



New South Wales

## **Police Powers (Vehicles) Bill 1998**

### **Explanatory note**

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

#### **Overview of Bill**

The objects of this Bill are:

- (a) to enable a police officer who reasonably suspects that a vehicle was or may have been used in the commission of an indictable offence to request:
    - (i) the driver of the vehicle to disclose his or her identity and the identity of any passenger in or on the vehicle at or about the time the offence was or may have been committed, and
    - (ii) any owner of the vehicle to disclose the identity of the driver of, and any passenger in or on, the vehicle at or about the time the offence was or may have been committed, and
  - (b) to enable senior police officers to authorise other police officers to stop and search vehicles at road blocks and other places in certain circumstances, and
  - (c) to create offences for failing to disclose identities on request, giving false or misleading information about identities and failing to comply with directions concerning the stopping and searching of such vehicles.
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## Outline of provisions

### **Part 1 Preliminary**

**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** defines certain words and expressions used in the proposed Act.

**Clause 4** makes it clear that nothing in the proposed Act limits any function of a police officer under any other Act or law.

**Clause 5** provides that notes in the text of the proposed Act do not form part of the Act.

### **Part 2 Driver and passenger identification**

**Clause 6** enables a police officer who reasonably suspects that a vehicle was or may have been used in the commission of an indictable offence to request:

- (a) the driver of the vehicle to disclose his or her identity and the identity of any passenger in or on the vehicle at or about the time the offence was or may have been committed, and
- (b) any owner of the vehicle (who was not the driver) to disclose the identity of the driver of, and any passenger in or on, the vehicle at or about the time the offence was or may have been committed.

It also provides for certain procedures to be followed by a police officer before making such a request.

**Clause 7** makes it an offence for the driver of a vehicle to fail to disclose his or her identity or the identity of a passenger if requested to disclose it unless the driver has a reasonable excuse for failing to do so.

**Clause 8** makes it an offence for the owner of a vehicle to fail to disclose the identity of the driver of the vehicle or the identity of a passenger if requested to disclose it unless the owner has a reasonable excuse for failing to do so.

**Clause 9** makes it an offence to give false or misleading information about an identity that a person has been requested to disclose.

### **Part 3 Stopping and searching vehicles**

**Clause 10** enables a senior police officer to authorise another police officer to exercise any or all of certain stop and search powers (set out in proposed section 10 (6)) in respect of any specified vehicle (or class of vehicles) on a road, road related area or other public place (a *search authorisation*). However, a search authorisation may only be given if the senior officer suspects on reasonable grounds that:

- (a) the vehicle (or a vehicle of the specified class of vehicles) is being, or was or may have been, used in or in connection with the commission of any indictable offence and the exercise of the powers may provide evidence of the commission of the offence, or
- (b) circumstances exist on or in the vicinity of that road, area or place that are likely to give rise to a serious risk to public safety and the exercise of the powers may lessen the risk.

A police officer given a search authorisation may give reasonable directions to another person to facilitate the exercise of the powers conferred by the authorisation. The police officer must follow certain procedures before giving such a direction.

The proposed section makes it an offence for a person, without reasonable excuse, to fail to comply with such a direction.

**Clause 11** provides for a search authorisation to be given verbally or in writing and to have effect for a period of 6 hours (or such lesser period as may be specified by the senior police officer giving the authorisation).

**Clause 12** requires certain records to be kept relating to search authorisations.

### **Part 4 Miscellaneous**

**Clause 13** provides for the onus of proof of reasonable excuse in proceedings for an offence against the proposed Act to lie on the accused.

**Clause 14** provides for proceedings for offences against the proposed Act to be dealt with summarily by a Magistrate.

**Clause 15** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 16** requires the Ombudsman to keep under scrutiny the exercise of the powers conferred on police officers by the proposed Act for a period of 12 months and to furnish the Minister and the Commissioner of Police with a copy of a report on the Ombudsman's scrutiny of the exercise of those powers.

**Clause 17** requires the Minister to review the proposed Act as soon as possible after the end of the period of 12 months following assent to the Act.



New South Wales

# Police Powers (Vehicles) Bill 1998

## Contents

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	Page
<b>Part 1 Preliminary</b>	
1 Name of Act	2
2 Commencement	2
3 Definitions	2
4 Inter-relationship of Act with other police functions	3
5 Notes	3
<hr/>	
<b>Part 2 Driver and passenger identification</b>	
6 Power of police officers to request disclosure of driver or passenger identity	4
7 Failure of driver to disclose identity on request	5
8 Failure of owner to disclose identity on request	5
9 False or misleading information about driver or passenger identity	6

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	Page
<b>Part 3 Stopping and searching vehicles</b>	
10 Powers to stop and search vehicles	7
11 Duration and form of search authorisation	8
12 Record of search authorisation	9

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<b>Part 4 Miscellaneous</b>	
13 Onus of proof of reasonable excuse	10
14 Proceedings for offences	10
15 Regulations	10
16 Monitoring of operation of Act by Ombudsman	10
17 Review of Act	10



New South Wales

## **Police Powers (Vehicles) Bill 1998**

No. , 1998

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### **A Bill for**

An Act to confer additional powers on police officers to stop and search vehicles and to obtain information concerning the identity of drivers of and passengers in or on vehicles used in connection with the commission of certain offences: and for other purposes.

