

Crimes Legislation Amendment Act 2002 No 130

[2002-130]



New South Wales

Status Information

Currency of version

Repealed version for 1 July 2005 to 19 June 2006 (accessed 22 December 2024 at 16:13)

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

Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Repeal**

The Act was repealed by Sch 4 to the [Statute Law \(Miscellaneous Provisions\) Act 2006 No 58](#) with effect from 20.6.2006.

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](#).

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New South Wales

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Crimes Legislation Amendment Act 2002 No 130



New South Wales

An Act to amend certain Acts with respect to criminal offences and procedure; and for other purposes.

1 Name of Act

This Act is the *Crimes Legislation Amendment Act 2002*.

2 Commencement

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

3 Amendment of Acts

The Acts specified in Schedules 1–10 are amended as set out in those Schedules.

4 Explanatory notes

The matter appearing under the heading “Explanatory note” in any of the Schedules does not form part of this Act.

Schedules 1–3 (Repealed)

Schedule 4 Amendment of **Crimes Act 1900**

(Section 3)

[1] (Repealed)

[2] Section 356D Investigation period

Omit section 356D (1). Insert instead:

(1) The investigation period is a period that:

- (a) if the person was arrested on premises during the execution of a search warrant and detained under Part 3A of the *Search Warrants Act 1985*—begins when the person ceases to be detained under that Part and ends at a time that is reasonable in all the circumstances (but does not exceed the maximum

investigation period), or

- (b) in any other case—begins when the person is arrested and ends at a time that is reasonable in all the circumstances (but does not exceed the maximum investigation period).

[3] Section 356E Determining reasonable time

Insert after section 356E (2) (k):

- (k1) if the person was arrested on premises during the execution of a search warrant and detained on the premises under Part 3A of the [Search Warrants Act 1985](#):
- (i) the period of time that the person was detained on the premises, and
 - (ii) the time taken to execute the search warrant, and
 - (iii) whether, in the circumstances, the search warrant was executed diligently and without undue delay,

[4] Section 356FA

Insert after section 356F:

356FA No person may be detained for period of time that is not reasonable

- (1) Nothing in this Part authorises the detention of any person for a continuous period of time that is not reasonable having regard to all the circumstances of the case.
- (2) Without limiting subsection (1), the following periods of time are to be taken into account in determining whether a person has been detained for a continuous period of time that is not reasonable:
 - (a) such of the periods of time referred to in section 356F (1) as are relevant,
 - (b) if the person was first arrested on premises during the execution of a search warrant—any period of time that the person was detained under Part 3A of the [Search Warrants Act 1985](#) before being detained under this Part.

[5] Section 356I Information in application for detention warrant

Insert after section 356I (1) (f):

- (f1) if the person was arrested on premises during the execution of a search warrant and detained on the premises under Part 3A of the [Search Warrants Act 1985](#):

- (i) details of the premises being searched, and
- (ii) the time and date of the commencement of the execution of the search warrant and the time and date of the completion or cessation of that execution, and
- (iii) the period of time that the person was detained on the premises,

[6]-[8] (Repealed)

Explanatory note

Assaults against law enforcement officers

Item [1] amends section 60AA of the *Crimes Act 1900* to provide that Crown Prosecutors, Acting Crown Prosecutors, sheriff's officers and solicitors employed by the Director of Public Prosecutions are law enforcement officers for the purposes of Division 8A (Assaults and other actions against police and other law enforcement officers) of Part 3 of the Act.

Amendments consequential on amendments to *Search Warrants Act 1985*

Items [2], [3] and [5] make amendments to Part 10A (Detention after arrest for purposes of investigation) of the Act that are consequential on the insertion of Part 3A (Detention after arrest during execution of warrant) of the *Search Warrants Act 1985* by Schedule 10 [3] to the proposed Act. The amendments ensure that detention under the new Part 3A is taken into account for the purposes of determining an appropriate period of detention under Part 10A. Item [2], in particular, amends Part 10A to provide that a person may be detained under Part 10A for an appropriate period commencing when the person ceases to be detained under new Part 3A.

