

## Law Enforcement and Other Legislation Amendment Bill 2007

### Explanatory note

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

#### Overview of Bill

The objects of this Bill are as follows:

- (a) following a statutory review of Part 6A of the *Law Enforcement (Powers and Responsibilities) Act 2002*, to lift the sunset provision on the exercise of special police powers in relation to large-scale public disorders (and related increased penalties for assault during such disorders and presumptions against bail for offences committed during such disorders) and to amend those powers,
- (b) to amend that Act to confer on police officers power to “move-on” groups of seriously intoxicated persons in public places who are likely to cause injury to persons or damage to property or otherwise risk public safety,
- (c) to amend the *Crimes (Serious Sex Offenders) Act 2006* and the *Bail Act 1978* in relation to serious sex offenders, in particular to extend continuing detention orders to such offenders who breach extended supervision orders or interim supervision orders,
- (d) to make a number of changes relating to the exercise of terrorism-related police powers following a statutory review of the *Terrorism (Police Powers) Act 2002*.

#### 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 proclaimed (the amendments lifting the sunset provisions relating to public disorders are to commence on the day before the sunset provisions were to take effect).

**Clause 3** is a formal provision that gives effect to the amendments to the Acts and Regulation set out in Schedules 1–4.

**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 relating to large-scale public disorders

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

Schedule 1.1 [1] limits the nature and extent of authorisations of special powers during large-scale public disorders to a level that is appropriate to the public disorder concerned.

Schedule 1.1 [2] extends the current power to seize and detain vehicles, mobile phones and other communication devices to things of any kind.

Schedule 1.1 [3] enables a police officer to stop a vehicle (and exercise powers in relation to the vehicle and its occupants) on a road or road-related area that is not in the target area of a formal authorisation given for a large-scale public disorder if the police officer suspects on reasonable grounds that the occupants of the vehicle have participated or intend to participate in the public disorder and is satisfied that the exercise of those powers is reasonably necessary to prevent or control the public disorder.

Schedule 1.1 [4] simplifies the existing emergency power of a police officer to stop a vehicle (and exercise powers in relation to the vehicle and its occupants) on a road or road-related area without a formal authorisation having been given for the large-scale public disorder, so that the power may be exercised if the police officer suspects on reasonable grounds that such a disorder is occurring or threatened in the near future and that the occupants of the vehicle have participated or intend to

participate in the disorder. The amendment imposes an additional requirement that the approval of a police officer of or above the rank of Inspector is required before any such power is exercised by a police officer, and limits the exercise of the power to a maximum of 3 hours after the approval is given.

Schedule 1.1 [5] provides, in connection with the existing provision for the monitoring of police powers relating to public disorders, for reports to the Ombudsman by the Commissioner of Police within 3 months after the powers are exercised (rather than at the time of their exercise), and for the Ombudsman's annual report to Parliament to include a report on the Ombudsman's scrutiny of the exercise of those powers.

Schedule 1.1 [6] lifts the expiry of Part 6A relating to public disorder police powers (the powers were due to sunset on 15 December 2007).

Schedule 1.2 Crimes Act 1900 No 40

Section 59A of the *Crimes Act 1900* provides a maximum penalty for assault during a large-scale public disorder of 5 years instead of the general penalty of 2 years (if no actual bodily harm was caused) and of 7 years instead of a general penalty of 5 years (if actual bodily harm was caused). The amendment lifts the expiry of that section (the section was due to sunset on 15 December 2007).

Schedule 1.3 Bail Act 1978 No 161

Section 8D of the *Bail Act 1978* provides for a presumption against bail in the case of the offence of riot and any other offence punishable by imprisonment for 2 years or more that is committed in the course of a large-scale public disorder (or the exercise of police powers during the disorder). The amendment lifts the expiry of that section (the section was due to sunset on 15 December 2007).

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

**Schedule 2 [2]** enacts a new section 198 to confer on police officers the power to give directions to a person, in a group of 3 or more seriously intoxicated persons in a public place, for any such person to leave the place and not return (for a period that does not exceed 6 hours). The power is exercisable if the police officer believes on reasonable grounds that the person's behaviour is likely to cause injury to other

persons, damage to property or otherwise gives rise to a risk to public safety.

**Schedule 2 [1]** transfers from existing section 198 a provision that concerns the related power in section 197 for the dispersal of persons in public places who are causing an obstruction, harassment or intimidation or fear or who are suspected of being involved in drug trafficking.

**Schedule 2 [3]** extends the existing provisions relating to the giving of directions to groups of people to the proposed power relating to the dispersal of intoxicated persons.

**Schedule 2 [4]–[6]** make consequential and other minor amendments.

**Schedule 2 [7]** authorises the making of savings and transitional regulations.

## **Schedule 3 Amendments relating to serious sex offenders**

### **Schedule 3.1 Crimes (Serious Sex Offenders) Act 2006 No 7**

The Schedule amends the Act:

- (a) to clarify the objects of the Act, and
- (b) to provide for proceedings for extended supervision orders and continuing detention orders for serious sex offenders to be taken by the State of New South Wales rather than the Attorney General, and
- (c) to enable the Supreme Court to make a continuing detention order against a sex offender who breaches an extended supervision order or interim supervision order.

**Schedule 3.1 [1]** substitutes section 3 to make it clear that the primary object of the 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, and to change the other object of the Act to encouraging such offenders to undertake rehabilitation.

**Schedule 3.1 [2]** amends section 6 to provide that the State of New South Wales, rather than the Attorney General, is to make applications for extended supervision orders against sex offenders.

**Schedule 3.1 [3] and [4]** make consequential amendments.

**Schedule 3.1 [5]** amends section 11 to enable a condition that a person reside at an address approved by the Commissioner of Corrective Services to be imposed on an extended supervision order or interim supervision order.

