



New South Wales

## **Crimes Amendment (Police Detention Powers after Arrest) Bill 1996**

### **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 police to detain a person after arrest for a maximum period of 4 hours or, if a detention warrant is obtained, for a maximum period of 12 hours, for the purpose of investigating the person's involvement in the commission of an offence, and
- (b) to provide for the rights of a person after arrest.

Currently there is no power to detain a person after arrest for the purposes of investigation for longer than the period within which a person must be brought before a justice, Magistrate or a court.

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## 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 date that is 3 months after the date of assent, unless commenced sooner by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to a consequential amendment to the *Children (Criminal Proceedings) Act 1987* contained in Schedule 2.

## Schedule 1      Amendment of Crimes Act 1900

### Power to detain persons after arrest

A new Part is to be inserted into the *Crimes Act 1900* containing police powers to detain a person after arrest for the purposes of investigation (proposed Part 10A, inserted by **Schedule 1 [5]**).

The objects of the Part are set out in proposed section 354. Proposed section 356A defines terms for the purposes of the Part.

The Part will apply to the detention of persons (including children) after arrest (proposed section 355). The Part will not apply to a person arrested before the commencement of the Part or to a person detained under the *Intoxicated Persons Act 1979*.

The Part contains a new power for police to detain a person after arrest for a reasonable period up to 4 hours (with provision for the extension of the period for up to an additional 8 hours in certain circumstances) to enable the person's involvement in the commission of an offence (including an offence other than the offence for which the person was arrested) to be investigated (proposed sections 356B and 356C).

The power applies in respect of offences committed in or out of the State (proposed section 355). A list of criteria for determining what is a reasonable period is set out (proposed section 356D). Investigative procedures which may be carried out during the detention are listed, including obtaining statements, searching the person and taking photographs and finger-prints (proposed section 356N).

Explanatory note

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Application for extension of the 4 hour period may be made in person or by telephone to an authorised justice and must be made before the expiry of that period. Proposed sections 356F–356M set out the procedures for obtaining an extension and make it an offence to provide false or misleading information in connection with applications for extensions punishable by a fine of up to 100 penalty units (currently \$10,000) or imprisonment for 2 years, or both.

**Effect of proposed Part on existing powers, rights and rules of evidence**

Proposed section 356 makes it clear that the Part does not confer any power to arrest a person, or to detain a person who has not been lawfully arrested, prevent a police officer from asking or causing a person to do a particular thing that the police officer is authorised by law to ask or cause the person to do or independently confer power to carry out an investigative procedure outlined in proposed section 356N.

The Part will not remove or derogate from certain existing rights of persons or rules of evidence (eg the right to remain silent, the prosecution's obligation to prove the voluntariness of a confession or the court's discretion to exclude unfairly, improperly or illegally obtained evidence).

**Rights of persons after arrest**

The Part requires police to give persons who are under arrest an opportunity to communicate with a person (eg a friend or relative) and a legal practitioner of the person's choice and to defer the questioning of the person or the conduct of any other investigative procedure in which the person is to participate for up to 2 hours until the person contacted arrives (proposed section 356O).

If the person who is under arrest is not an Australian citizen, police are required, in addition, to give the person an opportunity to communicate with a consular official and to defer the questioning of the person or the conduct of any other investigative procedure in which the person is to participate for up to 2 hours until the consular official arrives (proposed section 356P).

However, these provisions will not apply (except to rights in relation to legal practitioners) if the police officer concerned believes on reasonable grounds that doing so could result in an accomplice of the person who is under arrest avoiding apprehension, the concealment, fabrication, destruction or loss of evidence or the intimidation of a witness or could affect the safety of other people or could hinder the recovery of any person or property relating to the offence concerned (proposed section 356Q).



Friends, relatives, guardians or legal representatives are entitled to information about the police station or other place where persons who are under arrest are being detained (proposed section 356R). The custody officer for a person who is under arrest may obtain an interpreter for the person in connection with the questioning of the person or any other investigative procedure in which the person is to participate if the person cannot communicate orally with reasonable fluency in English (proposed section 356S) or cannot communicate orally with reasonable fluency because of physical or intellectual disability (proposed section 356T).