Person cannot be detained for an excessively long period of time under Part 10A of Act

Item [4] amends Part 10A of the Act to provide that a person cannot be detained under Part 10A for a continuous period of time that is not reasonable having regard to all the circumstances.

Self-defence

Section 421 of the *Crimes Act 1900* currently provides that a person is not criminally responsible for murder where the person uses force that involves the intentional or reckless infliction of death in circumstances where the conduct is not a reasonable response in the circumstances as he or she perceives them, but the person believes the conduct is necessary to defend the person or another person or to prevent or terminate the unlawful deprivation of the person's or another person's liberty. The section operates to allow a verdict of manslaughter to be given if the person is otherwise criminally responsible for manslaughter.

Item [6] of the proposed amendments to the Act seeks to remove a possible anomaly by making it clear that the exclusion of criminal responsibility for murder for such conduct in those circumstances applies to any conduct that would otherwise amount to murder. The effect of the amendment is to require murder to be reduced to manslaughter if death is inflicted where the accused intends only to cause grievous bodily harm (since it is to be so reduced where the accused intends to kill).

Disclosure of residential address of health care providers applying for apprehended personal violence orders

Item [7] amends Part 15A of the Act to provide that generally the residential address of a health care provider who applies for or is granted an apprehended personal violence order does not need to be specified on the application or order and that a work address may be specified instead.

Savings and transitional provisions

Item [8] amends the Eleventh Schedule to the Act to enable the making of savings and transitional regulations consequent on the enactment of the proposed amendments to the Act.

Schedules 5-9 (Repealed)

Schedule 10 Amendment of [Search Warrants Act 1985](#)

(Section 3)

[1] Section 3A

Insert after section 3:

3A Notes

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

[2] Section 19A

Insert after section 19:

19A Recording execution of search warrants

- (1) The police officer in charge of the execution of a search warrant must ensure that an audio and visual recording of the execution of the warrant is made in accordance with any requirements prescribed by the regulations.
- (2) Nothing in subsection (1) requires the making of an audio and visual recording if there is an urgent need to execute the search warrant and it is not reasonably practicable in the circumstances for the recording to be made.
- (3) The police officer in charge of the execution of the search warrant must give each of the following persons the opportunity to view, free of charge, any such recording if the person requests it:
 - (a) an owner of the premises,
 - (b) an occupier of the premises,
 - (c) any person arrested on the premises during the execution of the warrant,
 - (d) a legal representative of a person referred to in paragraph (a), (b) or (c),
 - (e) any other person, or person belonging to a class of persons, prescribed by the regulations.
- (4) Nothing in subsection (3) requires a person (other than a legal practitioner of the kind referred to in subsection (3) (d)) to be given an opportunity to view any such recording if the police officer in charge of the execution of the search warrant has reasonable grounds for believing that doing so is likely to result in:

- (a) a person avoiding arrest, or
 - (b) the concealment, fabrication, destruction or loss of evidence or the intimidation of a witness, or
 - (c) bodily injury being caused to any other person.
- (5) A failure to comply with this section does not affect the validity of the execution of any search warrant.

[3] Part 3A

Insert after Part 3:

Part 3A Detention after arrest during execution of warrant

Division 1 General

23A Definitions

- (1) In this Part:

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.

detained person means a person who is detained under this Part.

detention warrant means a warrant issued under Division 5.

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.

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 in charge of a detained person means:

- (a) the police officer who is in charge of executing the search warrant on the premises concerned, or
- (b) a police officer on the premises to whom the police officer referred to in paragraph (a) has delegated the function of detaining the person.

search detention period means the period provided for by section 23F.

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.
- (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 during the execution of a search warrant if:
- (a) the police officer believes that there is sufficient evidence to establish that the person has committed an offence in respect of a thing mentioned in the search warrant or seized during the execution of the warrant, 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.

