



New South Wales

Law Enforcement (Powers and Responsibilities) Amendment Bill 2007

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Law Enforcement (Powers and Responsibilities) Act 2002*:

- (a) to make it clear that the power to search a person under arrest includes a power to require the person to open his or her mouth or shake his or her hair (so as to enable inspection for concealed drugs or other items), and
- (b) to remove the requirement that the name of the authorised officer who issues a search warrant appear on an occupier's notice, and
- (c) to allow crime scene warrants issued in connection with terrorism offences to be extended so as to have effect for a period of up to 720 hours (30 days) after issue, and
- (d) to allow administrative officers of the NSW Police Force to exercise certain crime scene powers in relation to vehicles in public places that are reported as being stolen, without the necessity of a police officer being present, and
- (e) to repeal the provisions of that Act that provide for police use of medical imaging to search for internally concealed drugs, and

- (f) to allow the use of a tyre deflation device by police for the purpose of preventing the use of a vehicle by a person to escape lawful custody or avoid arrest.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002*.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Schedule 1 [2] clarifies that the power to search a person who is under arrest conferred on police officers by section 23 of the *Law Enforcement (Powers and Responsibilities) Act 2002* includes a power to request the person to open his or her mouth or to shake, or otherwise move, his or her hair so as to enable the police officer to search for concealed items (such as prohibited drugs). The provision is similar to the power conferred by existing section 21A of that Act.

Schedule 1 [3] removes the requirement that the name of the authorised officer who issues a search warrant be included in the occupier's notice that is provided to the occupier of the premises that are searched.

At present, the maximum period for which a crime scene warrant may be issued to have effect (taking into account possible extensions) is 144 hours (or 6 days).

Schedule 1 [4] and [5] allow an authorised officer who extends a crime scene warrant to extend the warrant so that it has effect for a period of up to 720 hours (or 30 days) after its issue, but only if the offence in connection with which the warrant is issued is a terrorism offence and the authorised officer is satisfied that there are reasonable grounds for extending the warrant beyond the usual 144 hour period.

Schedule 1 [10] allows a scene of crime officer (who is a member of the NSW Police Force responsible for examining or maintaining crime scenes, and not necessarily a police officer) to establish a crime scene in relation to a vehicle in a public place if the officer has reasonable grounds to suspect that it is a vehicle that has been reported as stolen by an owner or authorised user of the vehicle. The scene of crime officer will be able to exercise certain investigatory powers in relation to that crime scene if reasonably necessary to preserve, or search for and gather, evidence of the theft of the vehicle. It will no longer be necessary in these circumstances for a police officer

to establish the crime scene or to authorise the scene of crime officer to exercise the investigatory powers.

Schedule 1 [1] inserts a definition of *scene of crime officer* into the *Law Enforcement (Powers and Responsibilities) Act 2002* and **Schedule 1 [9]** makes amendments that are consequential to the inclusion of that definition. **Schedule 1 [7] and [8]** ensure that police officers are entitled to exercise crime scene powers at a crime scene established by a scene of crime officer under the new provisions. **Schedule 1 [6]** moves a provision of the Act that prevents a police officer establishing a crime scene more than once on the same premises in any 24 hour period, so as to facilitate its application to crime scenes established by scene of crime officers.

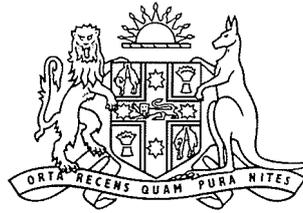
Schedule 1 [11] repeals the provisions of the *Law Enforcement (Powers and Responsibilities) Act 2002* that provide for the use of medical imaging to search for internally concealed drugs.

Schedule 1 [12] enables the Commissioner of Police to authorise the use of a tyre deflation device by police officers for the purpose of preventing the use of a vehicle by a person to escape from lawful custody or avoid arrest. At present, tyre deflation devices may only be used in connection with a police pursuit that has already commenced.

Schedule 1 [13] enables savings and transitional regulations to be made as a consequence of the amendments.

Schedule 1 [14] provides for transitional matters.

First print



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New South Wales

Law Enforcement (Powers and Responsibilities) Amendment Bill 2007

No. , 2007

A Bill for

An Act to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* to make further provision with respect to the powers of police officers and scene of crime officers, and with respect to warrants.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Law Enforcement (Powers and Responsibilities) Amendment Act 2007</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103	7 8
The <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> is amended as set out in Schedule 1.	9 10
4 Repeal of Act	11
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	12 13
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	14 15