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**The Legislature of New South Wales enacts:**

**Part 1        Preliminary**

**1    Name of Act**

This Act is the *Police Powers (Vehicles) Act 1998*.

**2    Commencement**

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This Act commences on a day or days to be appointed by proclamation.

**3    Definitions**

In this Act:

***driver*** includes a person having control over the steering, movement or propulsion of a vehicle and includes a person riding a vehicle. 10

***exercise*** a function includes perform a duty.

***function*** includes a power, authority or duty.

***identity*** of a driver means the name or residential address of the driver (or both). 15

***owner*** of a vehicle means an owner within the meaning of section 18A of the *Traffic Act 1909* and includes:

(a) a person who is not such an owner but who usually has the care, control and custody of the vehicle, and 20

(b) any other person prescribed by the regulations for the purposes of this definition.

***public place*** includes:

(a) a public place or school within the meaning of the *Summary Offences Act 1988*, and 25

(b) a road or road related area.

***road*** means a road within the meaning of the *Traffic Act 1909* (other than a road that is the subject of a declaration made under section 2A (1) (b) of that Act).



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**road related area** means a road related area within the meaning of the *Traffic Act 1909* (other than a road related area that is the subject of a declaration made under section 2A (1) (b) of that Act).

**search authorisation** means an authorisation given by a senior police officer under section 10. 5

**senior police officer** means:

- (a) a Local Area Commander of Police, or
- (b) a Duty Officer for a police station, or
- (c) any other police officer of the rank of Inspector or above. 10

**vehicle** includes a registrable vehicle within the meaning of the *Road Transport (Vehicle Registration) Act 1997*.

**vehicle search power**—see section 10 (6).

#### 4 Inter-relationship of Act with other police functions

Nothing in this Act limits any functions that police officers may have under any other Act or law. 15

#### 5 Notes

Notes included in this Act are explanatory notes and do not form part of this Act.

## Part 2            Driver and passenger identification

### 6    Power of police officers to request disclosure of driver or passenger identity

- (1)    A police officer who reasonably suspects that a vehicle was or may have been used in the commission of an indictable offence may request:
- (a)    the driver of the vehicle to disclose his or her identity and the identity of any passenger in or on the vehicle at or about the time the offence was or may have been committed, or
  - (b)    any owner of the vehicle (who was not the driver) to disclose the identity of the driver of, and any passenger in or on, the vehicle at or about the time the offence was or may have been committed,
- or both.
- (2)    A police officer may make a request under subsection (1) only if, before making the request, the police officer:
- (a)    provides evidence to the person that he or she is a police officer (unless the police officer is in uniform), and
  - (b)    provides his or her name and place of duty, and
  - (c)    informs the person of the reason for the request, and
  - (d)    warns the person that failure to comply with the request may be an offence.

**Note.**    Section 563 of the *Crimes Act 1900* also confers a power on a police officer to request a person whose name or address is, or whose name and address are, unknown to the officer to state his or her name or residential address (or both) if the officer believes on reasonable grounds that the person may be able to assist in the investigation of an alleged indictable offence because the person was at or near the place where the alleged offence occurred, whether before, when, or soon after it occurred.

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**7 Failure of driver to disclose identity on request**

- (1) The driver of a vehicle who is requested by a police officer to disclose his or her identity under section 6 must (unless the driver has a reasonable excuse for not doing so) disclose that fact to the officer.

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Maximum penalty: 50 penalty units or 12 months imprisonment, or both.

- (2) The driver of a vehicle who is requested by a police officer to disclose the identity of any passenger in or on the vehicle under section 6 must (unless the driver has a reasonable excuse for not doing so):

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- (a) disclose the full and correct identity of the passenger, or  
(b) if the driver does not know the full and correct identity of the passenger—disclose such information about the passenger's identity (such as any alias used by the passenger or the general location of his or her residential address) as is known to the driver.

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Maximum penalty: 50 penalty units or 12 months imprisonment, or both.

**8 Failure of owner to disclose identity on request**

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- (1) An owner of a vehicle who is requested by a police officer to disclose the identity of the driver of, or passenger in or on, the vehicle under section 6 must (unless the owner has a reasonable excuse for not doing so):

- (a) disclose the full and correct identity of any person the owner knows or has reason to suspect was the driver or a passenger, or

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- (b) if the owner does not know the full and correct identity of that person—disclose such information about the person's identity (such as any alias used by the person or the general location of his or her residential address) as is known to the owner.

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Maximum penalty: 50 penalty units or 12 months imprisonment, or both.

- (2) Subsection (1) extends to an owner of a vehicle who was the driver of, or a passenger in or on, the vehicle.
- (3) Without limitation for the purposes of this section, an owner has reason to suspect the identity of a person if the owner has reason to suspect that a person had access to the vehicle.