Note—

For example, both the [Mental Health Act 1990](#) and the [Mental Health \(Criminal Procedure\) Act 1990](#) contain provisions that authorise police officers to detain mentally ill persons in certain circumstances.

- (4) For the purposes of this Part, a person ceases to be under arrest for an offence if the person is remanded by a justice, Magistrate or court in respect of the offence.

23B Persons to whom Part applies

- (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 the [Intoxicated Persons Act 1979](#).

- (3) This Part does not apply to any person who is being detained under Part 10A of the *Crimes Act 1900*.

23C Modification of application of Part to certain persons

- (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 a search detention period for a person or class of persons referred to in that subsection that is shorter than the period provided for by section 23F.

23D Effect of Part on other powers and duties

- (1) **Existing powers of 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.
- (2) **Certain evidentiary matters and rights not affected** Nothing in this Part affects:
- (a) the operation of any of the provisions of the *Evidence Act 1995*, including the following:
 - (i) section 84 (Exclusion of admissions influenced by violence and certain other conduct),
 - (ii) section 85 (Criminal proceedings: reliability of admissions by defendants),
 - (iii) section 90 (Discretion to exclude admissions),
 - (iv) section 138 (Exclusion of improperly or illegally obtained evidence),
 - (v) section 139 (Cautioning of persons), 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 Power to detain on search premises

23E Detention after arrest during execution of search warrant

- (1) A police officer who is executing a search warrant in respect of any premises may, in accordance with this section, detain in connection with the execution of the warrant, for the search detention period provided by section 23F, any person who is lawfully arrested on the premises for an offence in connection with a thing mentioned in, or seized during the execution of, the warrant.
- (2) The person must be:
 - (a) released (whether conditionally or on bail) within the search detention period, or
 - (b) brought before a justice, Magistrate 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.
- (3) Nothing in this section:
 - (a) authorises the detention of a person after the search warrant ceases to have effect, or
 - (b) prevents a police officer from detaining under Part 10A of the *Crimes Act 1900* any person who has ceased to be detained under this Part if such detention is otherwise authorised under Part 10A.

Note—

Section 20 specifies the circumstances in which a search warrant ceases to have effect.

- (4) A requirement in another Part of this Act, the *Justices Act 1902*, the *Bail Act 1978* or under any other relevant law that a person who is under arrest be taken before a justice, Magistrate 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 justice, Magistrate or court is authorised by this Part.

23F Search detention period

- (1) The search detention period is a period that:
 - (a) begins when the person is arrested, and
 - (b) ends when the search warrant ceases to have effect or at a time that is reasonable having regard to all the circumstances (whichever is the earlier),but does not exceed the maximum search detention period.

Note—

Section 20 specifies the circumstances in which a search warrant ceases to have effect.

- (2) The maximum search detention period is 4 hours or such longer period as the maximum search detention period may be extended by a detention warrant.

23G Determining reasonable time

- (1) In determining what is a reasonable time for the purposes of section 23F (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 to assist in the execution of the search warrant,
 - (c) whether the presence of the person to observe the execution of the search warrant would assist in the protection of the person's interests,
 - (d) whether the person has indicated a willingness to assist in the execution of the search warrant,
 - (e) the time during which the person is in the company of a police officer before and after the person is arrested,
 - (f) the time required to execute the search warrant.
- (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.

Division 3 Rights of detained persons

23H Police officer in charge to caution, and give summary of Part to, detained person

- (1) The police officer in charge of a detained person must, as soon after the arrest of the person as is reasonably practicable in the circumstances:
 - (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 search detention period may be extended beyond 4 hours by application made to an authorised justice and that the person, or the person's legal representative, may make representations to the authorised justice about the application.
- (2) The giving of a caution under subsection (1) (a) does not affect a requirement of any law that a person answer questions put by, or do things required by, a police officer.