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 3 Interpretation	3
	Insert in alphabetical order in section 3 (1):	4
	<i>scene of crime officer</i> means a member of the NSW Police Force responsible for examining or maintaining crime scenes.	5 6
[2]	Section 23A	7
	Insert after section 23:	8
	23A Ancillary power to search persons	9
	(1) In conducting a search of a person under section 23, a police officer may, if the police officer suspects on reasonable grounds that a thing of a kind referred to in section 23 (1) or (2) is concealed in the person's mouth or hair, request the person:	10 11 12 13
	(a) to open his or her mouth, or	14
	(b) to shake, or otherwise move, his or her hair.	15
	(2) Subsection (1) does not authorise a police officer to forcibly open a person's mouth.	16 17
	(3) A person must not, without reasonable excuse, fail or refuse to comply with a request made by a police officer in accordance with this section and section 201.	18 19 20
	Maximum penalty: 5 penalty units.	21
[3]	Section 67 Notice to occupier of premises entered pursuant to warrant	22
	Omit section 67 (2) (b) (ii).	23
[4]	Section 73A Extension of warrant	24
	Insert “, except as provided by subsection (7)” after “its issue” in section 73A (6) (a).	25 26
[5]	Section 73A (7) and (8)	27
	Insert after section 73A (6):	28
	(7) A crime scene warrant may be extended so that it has effect for a period of up to 720 hours after its issue if:	29 30
	(a) the offence in connection with which the warrant was issued is a terrorism offence, and	31 32

(b)	the authorised officer who issued the warrant is satisfied that there are reasonable grounds for extending the warrant beyond a period of 144 hours after its issue.	1 2 3
	Note. 720 hours is equivalent to 30 days.	4
(8)	In this section: <i>terrorism offence</i> means an offence under Part 6B of the <i>Crimes Act 1900</i> or an offence under Division 101, 102 or 103 of the <i>Criminal Code</i> of the Commonwealth.	5 6 7 8
[6]	Section 91 Establishment of crime scene	9
	Insert after section 91 (2):	10
(3)	A crime scene may not be established under this Part on the same premises more than once in a 24 hour period unless a crime scene warrant is obtained in respect of the second and any subsequent occasion.	11 12 13 14
[7]	Section 92 Exercise of powers at crime scene	15
	Omit “established by the police officer or another police officer” wherever occurring in section 92 (1) (a) and (2) (a).	16 17
	Insert instead “established under this Part”.	18
[8]	Section 92 (4)	19
	Omit the subsection. Insert instead:	20
(4)	A police officer may exercise crime scene powers in relation to a crime scene whether or not the police officer is the person who established the crime scene.	21 22 23
[9]	Sections 92 (5) and 94 (4)	24
	Omit “any member of the NSW Police Force responsible for examining or maintaining a crime scene” wherever occurring.	25 26
	Insert instead “a scene of crime officer”.	27
[10]	Section 95A	28
	Insert after section 95:	29
	95A Special arrangements for investigation of stolen vehicles	30
(1)	A scene of crime officer may establish a crime scene in relation to a vehicle in a public place if:	31 32
(a)	a vehicle has been reported as stolen by an owner or authorised user of the vehicle, and	33 34

(b)	the scene of crime officer suspects on reasonable grounds that the vehicle in relation to which the crime scene is to be established is that stolen vehicle.	1 2 3
(2)	Sections 91 and 93 apply in relation to a crime scene established by a scene of crime officer under this section in the same way as they apply to a crime scene established by a police officer.	4 5 6
(3)	A scene of crime officer may exercise any investigatory powers in relation to the vehicle at the crime scene established under this section, without a warrant, if the scene of crime officer suspects on reasonable grounds that it is reasonably necessary to exercise the investigatory powers to preserve, or search for and gather, evidence of the theft of the vehicle.	7 8 9 10 11 12
(4)	A scene of crime officer does not require the authority of a police officer to exercise investigatory powers under this section.	13 14
(5)	A scene of crime officer may exercise the investigatory powers conferred by this section for a period of not more than 3 hours, commencing when the crime scene is established, unless a police officer obtains a crime scene warrant in respect of the crime scene.	15 16 17 18 19
(6)	This section does not prevent a scene of crime officer from exercising any power, or doing any other thing, in relation to a vehicle if the owner or authorised user of the vehicle consents.	20 21 22
(7)	For the purposes of this section, <i>investigatory powers</i> are the crime scene powers referred to in section 95 (1) (g)–(j) and (l)–(o), including section 95 (1) (p) as it applies to those powers.	23 24 25
[11]	Part 11, Division 3 Use of medical imaging to search for internally concealed drugs	26 27
	Omit the Division.	28
[12]	Section 187 Use of tyre deflation devices	29
	Omit section 187 (1). Insert instead:	30
(1)	The Commissioner may authorise the use by police officers of a device (a <i>tyre deflation device</i>) that causes the deflation of the tyres of a vehicle:	31 32 33
(a)	to enable police to stop or assist in the stopping of a vehicle in connection with the pursuit of the vehicle by police, or	34 35
(b)	to enable police to prevent the use of the vehicle by a person for the purpose of escaping from lawful custody or avoiding arrest.	36 37 38

[13] Schedule 5 Savings, transitional and other provisions	1
Insert at the end of clause 1 (1):	2
<i>Law Enforcement (Powers and Responsibilities) Amendment Act 2007</i>	3
	4
[14] Schedule 5, Part 6	5
Insert after Part 5:	6
Part 6 Provisions consequent on enactment of Law Enforcement (Powers and Responsibilities) Amendment Act 2007	7
	8
	9
14 Changes to search warrant provisions	10
An amendment made to Part 5 by the <i>Law Enforcement (Powers and Responsibilities) Amendment Act 2007</i> does not apply to a warrant issued before the commencement of the amendment.	11
	12
	13