



New South Wales

# Law Enforcement (Powers and Responsibilities) Amendment (Arrest without Warrant) Bill 2013

## 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* to extend police powers of arrest without warrant. The revised powers of arrest are modelled on the *Police Powers and Responsibilities Act 2000* of Queensland.

## 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 to be appointed by proclamation.

## Schedule 1      **Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

Section 99 (1) of the *Law Enforcement (Powers and Responsibilities) Act 2002* currently provides that a police officer may arrest a person without a warrant if the person is committing an offence, has just committed an offence or has previously committed a serious indictable offence for which the person has not been tried. Section 99 (2) states that a police officer may, without a warrant, arrest a person if the police officer suspects on reasonable grounds that the person has committed an offence. Section 99 (3) prohibits the use of police powers of arrest without warrant unless the police officer suspects on reasonable grounds that the arrest is necessary for any one or more enumerated reasons (including to ensure the appearance of the arrested person before a court, to

prevent a continuation of the offence or the commission of another offence, to prevent interference with evidence, to protect witnesses or to preserve the safety or welfare of the arrested person).

**Schedule 1 [1]** repeals section 99 and replaces it with a provision that allows a police officer to arrest a person without a warrant if the police officer suspects on reasonable grounds that the person is committing or has committed an offence and if the police officer is satisfied the arrest is reasonably necessary for any one or more enumerated reasons. The substituted section does not purport to limit the power of arrest for previous offences to serious indictable offences. The substituted section extends the reasons for arrest without warrant to include additional reasons in line with section 365 of the *Police Powers and Responsibilities Act 2000* of Queensland. Those additional reasons include to stop the person fleeing, to make inquiries to establish the identity of the person, to obtain property in the possession of the person connected with the offence, to preserve the safety or welfare of any person or because of the nature and seriousness of the offence. A police officer is also empowered to arrest a person without a warrant if directed to do so by another police officer who may lawfully arrest the person. Additionally, the substituted section makes it clear that a person lawfully arrested without a warrant may be detained by any police officer for the purpose of investigating whether the person committed the offence for which the person has been arrested.

**Schedule 1 [2]** clarifies that a police officer may discontinue an arrest at any time despite the requirement that the arrested person be taken, as soon as is reasonably practicable, before an authorised officer to be dealt with according to law.



New South Wales

# Law Enforcement (Powers and Responsibilities) Amendment (Arrest without Warrant) Bill 2013

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New South Wales

# Law Enforcement (Powers and Responsibilities) Amendment (Arrest without Warrant) Bill 2013

No. , 2013

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## A Bill for

An Act to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* to extend police powers of arrest without warrant.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Law Enforcement (Powers and Responsibilities) Amendment (Arrest without Warrant) Act 2013</i> .	3
	4
<b>2 Commencement</b>	5
This Act commences on a day to be appointed by proclamation.	6

<b>Schedule 1</b>	<b>Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103</b>	1
		2
<b>[1] Section 99</b>		3
Omit the section. Insert instead:		4
<b>99 Power of police officers to arrest without warrant</b> (cf Crimes Act 1900, s 352, Cth Act, s 3W)		5 6
(1) A police officer may, without a warrant, arrest a person if:		7
(a) the police officer suspects on reasonable grounds that the person is committing or has committed an offence, and		8 9
(b) the police officer is satisfied that the arrest is reasonably necessary for any one or more of the following reasons:		10 11
(i) to stop the person committing or repeating the offence or committing another offence,		12 13
(ii) to stop the person fleeing from a police officer or from the location of the offence,		14 15
(iii) to enable inquiries to be made to establish the person's identity if it cannot be readily established or if the police officer suspects on reasonable grounds that identity information provided is false,		16 17 18
(iv) to ensure that the person appears before a court in relation to the offence,		19 20
(v) to obtain property in the possession of the person that is connected with the offence,		21 22
(vi) to preserve evidence of the offence or prevent the fabrication of evidence,		23 24
(vii) to prevent the harassment of, or interference with, any person who may give evidence in relation to the offence,		25 26
(viii) to protect the safety or welfare of any person (including the person arrested),		27 28
(ix) because of the nature and seriousness of the offence.		29
(2) A police officer may also arrest a person without a warrant if directed to do so by another police officer. The other police officer is not to give such a direction unless the other officer may lawfully arrest the person without a warrant.		30 31 32 33
(3) A police officer who arrests a person under this section must, as soon as is reasonably practicable, take the person before an authorised officer to be dealt with according to law.		34 35 36
<b>Note.</b> The police officer may discontinue the arrest at any time and without taking the arrested person before an authorised officer—see section 105.		37 38
(4) A person who has been lawfully arrested under this section may be detained by any police officer under Part 9 for the purpose of investigating whether the person committed the offence for which the person has been arrested and for any other purpose authorised by that Part.		39 40 41 42
(5) This section does not authorise a person to be arrested for an offence for which the person has already been tried.		43 44
(6) For the purposes of this section, property is connected with an offence if it is connected with the offence within the meaning of Part 5.		45 46

**[2] Section 105 Arrest may be discontinued**

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Insert after section 105 (2):

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- (3) A police officer may discontinue an arrest despite any obligation under this Part to take the arrested person before an authorised officer to be dealt with according to law.

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