23I Right to communicate with friend, relative, guardian or independent person

- (1) The police officer in charge of a detained person must, as soon after the arrest of the person as is reasonably practicable in the circumstances, inform the person that he or she may communicate, or attempt to communicate, with a friend, relative, guardian or independent person:
 - (a) to inform that person of the detained person's whereabouts, and
 - (b) 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.
- (2) If the person wishes to make any communication referred to in subsection (1), the police officer in charge must, as soon as is reasonably practicable in the circumstances:
 - (a) provide the person with facilities that are reasonable in the circumstances to enable the person to do so, and
 - (b) allow the person to do so in circumstances in which, so far as is reasonably practicable in the circumstances, the communication will not be overheard.
- (3) 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 police officer in charge must:

- (a) allow the person to consult with the friend, relative, guardian or independent person, and
 - (b) provide facilities that are reasonable in the circumstances for that consultation, and
 - (c) allow the consultation to be in private if it is reasonably practicable to do so.
- (4) A requirement imposed on a police officer in charge under this section relating to a friend, relative, guardian or independent person need not be complied with if the police officer in charge 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 execution of the search warrant, or
 - (d) bodily injury being caused to any other person.
- (5) The duties of the police officer in charge under this section owed to a person who is detained under this Part and who is not an Australian citizen or a permanent Australian resident are in addition to the duties of the police officer owed to the person under section 23K.

23J Right to communicate with legal practitioner

- (1) The police officer in charge of a detained person must, as soon after the arrest of the person as is reasonably practicable in the circumstances, inform the person that he or she may communicate, or attempt to communicate, with a legal practitioner of the person's choice and ask that legal practitioner to do either or both of the following:
- (a) attend at the place where the person is being detained to enable the person to consult with the legal practitioner,
 - (b) be present during the execution of any part of the search warrant.
- (2) If the person wishes to make any communication referred to in subsection (1), the police officer in charge must, as soon as is reasonably practicable in the circumstances:
- (a) provide the person with facilities that are reasonable in the circumstances to enable the person to do so, and
 - (b) allow the person to do so in circumstances in which, so far as is reasonably practicable in the circumstances, the communication will not be overheard.

- (3) If the person has asked a legal practitioner communicated with to attend at the place where the person is being detained, the police officer in charge must:
 - (a) allow the person to consult with the legal practitioner, and
 - (b) provide facilities that are reasonable in the circumstances for that consultation, and
 - (c) allow the consultation to be in private if it is reasonably practicable to do so, and
 - (d) if the person has so requested, allow the legal practitioner to be present during the execution of the search warrant and to give advice to the person.
- (4) The duties of the police officer in charge under this section owed to a person who is detained under this Part and who is not an Australian citizen or a permanent Australian resident are in addition to the duties of the police officer owed to the person under section 23K.

23K Right of foreign national to communicate with consular official

- (1) This section applies to a detained person who is not an Australian citizen or a permanent Australian resident.
- (2) The police officer in charge of a detained person to whom this section applies must, as soon after the arrest of the person as is reasonably practicable in the circumstances, inform the person 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 police officer in charge must, as soon as is reasonably practicable in the circumstances:
 - (a) provide the person with facilities that are reasonable in the circumstances to enable the person to do so, and
 - (b) allow the person to do so in circumstances in which, so far as is reasonably practicable in the circumstances, the communication will not be overheard.
- (4) If the person has asked a consular official communicated with to attend at the place where the person is being detained, the police officer in charge must:
 - (a) allow the person to consult with the consular official, and
 - (b) provide facilities that are reasonable in the circumstances for that

consultation, and

(c) allow the consultation to be in private if it is reasonably practicable to do so.

(5) This section does not apply if the police officer in charge 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.

23L Provision of information to friend, relative or guardian

(1) The police officer in charge of a detained person must inform the detained person, as soon as is reasonably practicable in the circumstances, of any request for information as to the whereabouts of the detained person made by a person who claims to be a friend, relative or guardian of the detained person.

