



New South Wales

Law Enforcement and Other Legislation Amendment Act 2007 No 97

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Law Enforcement and Other Legislation Amendment Act 2007 No 97

Act No 97, 2007

An Act to amend the *Law Enforcement (Powers and Responsibilities) Act 2002*, the *Terrorism (Police Powers) Act 2002*, the *Crimes (Serious Sex Offenders) Act 2006* and other Acts to make further provision with respect to police powers and serious sex offenders; and for other purposes. [Assented to 13 December 2007]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Law Enforcement and Other Legislation Amendment Act 2007*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 1.1 [6], 1.2 and 1.3 commence, or are taken to have commenced, on 14 December 2007.

3 Amendment of Acts and regulation

The Acts and regulation specified in Schedules 1–4 are amended as set out in those Schedules.

4 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments relating to large-scale public disorders

(Section 3)

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

[1] Section 87D Authorisation of special powers to prevent or control public disorder in public place

Insert at the end of section 87D:

- (2) In giving an authorisation, the police officer is to be satisfied that the nature and extent of the powers to be conferred by the authorisation are appropriate to the public disorder that is occurring or threatened.

[2] Section 87M Power to seize and detain things

Omit “or other communication device”, “or other communication devices” and “or device” wherever occurring.

Insert instead “or other thing”, “or other things” and “or thing” respectively.

[3] Section 87MB

Insert after section 87MA:

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

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

- (3) This section does not limit the operation of section 87A (3).
- (4) This section does not authorise a police officer to exercise the powers under section 87MA.

[4] Section 87N

Omit the section. Insert instead:

87N Emergency exercise of powers

- (1) If:
 - (a) a police officer suspects on reasonable grounds that there is a large-scale public disorder occurring or a threat of such a disorder occurring in the near future, and
 - (b) the officer suspects on reasonable grounds that the occupants of a vehicle on a road have participated or intend to participate in the public disorder,the officer may exercise the powers conferred under this Division in relation to the vehicle (and any person or thing in or on the vehicle) without an authorisation having been given under this Division in connection with the public disorder or threatened public disorder.
- (2) Before exercising any such power, the officer must obtain approval to do so (orally or in writing) from a police officer of or above the rank of Inspector. Approval is not to be given unless the police officer is satisfied that the officer seeking to exercise the power has reasonable grounds for the suspicions referred to in subsection (1).
- (3) A police officer is to cease exercising powers under this section:
 - (a) if the officer is notified that an application for an authorisation under this Division in connection with the public disorder or threatened disorder has been granted or refused, or
 - (b) if 3 hours has expired since approval was given for the exercise of those powers,whichever first occurs.
- (4) This section does not authorise a police officer to exercise the powers under section 87MA.

[5] Section 87O

Omit the section. Insert instead:

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

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

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

[6] Section 87P Sunset provision

Omit the section.

1.2 Crimes Act 1900 No 40

Section 59A Assault during public disorder

Omit section 59A (4).

1.3 Bail Act 1978 No 161

Section 8D Presumption against bail for offences committed in the course of riots or other civil disturbances

Omit section 8D (7).

Schedule 2 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 relating to dispersal of intoxicated persons

(Section 3)

[1] Section 197 Directions generally relating to public places

Omit section 197 (2). Insert instead:

- (2) A direction given by a police officer under this section must be reasonable in the circumstances for the purpose of:
 - (a) reducing or eliminating the obstruction, harassment, intimidation or fear, or
 - (b) stopping the supply, or soliciting to supply, of the prohibited drug, or
 - (c) stopping the obtaining, procuring or purchasing of the prohibited drug.

[2] Section 198

Omit the section. Insert instead:

198 Directions relating to dispersal of groups of intoxicated persons in public places

- (1) A police officer may give a direction to an intoxicated person who is in a group of 3 or more intoxicated persons in a public place to leave the place and not return for a specified period if the police officer believes on reasonable grounds that the person's behaviour in the place as a result of the intoxication (referred to in this Part as *relevant conduct*):
 - (a) is likely to cause injury to any other person or persons or damage to property, or
 - (b) otherwise gives rise to a risk to public safety.
- (2) A direction given by a police officer under this section must be reasonable in the circumstances for the purpose of preventing that injury or damage or reducing or eliminating that risk.
- (3) The period during which a person may be directed not to return to a public place is not to exceed 6 hours after the direction was given.

- (4) The other person or persons referred to in subsection (1) (a) need not be in the public place but must be near that place at the time the relevant conduct is being engaged in.
- (5) In this section, *intoxicated person* means a person who appears to be seriously affected by alcohol or any drug.

[3] Section 198A

Insert after section 198:

198A Giving of directions to groups of persons

- (1) A police officer may give a direction under this Part to persons comprising a group.
- (2) In any such case, the police officer is not required to repeat the direction, or to repeat the information and warning referred to in section 201, to each person in the group.
- (3) However, just because the police officer is not required to repeat any such direction, information or warning does not in itself give rise to any presumption that each person in the group has received the direction, information or warning.