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**9 False or misleading information about driver or passenger identity**

A person must not, without reasonable excuse, in response to a request made by a police officer in accordance with section 6:

- (a) give a name that is false in a material particular, or
- (b) give an address other than the full and correct address of the driver's or passenger's residence known to the person.

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Maximum penalty: 50 penalty units or 12 months imprisonment, or both.

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## Part 3 Stopping and searching vehicles

### 10 Powers to stop and search vehicles

(1) **Suspected indictable offences**

A senior police officer may authorise another police officer to exercise any or all of the vehicle search powers in respect of any specified vehicle (or class of vehicles) on a road, road related area or other public place if the senior police officer suspects on reasonable grounds that:

- (a) the vehicle (or a vehicle of the specified class of vehicles) is being, or was or may have been, used in or in connection with the commission of any indictable offence, and
- (b) the exercise of the powers may provide evidence of the commission of the offence.

(2) **Serious risk to public safety**

A senior police officer may authorise another police officer to exercise any or all of the vehicle search powers in respect of any specified vehicle (or class of vehicles) on a road, road related area or other public place if the senior police officer suspects on reasonable grounds that:

- (a) circumstances exist on or in the vicinity of that road, area or place that are likely to give rise to a serious risk to public safety, and
- (b) the exercise of the powers may lessen the risk.

(3) **Power to give reasonable directions**

A search authorisation to exercise a particular vehicle search power includes the power to give reasonable directions (to facilitate the exercise of the power) to any person:

- (a) in or on the vehicle concerned, or
- (b) on or in the vicinity of the road, road related area or other public place concerned.

(4) **Preconditions for exercise of vehicle search power**

A police officer may give a direction referred to in subsection (3) only if, before giving the direction, the police officer:

- (a) provides evidence to the person that he or she is a police officer (unless the police officer is in uniform), and

- (b) provides his or her name and place of duty, and
- (c) informs the person of the reason for the direction, and
- (d) warns the person that failure to comply with the direction may be an offence.

(5) **Offence** 5  
A person must (unless the person has a reasonable excuse for not doing so):

- (a) stop a vehicle the person is driving when directed to do so by a police officer under a search authorisation, and
- (b) comply with any other direction given by a police officer under a search authorisation. 10

Maximum penalty: 50 penalty units or 12 months imprisonment, or both.

(6) **Definition** 15  
In this section, *vehicle search power* means a power:

- (a) to establish a road block (consisting of any appropriate form of barrier or obstruction preventing or limiting the passage of vehicles) on any specified road, road related area or other public place, or
- (b) to stop vehicles (whether at a road block or otherwise), or 20
- (c) to search vehicles (whether at a road block or otherwise) for the purpose of seeking evidence of the commission of the indictable offence or lessening the risk to public safety concerned and to give reasonable directions to any person in the vehicles for the purpose of facilitating the search, or 25
- (d) to take possession of any object found in the course of such a search that the police officer conducting the search suspects on reasonable grounds constitutes evidence of any indictable offence.

**11 Duration and form of search authorisation** 30

- (1) A search authorisation may be given either verbally (including by telephone, radio or other communication device) or in writing (including by facsimile).

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- (2) A search authorisation has effect for a period of 6 hours (or such lesser period as may be specified by the senior police officer giving the authorisation).
- (3) Nothing in this section prevents a senior police officer from giving a further search authorisation in respect of the same vehicle (or class of vehicles) on a road, road related area or other public place. 5

## 12 Record of search authorisation

- (1) A senior police officer who gives a search authorisation must:
- (a) if the authorisation is in writing—specify the following: 10
- (i) the date on, and time at, which the authorisation is given.
- (ii) the vehicle search powers conferred by the authorisation and the indictable offence or risk to public safety in respect of which the authorisation is given. 15
- (iii) the road, road related area or other public place in respect of which the authorisation is given.
- (iv) the vehicle (or class of vehicles) in respect of which the authorisation is given. 20
- (v) the period of the authorisation when the period is less than 6 hours, or
- (b) if the authorisation is given verbally—make a record as soon as is reasonably practicable after the giving of the authorisation of the matters referred to in paragraph (a). 25
- (2) A failure to comply with subsection (1) does not invalidate a search authorisation.

## **Part 4      Miscellaneous**

### **13    Onus of proof of reasonable excuse**

The onus of proof of reasonable excuse in proceedings for an offence against this Act lies on the person accused of the offence.

### **14    Proceedings for offences**

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Proceedings for an offence against this Act are to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

### **15    Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 10

### **16    Monitoring of operation of Act by Ombudsman**

- (1) For the period of 12 months from the commencement of this section, the Ombudsman is to keep under scrutiny the exercise of the powers conferred on police officers by this Act. 15
- (2) For that purpose, the Ombudsman may require the Commissioner of Police to provide information about the exercise of those powers. 20
- (3) The Ombudsman must, as soon as practicable after the expiration of that 12-month period, prepare a report of the Ombudsman's work and activities under this section and furnish a copy of the report to the Minister and the Commissioner of Police.

### **17    Review of Act**

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- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 12 months from the date of assent to this Act. 30



- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period referred to in subsection (2).
- (4) The report under this section is to include a copy of a report received by the Minister from the Ombudsman under section 16.

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