



New South Wales

Law Enforcement (Powers and Responsibilities) Amendment (In-car Video Systems) Bill 2004

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 require the use of police in-car video equipment (**ICV equipment**) when a police vehicle fitted with the equipment is being used for police activities involving the following of a vehicle with the intention of stopping the vehicle or involving a vehicle and the driver or an occupant of a vehicle that has been stopped or detained by police, and
- (b) to require ICV equipment to be used to record any conversation that the driver of the police vehicle has with a person who is the driver or an occupant of the vehicle stopped or detained, after informing the person that the conversation will be recorded and subject to the proviso that a conversation with a person is not to be recorded after the person is arrested, and
- (c) to protect recordings made with ICV equipment from unauthorised or corrupt disclosure.

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.

Clause 3 is a formal provision that gives effect to the amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 inserts a new Part 8A into the *Law Enforcement (Powers and Responsibilities) Act 2002* to provide for the arrangements referred to in the Overview.

The proposed new Part contains the following provisions:

- (a) Proposed section 108A contains definitions of expressions used in the proposed Part.
- (b) Proposed section 108B lists the police activities that require the use of ICV equipment.
- (c) Proposed section 108C requires the driver of a police vehicle fitted with ICV equipment to operate the equipment while the vehicle is being used in the course of police activities that require the use of ICV equipment, and to use the equipment to record a conversation that the officer has with the driver or an occupant of a vehicle stopped or detained by police.
- (d) Proposed section 108D requires a police officer who records a conversation with another person using ICV equipment to inform the person that the conversation is being recorded.
- (e) Proposed section 108E prevents the use of ICV equipment to record a person's conversation after the person is arrested.
- (f) Proposed section 108F exempts the recording of a conversation using ICV equipment as required by the proposed Part from the operation of the *Listening Devices Act 1984*.
- (g) Proposed section 108G requires ICV recordings to be kept for 2 years.
- (h) Proposed section 108H makes it clear that certain offences under the *Privacy and Personal Information Protection Act 1998* concerned with unauthorised or corrupt disclosure of personal information extend to ICV recordings.



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New South Wales

Law Enforcement (Powers and Responsibilities) Amendment (In-car Video Systems) Bill 2004

No , 2004

A Bill for

An Act to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* to make provision for the use of in-car video recording equipment by police; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Law Enforcement (Powers and Responsibilities) Amendment (In-car Video Systems) Act 2004</i> .	3 4
2 Commencement	5
(1) This Act commences on a day to be appointed by proclamation.	6
(2) Part 8A of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (as inserted by this Act) commences on the commencement of this Act.	7 8 9
3 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103	10 11
The <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> is amended as set out in Schedule 1.	12 13

Schedule 1 Amendments

(Section 3)

Part 8A

Insert after Part 8:

Part 8A Use of police in-car video equipment

108A Definitions

(1) In this Part:

ICV equipment means in-car video equipment, being equipment installed in a vehicle and capable of recording visual images and sound outside the vehicle (including by means of a microphone that is separate from the equipment and vehicle).

police activities means activities engaged in by a police officer while exercising any functions of a police officer.

police vehicle means a vehicle used or operated for the purposes of police activities.

vehicle includes a motorcycle or other cycle, and **driver** includes the rider of a motorcycle or other cycle.

(2) A reference in this Part to the **driver** of a police vehicle includes, in the case of a police vehicle that is not being driven, a reference to the police officer responsible for the use and operation of the vehicle as driver.

108B Police activities requiring use of ICV equipment

For the purposes of this Part, the following police activities are **police activities that require the use of ICV equipment**:

- (a) pursuing or otherwise following a vehicle with the intention of stopping or detaining the vehicle,
- (b) activities in relation to a vehicle that has been stopped or detained, or in relation to the driver or any occupant of the vehicle while in or about the vehicle (whether or not the vehicle was stopped or detained after being pursued or otherwise followed under paragraph (a)).

108C Mandatory use of ICV equipment

(1) If a police vehicle is equipped with ICV equipment, the driver of the vehicle must ensure that while the vehicle is being used in the course of police activities that require the use of ICV equipment:

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Schedule 1 Amendments

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| (a) | the ICV equipment is operated for the purpose of recording a view from the police vehicle of those activities, and | 1
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| (b) | a conversation between the police officer and the driver or any occupant of a vehicle stopped or detained in the course of those activities is recorded by means of the ICV equipment. | 3
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| (2) | The authority conferred by this section to record a conversation (the <i>primary conversation</i>) extends to authorise the recording of another conversation the recording of which is incidental to the recording of the primary conversation or that is inadvertently or unexpectedly recorded in the course of recording the primary conversation. | 7
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| (3) | Any failure to operate ICV equipment or to record a conversation as required by this section: | 13
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| (a) | does not of itself limit or otherwise affect the admissibility of evidence of any matter concerning the police activities to which the failure related, and | 15
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| (b) | does not of itself result in any such evidence being evidence improperly or unlawfully obtained, | 18
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| | but this subsection does not otherwise affect the operation of any rules as to admissibility of evidence. | 20
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| 108D | Person to be informed that conversation will be recorded | 22 |
| (1) | A police officer who records a conversation between the police officer and another person under this Part must inform the person (either immediately before recording of the conversation commences or as soon as practicable after recording has commenced) that the conversation will be recorded using police in-car video equipment. | 23
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| (2) | This section does not apply to the recording of a conversation inadvertently or unexpectedly or incidentally to the recording of another conversation. | 29
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| (3) | Recording of a conversation does not require the consent of the person and the authority conferred by this Part is not affected by any objection or refusal to consent by the person to the recording. | 32
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| 108E | Recording not authorised after arrest | 35 |
| (1) | A conversation between a police officer and a person must not be recorded under this Part after the person has been arrested. | 36
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	(2)	This section does not apply to the recording of a conversation inadvertently or unexpectedly or during the period between the person's arrest and the first reasonably practicable opportunity to discontinue recording of the conversation.	1 2 3 4
	(3)	This section applies only to the recording of the sounds of a conversation. It does not apply to the recording of visual images of the conversation.	5 6 7
108F	Operation of Listening Devices Act 1984		8
		The recording of a conversation as authorised or required by this Part by means of ICV equipment does not constitute the use of a listening device for the purposes of the <i>Listening Devices Act 1984</i> .	9 10 11 12
108G	ICV recordings to be kept for 2 years		13
		The Commissioner of Police must ensure that recordings made under this Part are kept for at least 2 years after they are made.	14 15
108H	Corrupt disclosure and use of ICV recordings		16
	(1)	For the purposes of sections 62 (Corrupt disclosure and use of personal information by public sector officials) and 63 (Offering to supply personal information that has been disclosed unlawfully) of the <i>Privacy and Personal Information Protection Act 1998</i> , an ICV recording constitutes personal information about another person.	17 18 19 20 21 22
	(2)	In this section: ICV recording means any recording of visual images or sound made pursuant to this Part and includes a copy of such a recording and any part of any such recording or copy. Note. This section ensures that the protections against corrupt disclosure and use of personal information under the <i>Privacy and Personal Information Protection Act 1998</i> will apply to ICV recordings. The maximum penalty for offences under those provisions is 100 penalty units or imprisonment for 2 years, or both.	23 24 25 26 27 28 29 30 31