A person who is under arrest has a right to medical assistance (proposed section 356U) and to the provision of reasonable refreshments and access to toilet facilities and, in certain circumstances, access to washing facilities (eg showering) (proposed section 356V).

Police must maintain custody records (proposed section 356W). The regulations may provide for codes of practice relating to persons who are under arrest to be observed by police and for the keeping of custody and other related records (proposed section 356X).

### **Effect on sentence**

A court is to take into account in passing sentence on a person any period during which the person was detained after arrest under the Part in respect of the offence and may accordingly reduce the sentence it would otherwise have passed (proposed section 442C, inserted by **Schedule 1 [7]**).

The Part will apply to all offences by the operation of the Second Schedule to the *Crimes Act 1900*.

### **Consequential amendments**

**Schedule 1 [1]–[4]** and **[6]** make minor consequential amendments.

### **Schedule 2      Amendment of Children (Criminal Proceedings) Act 1987**

Schedule 2 amends the *Children (Criminal Proceedings) Act 1987* as a consequence of the proposed amendments to the *Crimes Act 1900*.



Introduced by Mr A A Tink, MP

First print



New South Wales

# Crimes Amendment (Police Detention Powers after Arrest) Bill 1996

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New South Wales

## **Crimes Amendment (Police Detention Powers after Arrest) Bill 1996**

No. , 1996

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### **A Bill for**

An Act to amend the *Crimes Act 1900* to make further provision with respect to the powers of police to detain a person after arrest and the rights of persons who are under arrest; to amend the *Children (Criminal Proceedings) Act 1987* consequentially; and for other purposes.

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

**1 Name of Act**

This Act is the *Crimes Amendment (Police Detention Powers after Arrest) Act 1996*.

**2 Commencement**

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This Act commences 3 months after the date of assent, unless commenced sooner by proclamation.

**3 Amendment of Crimes Act 1900 No 40**

The *Crimes Act 1900* is amended as set out in Schedule 1.

**4 Amendment of Children (Criminal Proceedings) Act 1987 No 55**

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The *Children (Criminal Proceedings) Act 1987* is amended as set out in Schedule 2.

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## Schedule 1 Amendment of Crimes Act 1900

(Section 3)

**[1] Section 1 Name of Act and contents of Act**

Omit the matter relating to Part 10. Insert instead:

**Part 10 Arrest of offenders** (secs 352–353C) 5

**Part 10A Detention and rights of persons after arrest** (secs 354–356X)

**Part 10B Powers of search, powers of entry and discharge of persons in custody**

- (1) Powers of search (secs 357–357E) 10
- (2) Powers of entry and search in cases of child prostitution or pornography (sec 357EA)
- (3) Powers of entry in cases of domestic violence (secs 357F–357I)
- (4) Discharge of persons in custody (sec 358) 15
- (5) Disposal of property in the custody of the police (sec 358B)
- (6) Offence relating to escaped prisoners (sec 358C)

**[2] Section 1, Part 12**

Omit “442B” from the matter relating to Part 12. Insert instead “442C”. 20

**[3] Part 10, heading**

Omit the heading. Insert instead “**Part 10 Arrest of offenders**”.

**[4] Part 10, italicised heading** 25

Omit the italicised heading before section 352.

**[5] Part 10A (sections 354–356X)**

Insert after section 353C:

**Part 10A Detention and rights of persons after arrest**

**354 Objects of Part**

- The objects of this Part are: 5
- (a) to provide for the period of time that a person who is under arrest may be detained by a police officer to enable the investigation of the person's involvement in the commission of an offence, and
  - (b) to authorise the detention of a person who is under arrest for such a period despite any requirement imposed by law to bring the person before a justice, a Magistrate or court without delay or within a specified period, and 10
  - (c) to specify the investigative procedures, otherwise authorised by law, that may be carried out while the person is so detained, and 15
  - (d) to provide for the rights of a person who is under arrest.

**355 Application of Part 20**

- (1) This Part applies to the detention of a person, including a person under the age of 18 years, who has been arrested in connection with the investigation of an offence (whether committed within or outside the State).
- (2) This Part applies whether the offence being investigated was committed before or after the commencement of this Part. 25
- (3) This Part does not apply:
  - (a) to a person who was arrested before the commencement of this Part, or 30
  - (b) to a person detained under the *Intoxicated Persons Act 1979*.