(2) The police officer in charge 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 police officer in charge believes on reasonable grounds that the person requesting the information is not a friend, relative or guardian of the detained person, or

(c) the police officer in charge 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 execution of the search warrant, or

(iv) bodily injury being caused to any other person, or

(d) it is not reasonably practicable in the circumstances to do so.

23M Provision of information to certain other persons

(1) The police officer in charge of a detained person must inform the detained person, as soon as is reasonably practicable in the circumstances, of any request for information as to the whereabouts of the detained person made by a person who claims to be:

(a) a 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 police officer in charge 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 police officer in charge believes on reasonable grounds that the person requesting the information is not the person he or she claims to be, or
 - (c) it is not reasonably practicable in the circumstances to do so.

23N Provision of interpreter

- (1) The police officer in charge of a detained person must, as soon as is reasonably practicable in the circumstances, arrange for an interpreter to be present for the person if the police officer 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) If an interpreter is not available to be present for the person, the police officer in charge must instead arrange for a telephone interpreter for the person.
- (3) However, the police officer in charge need not arrange for an interpreter to be present or for a telephone interpreter if the police officer in charge believes on reasonable grounds that the difficulty of obtaining an interpreter makes compliance with the requirement not reasonably practicable.

23O Right to medical assistance

The police officer in charge of a detained person must arrange immediately for the person to receive medical attention if it appears to the police officer that the person requires medical attention or the person requests it on grounds that appear reasonable to the police officer.

23P Right to reasonable refreshments and facilities

The police officer in charge of a detained person must ensure that the person is provided with reasonable refreshments in the circumstances and reasonable access to toilet facilities.

23Q Execution of search warrant need not be deferred to secure rights and other matters

- (1) Nothing in this Division requires the execution of a search warrant to be deferred while the police officer in charge of a detained person informs the person of any right of the person under this Division or the person exercises (or seeks to exercise) any such right.
- (2) A failure to comply with a provision of this Division does not of itself affect the validity of the execution of any search warrant.

Note—

Section 23D (2) provides that nothing in this Part affects the operation of certain provisions of the [Evidence Act 1995](#) relating to the exclusion of illegally obtained evidence.

Division 4 Records in relation to execution of search warrant and detention

23R Audio and visual recording of search

- (1) If a person is detained under this Part, the police officer in charge must ensure that an audio and visual recording (with appropriate time and date information) is made of the following:
 - (a) the detention of the person on the premises,
 - (b) any attempt to inform the person of his or her rights under Division 3,
 - (c) such other matters as may be prescribed by the regulations.
- (2) The regulations may also provide for any other matter relating to technical requirements for the making of an audio and visual recording for the purposes of subsection (1).
- (3) Nothing in subsection (1):
 - (a) requires the making of an audio and visual recording of any exercise of a right under Division 3 that is exercised in private, or
 - (b) requires the making of an audio and visual recording if there is an urgent need to conduct the execution of the search warrant and it is not reasonably practicable for the recording to be made in the circumstances.
- (4) The detained person (or the detained person's legal representative) must be given the opportunity to view, free of charge, any such recording if the person requests it.
- (5) Any such request may be made at any time after the person ceases to be

detained under this Part.

- (6) Nothing in subsection (4) requires a person (other than a legal practitioner) to be given an opportunity to view any such recording if there are reasonable grounds for believing that doing so is likely to result in:
- (a) a person avoiding arrest, or
 - (b) the concealment, fabrication, destruction or loss of evidence or the intimidation of a witness, or
 - (c) bodily injury being caused to any other person.
- (7) The requirements of this section are in addition to the requirements of section 19A.

23S Records to be maintained

- (1) The police officer in charge of a detained person must keep a record in the form (if any) prescribed by the regulations of the following matters:
- (a) the date and time of the person's arrest,
 - (b) details of the search warrant that was being executed when the person was detained under this Part,
 - (c) the name and rank of the arresting officer and any accompanying officers,
 - (d) the grounds for the person's detention,
 - (e) 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,
 - (f) details of any application for a detention warrant and the result of any such application,
 - (g) 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,
 - (h) the date and time the person is released from detention,
 - (i) any other particulars prescribed by the regulations.
- (2) The police officer in charge is responsible for the accuracy and completeness of the record for the person and must ensure that the record (or a copy of it) accompanies the person if the person is transferred to another location for detention.