[4] Section 201 Supplying police officer's details and giving warnings

Omit "the power" where firstly occurring in section 201 (1).

Insert instead "a power referred to in subsection (3)".

[5] Section 201 (2) (b)

Insert "before or at that time" after "to do so".

[6] Part 16 heading

Insert "**detention of**" after "**Powers relating to**".

[7] Schedule 5 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Law Enforcement and Other Legislation Amendment Act 2007

Schedule 3 Amendments relating to serious sex offenders

(Section 3)

3.1 Crimes (Serious Sex Offenders) Act 2006 No 7

[1] Section 3

Omit the section. Insert instead:

3 Objects of Act

- (1) The primary object of this Act is to provide for the extended supervision and continuing detention of serious sex offenders so as to ensure the safety and protection of the community.
- (2) Another object of this Act is to encourage serious sex offenders to undertake rehabilitation.

[2] Section 6 Application for extended supervision order

Omit “Attorney General” from section 6 (1).

Insert instead “State of New South Wales”.

[3] Section 6 (4)

Omit “the Attorney General would consider”.

Insert instead “are considered to be”.

[4] Section 7 Pre-trial procedures

Omit “Attorney General” from section 7 (2).

Insert instead “State of New South Wales”.

[5] Section 11 Conditions that may be imposed on supervision order

Insert after section 11 (e):

- (ea) to reside at an address approved by the Commissioner of Corrective Services, or

[6] Section 13 Supervision order may be varied or revoked

Omit “Attorney General” from section 13 (1).

Insert instead “State of New South Wales”.

[7] Section 14 Application for continuing detention order

Omit “Attorney General” from section 14 (1).

Insert instead “State of New South Wales”.

[8] Section 14 (4)

Omit “the Attorney General would consider”.

Insert instead “are considered to be”.

[9] Section 14A

Insert after section 14:

14A Application for continuing detention order on breach of extended supervision order or interim supervision order

(1) The State of New South Wales may apply to the Supreme Court for a continuing detention order against a person who is found guilty of an offence under section 12.

(2) Section 14 (3) and (4) apply to an application under this section.

(3) An application must be supported by documentation that addresses each of the matters referred to in section 17 (4A).

(4) An application may be made for an order against a person under this section whether or not the person is in custody.

(5) If a person who is found guilty of an offence under section 12 is serving a sentence of imprisonment by way of full-time detention, an application may not be made until the last 6 months of the person’s current custody.

[10] Section 15 Pre-trial procedures

Insert “under this Part” after “application” in section 15 (1) where firstly occurring.

[11] Section 15 (2)

Omit “Attorney General”.

Insert instead “State of New South Wales”.

[12] Section 16 Interim detention orders

Insert “under this Part” after “application” in section 16 (1).

[13] Section 16 (1) (a)

Insert “(if any)” after “custody”.

[14] Section 17 Determination of application for continuing detention order

Insert “under this Part” after “application” in section 17 (1) where firstly occurring.

[15] Section 17 (4A)

Insert after section 17 (4):

- (4A) In addition to the matters in subsection (4), in determining an application made under section 14A, the Supreme Court must have regard to the nature of the failure to comply with the requirements of the extended supervision order or interim supervision order and the likelihood of further failures to comply.

[16] Section 17A

Insert after section 17:

17A Special provisions relating to parole

- (1) This section applies to a person whose obligations under a parole order are suspended while the person is subject to an extended supervision order and who has been found guilty of an offence under section 12 in relation to the order.
- (2) Any parole order to which the person is subject is revoked if a continuing detention order is made against the person on an application under section 14A.

[17] Section 18 Term of continuing detention order

Insert after section 18 (1):

- (1A) Despite subsection (1), a continuing detention order made on application under section 14A in respect of a person who is not in custody commences when it is made and expires at the end of such period (not exceeding 5 years from the day on which it commences) as is specified in the order.

[18] Section 19 Detention order may be varied or revoked

Omit “Attorney General” from section 19 (1).

Insert instead “State of New South Wales”.

[19] Section 20 Warrant of committal

Insert “, or arrest and convey,” after “convey” in section 20 (2) (a).

[20] Section 22 Right of appeal

Insert after section 22 (4):

- (4A) If the Court of Appeal remits a matter to the Supreme Court for decision after an appeal is made, the extended supervision order or continuing detention order the subject of the appeal continues in force, subject to any order made by the Court of Appeal.
- (4B) Without limiting any other jurisdiction it may have, if the Court of Appeal remits a matter to the Supreme Court for decision after an appeal is made, the Court of Appeal may make an interim order revoking or varying an extended supervision order or a continuing detention order the subject of the appeal.

