by a provision of this Act.

### **34 Proof of voluntary waiver of rights**

In any proceedings:

- (a) the burden lies on the prosecution to prove that an Aboriginal person or Torres Strait Islander has waived a right as mentioned in this Act, and
- (b) the burden is not discharged unless the court is satisfied on the balance of probabilities that the person voluntarily waived that right, and did so with full knowledge and understanding of what he or she was doing.

### **35 Liability of medical practitioners and appropriately qualified persons**

No civil or criminal liability is incurred by any medical practitioner or appropriately qualified person who carries out, or helps to carry out, an internal search under this Act in respect of anything properly and necessarily done or omitted to be done in good faith by the medical practitioner or appropriately qualified person in carrying out or helping to carry out the search if the medical practitioner or appropriately qualified person believed on reasonable grounds that:

- (a) consent had been given to the carrying out of the internal search, or
- (b) the carrying out of the internal search without consent had been duly ordered by an eligible judicial officer under this Act.

### **36 Medical practitioners and appropriately qualified persons not obliged to carry out**

### **internal searches**

Nothing in this Act requires a medical practitioner or appropriately qualified person to carry out an internal search.

### **37 Relationship to Part 10A of the *Crimes Act 1900***

- (1) Nothing in this Act is intended to limit the rights and protections provided by Part 10A of the *Crimes Act 1900* to the extent that the provisions of that Part can operate in circumstances covered by this Act.
- (2) The rights and protections conferred by this Act are in addition to those conferred by Part 10A of the *Crimes Act 1900* but, to the extent (if any) that compliance with this Act results in compliance with that Part, the requirements of that Part are satisfied.
- (3) Except as provided by subsection (4), this Act does not authorise keeping a suspect in custody, in order to carry out an internal search, for more than 24 hours (or such longer period as may be extended by a detention order under section 38) after the suspect consents to, or an eligible judicial officer authorises, the carrying out of the internal search.
- (4) Despite subsection (3), a suspect may be kept in custody for up to 48 hours (or such longer period as may be extended by a detention order under section 38) after an internal search carried out on the suspect reveals the presence of matter that could be drugs in the suspect's body.
- (5) In working out any period of time for the purposes of subsection (3) or (4), time out is to be disregarded.
- (6) In working out whether the investigation period for the purposes of Part 10A of the *Crimes Act 1900* has expired, any time that is reasonably required to carry out an internal search authorised by this Act is to be taken into account.

### **38 Detention orders**

- (1) A police officer may, before the end of a period referred to in section 11 or 37, apply to an eligible judicial officer to extend the maximum period for which a suspect may be detained under that section.
- (2) The eligible judicial officer may order that the maximum period be extended by a period (not exceeding 48 hours) specified in the order.
- (3) An eligible judicial officer must not extend the period unless satisfied that the further period is reasonably necessary to carry out an internal search or to confirm that matter present in the suspect's body that was revealed by an internal search is drugs.
- (4) The maximum period must not be extended a second time unless an eligible judicial officer is satisfied that there are exceptional circumstances that justify the extension.

(5) The maximum period cannot in any circumstances be extended more than twice.

### **39 Restrictions on publication**

(1) A person must not intentionally or recklessly, in any report of a proceeding under this Act, publish:

(a) the name of the suspect on whom an internal search is carried out or proposed to be carried out under this Act in relation to an offence of supplying a prohibited drug, or

(b) any information likely to enable the identification of the suspect,

unless the suspect has been charged with the offence or an eligible judicial officer, by order, has authorised such publication.

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

(2) This section does not make it an offence to publish the name of a suspect or any information likely to enable the identification of a suspect if the publication is solely for the purposes of the internal management of NSW Police or the investigation of an offence by a law enforcement officer.

(3) In this section:

**law enforcement agency** means each of the following:

(a) NSW Police,

(b) the Independent Commission Against Corruption,

(c) the New South Wales Crime Commission,

(d) the Police Integrity Commission,

(e) the Australian Federal Police,

(f) the Australian Crime Commission,

(g) any other agency prescribed for the purposes of this definition.

**law enforcement officer** means:

(a) an officer or employee of a law enforcement agency or a person who is seconded to such an agency, including (but not limited to) a police officer, or

(b) a member of a police force or police service (however described) of another State, a Territory or another country.

#### **40 Lists of search friends**

- (1) The Minister must, so far as is reasonably practicable, establish, and update at such intervals as the Minister thinks appropriate, a list, in relation to a part of the State where there are likely to be persons detained under this Act of the names of persons (not being police officers) who:
  - (a) are suitable to help Aboriginal persons or Torres Strait Islanders so detained, and
  - (b) are willing to give such help in that part of the State.
- (2) In establishing and maintaining a list in relation to a part of the State, the Minister must from time to time consult with any Aboriginal legal aid organisation providing legal assistance to Aboriginal persons or Torres Strait Islanders in that part of the State.
- (3) The Minister may, in writing, delegate to a person employed in the Attorney General's Department all or any of the functions of the Minister under this section.

#### **41 Proceedings for offences**

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

#### **42 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 the purpose of carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units.

#### **43 Monitoring of Act by Ombudsman**

- (1) For the period of 2 years after the commencement of this section the Ombudsman is to keep under scrutiny the operation of the provisions of this Act and the regulations.
- (2) For that purpose, the Ombudsman may require any public authority to provide information concerning the authority's participation in the operation of this Act and the regulations.
- (3) The Ombudsman must, as soon as practicable after the expiration of that 2-year 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 the Commissioner of Police.
- (4) The Ombudsman may identify, and include recommendations in the report to be

considered by the Minister about, amendments that might appropriately be made to this Act with respect to the operation of this Act and the regulations.

- (5) The Ombudsman may at any time make a special report on any matter arising out of the operation of this Act and the regulations 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) The report:
  - (a) on presentation and for all purposes is 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.

#### **44 Review of Act**

- (1) The Minister is 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 undertaken as soon as possible after the period of 2 years from the date of assent to this Act.
- (3) In reviewing the Act, the Minister is to have regard to any report furnished to the Minister under section 43.
- (4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the Ombudsman furnishes a report to the Minister under section 43.