- (3) The recording of any matters referred to in this section must be made contemporaneously with the matter recorded in so far as it is reasonably practicable to do so.
- (4) As soon as practicable after the person is released or taken before a justice, Magistrate or court, the police officer in charge must ensure that a copy of the person's record is given to the person.

Division 5 Extension of maximum search detention period

23T Detention warrant to extend search detention period

- (1) A police officer may, before the end of the search detention period, apply to an authorised justice for a warrant to extend the maximum search detention 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 justice about the application.
- (3) The authorised justice may issue a warrant that extends the maximum search detention period by up to 8 hours.
- (4) The maximum search detention period cannot be extended more than once.
- (5) After considering the information referred to in section 23W (1), an authorised justice must not issue a warrant to extend the maximum search detention period unless satisfied that:
 - (a) the execution of the search warrant concerned is being conducted diligently and without delay, and
 - (b) a further period of detention of the person to whom the application relates on the premises being searched is reasonably necessary to complete the execution of the search warrant because of the special and unusual circumstances of the search, and
 - (c) circumstances exist in the matter that make it impracticable for the execution of the search warrant to be completed within the 4-hour period.
- (6) A detention warrant ceases to have effect even if the extended maximum search detention period for which it provides has not expired when the search warrant by reason of which the detained person is being detained ceases to have effect.

Note—

Section 20 specifies the circumstances in which a search warrant ceases to have effect.

23U Procedure for applying for and issuing detention warrant

- (1) An application for a detention warrant may be made by the applicant in person or by telephone.
- (2) An application for a detention warrant made in person must be made in writing in the form prescribed by the regulations. The authorised justice must not issue the detention warrant unless the information given by the applicant in or in connection with the application is verified before the authorised justice on oath or affirmation or by affidavit. An authorised justice may administer an oath or affirmation or take an affidavit for the purposes of an application for a detention warrant.
- (3) An application for a detention warrant made by telephone must be made by facsimile (instead of orally) if the facilities to do so are readily available for that purpose.
- (4) If it is not practicable for an application made by telephone to be made directly to an authorised justice, the application may be transmitted to the authorised justice by another person on behalf of the applicant.
- (5) An authorised justice who issues a detention 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.
- (6) If a detention warrant is issued on an application made by telephone and the applicant was not furnished with the warrant, the applicant is to complete a form of detention warrant in the terms indicated by the authorised justice under subsection (5) and write on it the name of that authorised justice and the date and time when the warrant was signed. A form of detention warrant so completed is taken to be a detention warrant issued in accordance with this section.
- (7) A detention warrant issued on an application made by telephone is to be furnished by the authorised justice by transmitting it by facsimile, if the facilities to do so are readily available. The copy produced by that transmission is taken to be the original document.
- (8) As soon as practicable after a detention warrant is issued, the police officer in charge:
 - (a) must give a copy of the warrant to the person to whom it relates, and

- (b) must orally inform the person of the nature of the warrant and its effect.
- (9) In the case of an application for a detention warrant made 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 justice concerned an affidavit setting out the information on which the application was based that was given to the authorised justice when the application was made.
- (10) In any criminal proceedings, the burden lies on the prosecution to prove on the balance of probabilities that the warrant was issued.
- (11) In this section, **facsimile** includes any electronic communication device that transmits information in a form from which written material is capable of being reproduced with or without the aid of any other device or article.