[21] Section 24A

Insert before section 25:

24A Attorney General etc to act on behalf of State

The Attorney General (or any other person prescribed by the regulations) is entitled to act on behalf of the State of New South Wales for the purposes of applications made under this Act.

[22] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

the *Law Enforcement and Other Legislation Amendment Act 2007*

[23] Schedule 2, Part 3

Insert after Part 2:

Part 3 Provisions consequent on enactment of Law Enforcement and Other Legislation Amendment Act 2007

4 Definition

In this Part:

2007 amending Act means the *Law Enforcement and Other Legislation Amendment Act 2007*.

5 Application of 2007 amending Act

- (1) The amendments made to this Act by the 2007 amending Act apply to and in respect of offences committed before the

commencement of this clause in the same way as they apply to and in respect of offences committed on or after that commencement.

- (2) This Act, as amended by the 2007 amending Act, applies to and in respect of a person who is subject to an order under this Act, that commenced before the commencement of this clause in the same way as it applies to and in respect of a person who is made subject to an order under this Act after that commencement.

3.2 Bail Act 1978 No 161

[1] Section 8F

Insert after section 8E:

8F Presumption against bail for breach of extended supervision orders or interim supervision orders

- (1) A person accused of an offence under section 12 of the *Crimes (Serious Sex Offenders) Act 2006* is not to be granted bail unless the person satisfies the authorised officer or court that bail should not be refused.
- (2) The requirement for bail cannot be dispensed with for a person accused of any such offence and section 10 (2) does not apply with respect to any such offence.
- (3) Section 9 does not apply to any such offence.

[2] Section 9D Repeat offenders—serious personal violence offences

Insert “66D,” after “66C,” in paragraph (a) of the definition of *serious personal violence offence* in section 9D (4).

[3] Section 32 Criteria to be considered in bail applications

Omit “or 8B” from section 32 (6). Insert instead “, 8B or 8F”.

[4] Section 38 Reasons to be recorded

Insert “8F,” before “9C” in section 38 (1A).

[5] Schedule 1 Savings and transitional provisions

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Law Enforcement and Other Legislation
Amendment Act 2007**

Presumptions against bail

- (1) Section 8F, as inserted by the *Law Enforcement and Other Legislation Amendment Act 2007*, extends to a grant of bail in respect of an offence alleged to have been committed before the commencement of that section if a person is charged with the offence on or after that commencement.
- (2) Section 9D, as amended by the *Law Enforcement and Other Legislation Amendment Act 2007*, extends to a grant of bail in respect of an offence alleged to have been committed under section 66D of the *Crimes Act 1900* before the commencement of that amendment if a person is charged with the offence on or after that commencement.

Schedule 4 Amendments relating to terrorism

(Section 3)

4.1 Terrorism (Police Powers) Act 2002 No 115

[1] Section 18 Power to search vehicles

Insert “, enter” after “stop” in section 18 (1).

[2] Section 22 Offence to obstruct or hinder search or other powers

Omit “or vehicle”. Insert instead “, to stop, enter and search a vehicle”.

[3] Section 23 Supplying police officer’s details and other information

Omit “, or as soon as is reasonably practicable after exercising the power” from section 23 (1).

Insert instead “(or if that is not reasonably practicable, as soon as is reasonably practicable after exercising the power)”.

[4] Section 26E No preventative detention order in relation to person under 16 years of age

Insert after subsection (2):

- (3) The person is to be released into the care of a parent or other appropriate person.

[5] Section 26U Power to enter premises

Omit “In subsection (2)” from section 26U (3). Insert instead “In this section”.

[6] Section 26U (3)

Insert in alphabetical order:

premises includes vehicle.

[7] Section 26ZA Compliance with obligation to inform

Insert after subsection (3):

- (3A) A police officer need not arrange for an interpreter to be present in compliance with the requirement under subsection (3) if the officer believes on reasonable grounds that the difficulty of obtaining an interpreter makes compliance with the requirement not reasonably practicable.

[8] Section 27A Definitions

Insert in alphabetical order in section 27A (1):

premises includes vehicle.

[9] Section 27U Notice to occupiers of execution of covert search warrant

Insert “occupied the subject premises and” after “was executed” where firstly occurring in section 27U (5) (a).

4.2 Terrorism (Police Powers) Regulation 2005

[1] Clause 4 Delegation of powers to give authorisation

Omit “Assistant Commissioner, Counter Terrorism” from clause 4 (1).

Insert instead “the Assistant Commissioner responsible for counter terrorism”.

[2] Clause 4 (2)

Omit “Commander, Counter Terrorist Co-ordination Command” from clause 4 (2).

Insert instead “the Assistant Commissioner responsible for counter terrorism investigations”.

[Second reading speech made in Legislative Council on 28 November 2007

Agreement in principle speech made in Legislative Assembly on 5 December 2007]

BY AUTHORITY