**Schedule 3.1 [6]** amends section 13 to provide that the State of New South Wales, rather than the Attorney General, is to make applications for the variation or revocation of extended supervision orders or interim supervision orders against sex offenders.

**Schedule 3.1 [7]** amends section 14 to provide that the State of New South Wales, rather than the Attorney General, is to make applications for continuing detention orders against sex offenders. **Schedule 3.1 [8] and [11]** make consequential amendments.

**Schedule 3.1 [9]** inserts proposed section 14A to enable the State of New South Wales to apply to the Supreme Court for a continuing detention order against a person who has been found guilty of the offence of failing to comply with the requirements of an extended supervision order or interim supervision order.

**Schedule 3.1 [10], [12]–[14] and [17]** make consequential amendments.

**Schedule 3.1 [15]** amends section 17 to require the Supreme Court to consider the nature of the failure to comply with an extended supervision order or interim supervision order and the likelihood of further failures to comply before making an order on an application under proposed section 14A.

**Schedule 3.1 [16]** inserts proposed section 17A to revoke a parole order if the person subject to the order is made the subject of a continuing detention order under proposed section 14A.

**Schedule 3.1 [18]** amends section 19 to provide that the State of New South Wales, rather than the Attorney General, is to make applications for the variation or revocation of continuing detention orders or interim detention orders against sex offenders.

**Schedule 3.1 [19]** amends section 20 to enable the arrest of a person in respect of whom a warrant of commitment is issued as a result of a continuing detention order and who is not in custody.

**Schedule 3.1 [20]** amends section 22 to provide that, if a matter the subject of an appeal is remitted by the Court of Appeal to the Supreme Court, the order concerned continues in force. The Court of Appeal may make an interim order revoking or varying an extended supervision order or a continuing detention order if a matter is remitted to the Supreme Court.

**Schedule 3.1 [21]** inserts proposed section 24A to enable the Attorney General (or other prescribed person) to act on behalf of the State of New South Wales for the purposes of applications under the Act.

**Schedule 3.1 [22]** amends Schedule 2 to enable regulations to be made containing savings or transitional provisions as a consequence of the enactment of the proposed Act.

**Schedule 3.1 [23]** amends Schedule 2 to apply the amendments made by the proposed Act to offences committed before the commencement of the proposed Act and to persons subject to orders before that commencement.

### **Schedule 3.2 Bail Act 1978 No 161**

The proposed Schedule amends the Act to provide for a presumption against bail for an offence of breaching an extended supervision order and to add an offence to the serious personal violence offences listed for the purposes of the presumption against bail for repeat offenders.

**Schedule 3.2 [1]** inserts proposed section 8F to create a presumption against bail for a person who is accused of the offence of breaching an extended supervision order or interim supervision order under the *Crimes (Serious Sex Offenders) Act 2006*.

**Schedule 3.2 [2]** amends section 9D to add the offence of attempting, or assaulting with intent, to have sexual intercourse with a child between 10 and 16 (under section 66D of the *Crimes Act 1900*) to the list of serious personal violence offences for which a repeat offender may only be granted bail in exceptional circumstances.

**Schedule 3.2 [3]** amends section 32 to make it clear that that section (which contains the matters to be taken into account when considering a bail application) applies to offences to which proposed section 8F applies but does not prevent consideration of matters relevant to the question of whether bail should not be refused.

**Schedule 3.2 [4]** amends section 38 to require an authorised officer or court to record the reasons for granting bail for an offence to which proposed section 8F applies.

**Schedule 3.2 [5]** amends Schedule 1 to apply the presumption against bail for an offence of breaching an extended supervision order or interim supervision order to offences committed before the commencement of proposed section 8F, if the person is charged after that commencement. The amendment also applies section 9D of the Bail Act to offences under section 66D of the *Crimes Act 1900* committed before the commencement of the amendment, if the person is charged after that commencement.

### **Schedule 4 Amendments relating to terrorism**

#### **Schedule 4.1 Terrorism (Police Powers) Act 2002 No 115**

**Schedule 4.1 [1] and [2]** amend sections 18 and 22 to provide that, when the exercise of special police powers is authorised in connection with a terrorist act or threatened terrorist act, the power to stop and search vehicles, vessels and aircraft includes the power to enter vehicles, vessels and aircraft.

**Schedule 4.1 [5] and [6]** amend section 26U to provide that, when a preventative detention order is in force in relation to a person, the power to enter and search premises for the person includes the power to enter and search vehicles, vessels and aircraft for the person.

**Schedule 4.1 [8]** amends section 27A to provide that the covert search warrant scheme in Part 3 in relation to premises extends to vehicles, vessels and aircraft.

**Schedule 4.1 [3]** amends section 23 (which relates to the identification and other details that a police officer is required to disclose when exercising a special police power) to make it clear that the information may only be provided after the power is exercised if it is not reasonably practicable to provide the information before or at the time of exercising the power.

**Schedule 4.1 [4]** amends section 26E (which precludes the making of a preventative detention order in relation to a child under 16 years of age and which requires the release from detention of any such child who is inadvertently detained under such an order) to require the child to be released into the care of a parent or other appropriate person.

**Schedule 4.1 [7]** amends section 26ZA to provide that a police officer detaining a person under a preventative detention order need not comply with the requirement under that section to arrange for an interpreter if the officer believes on reasonable grounds that the difficulty of obtaining an interpreter makes compliance not reasonably practicable.

**Schedule 4.1 [9]** amends section 27U (which provides for the service of an occupier's notice if a Judge approves the notice after the execution of a covert search warrant) to make it clear that service on a person who was believed to be concerned in the terrorist act for which the warrant was executed is only required if that person occupied the relevant premises when the warrant was executed.