23V Detention warrants may be issued after end of search detention period in limited circumstances

- (1) An authorised justice may issue a detention warrant even after the search detention period has ended if the authorised justice is satisfied that:
 - (a) the person applying for the warrant attempted to apply for the warrant by telephone before the end of that period, and
 - (b) the applicant's telephone call was answered but the applicant was not referred to an authorised justice to be dealt with until after the end of that period.
- (2) If an authorised justice issues a detention warrant after the end of the search detention period, the warrant is taken to have been issued immediately before the end of that period for the purposes of determining whether the detained person's further detention under this Part was authorised.

23W Information in application for detention warrant

- (1) An authorised justice must not issue a detention warrant unless the application for the warrant includes the following information:
 - (a) the details of the search warrant that is being executed,
 - (b) the general nature of the evidence on which the person to whom the application relates was arrested,
 - (c) the extent to which the search warrant has been executed and what steps are required to complete the execution of that warrant,
 - (d) the reasons for believing that the continued detention of the person is reasonably necessary to assist in the completion of the execution of the

search warrant,

- (e) the extent to which the person is co-operating with the execution of the search warrant,
 - (f) the views of the person detained,
 - (g) 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 by section 23X,
 - (h) any other information required by the regulations.
- (2) The applicant must provide (either orally or in writing) such further information as the authorised justice 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.

23X Further application for detention warrant after refusal

If an application by a person for a detention warrant is refused by an authorised justice, that person (or any other person who is aware of the application) may not make a further application for the same, or substantially the same, warrant to that or any other authorised justice unless the further application provides additional information that justifies the making of the further application.

23Y False or misleading information in applications

- (1) A person must not, in or in connection with an application for a detention warrant, give information to an authorised justice 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 made 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.

23Z Provisions relating to detention warrants

- (1) An authorised justice who issues a detention warrant is to cause a record to be made of all relevant particulars of the grounds the authorised justice has relied on to justify the issue of 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 detention 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 under this section if the authorised justice is satisfied that to do so might jeopardise the safety of any person.
 - (4) A detention warrant must be in the form prescribed by the regulations.
 - (5) A detention warrant is not invalidated by any defect other than a defect that affects the substance of the warrant in a material particular.

Division 6 Miscellaneous

23ZA Detention after arrest for purposes of investigation may count towards sentence

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.

23ZB Regulations may prescribe guidelines

The regulations may make provision for or with respect to guidelines to be observed by police officers regarding the exercise or performance of powers, authorities, duties or functions conferred or imposed on police officers (including police officers in charge of detained persons) by this Part.

23ZC Review of Part

- (1) The Attorney General is to review this Part to determine whether the policy objectives of the Part remain valid and whether the terms of the Part remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 12 months from the commencement of this Part.
- (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 referred to in subsection (2).

23ZD Monitoring of operation of certain provisions of Part by Ombudsman

- (1) For the period of 2 years from the date of commencement of this Part, the

Ombudsman is to keep under scrutiny the exercise of the functions conferred on police officers under this Part.

- (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 the 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 Attorney General and the Minister for Police and the Commissioner of Police.
- (4) The Attorney General is to lay (or cause to be laid) a copy of the report 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.
- (7) In this section:

exercise a function includes perform a duty.

function includes a power, authority or duty.

[4] Section 26A

Insert after section 26:

26A Savings and transitional regulations consequent on enactment of Crimes Legislation Amendment Act 2002

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Crimes Legislation Amendment Act 2002* (but only to the extent that it amends this Act).
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to that Act 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.

Explanatory note

Item [1] amends the *Search Warrants Act 1985* to provide that notes included in the Act do not form part of the Act.

Item [2] amends the Act to provide that the execution of search warrants are to be recorded by means of an audio and visual recording.

Item [3] inserts a new Part 3A in the Act that authorises police officers executing search warrants in relation to premises to detain any person lawfully arrested on the premises for a certain period while the search warrant is being executed. The provisions of the Part are similar to the provisions of Part 10A of the *Crimes Act 1900* (which deal with the detention of persons after arrest for the purposes of investigation).

Item [4] amends the Act to enable the making of savings and transitional regulations consequent on the enactment of the proposed amendments to the Act.