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**356 Operation of Part**

(1) **Existing powers relating to arrest and other matters**

This Part does not:

- (a) confer any power to arrest a person, or to detain a person who has not been lawfully arrested, or 5
- (b) prevent a police officer from asking or causing a person to do a particular thing that the police officer is authorised by law to ask or cause the person to do (for example, the power to require a person to submit to a breath analysis under section 4E of the *Traffic Act 1909*), or 10
- (c) independently confer power to carry out an investigative procedure.

(2) **Certain evidentiary matters and rights not affected**

Nothing in this Part removes or derogates from: 15

- (a) the burden on the prosecution to prove the voluntariness of an admission or confession made by a person, or
- (b) the discretion of a court to exclude unfairly obtained evidence, or 20
- (c) the discretion of a court to exclude evidence obtained improperly, in contravention of a law, or in consequence of an impropriety or of a contravention of a law, or
- (d) any law that permits or requires a person to be present at the questioning of another person who is under arrest (for example, the presence of a parent at the questioning by a police officer of the parent's child), or 25
- (e) the right of a person to refuse to answer questions or refuse to participate in the investigation of an offence unless the person is required to do so by law, or 30
- (f) the right of a person to leave a police station or other police custody if the person is not under arrest, or 35
- (g) the rights of a person under the *Bail Act 1978*.

**356A Definitions**

In this Part:

*authorised justice* has the same meaning as in the *Search Warrants Act 1985*.

*custody officer* means the police officer having, or nominated by the officer in charge of a police station as having, the responsibility for the care, control and safety of persons detained at the police station or another place. 5

*detention warrant means* a warrant issued under section 356F. 10

*investigative procedure* means a procedure specified in section 356N.

*telephone* includes radio, facsimile and any other communication device.

**356B Detention after arrest** 15

- (1) A police officer may detain a person who is under arrest for the investigation period provided for by section 356C.
- (2) A police officer may so detain a person only if it is necessary for any of the following purposes: 20
  - (a) to establish the identity of the person,
  - (b) to conduct any further inquiries that are reasonably necessary to confirm or dispel any reasonable suspicion held by the police officer as to the person's involvement in the commission of an offence (including an offence other than the offence for which the person is under arrest), 25
  - (c) to conduct any further inquiries that are reasonably necessary to determine whether a prosecution against any person will be commenced, 30
  - (d) to complete any necessary documentation relating to the investigation that requires the person's presence,
  - (e) to conduct an investigative procedure. 35

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- (3) Before the end of the investigation period, the person must either:
- (a) be released (whether unconditionally or on bail), or
  - (b) be brought before a justice, a Magistrate or court. 5
- (4) A requirement in another Part of this Act, the *Justices Act 1902*, the *Bail Act 1978* or any other relevant law that a person who is under arrest be taken before a justice, a Magistrate or court, without delay, or within a specified period, is affected by this Part only to the extent that the extension of the period within which the person is to be brought before the justice, the Magistrate or the court is authorised by this Part. 10
- (5) A person must not be re-arrested in respect of the same offence or offences unless additional information has come to the attention of the police that justifies the person's re-arrest, or a reasonable time has elapsed, after the person was released. 15

**356C Investigation period**

- (1) The investigation period begins when the person is arrested and ends at a later time that is reasonable having regard to all the circumstances but does not extend beyond the maximum investigation period unless that maximum investigation period is extended by a detention warrant. 20 25
- (2) The maximum investigation period is 4 hours.

**356D Determining reasonable investigation period**

- (1) In determining what is a reasonable period to detain a person under this Part, all the relevant circumstances of the particular case must be taken into account. 30
- (2) Without limiting the relevant circumstances that must be taken into account, the following circumstances (if relevant) are to be taken into account:



- (a) the age, the physical capacity and condition, the mental capacity and condition and the intellectual capacity, of the person,
- (b) whether the presence of the person is necessary for the investigation of the offences concerned, 5
- (c) the number, seriousness and complexity of the offences under investigation,
- (d) whether the person has indicated a willingness to make a statement or to answer any questions,
- (e) the time taken for police officers connected with the investigation to attend the police station or other place where the person is being detained, 10
- (f) whether a police officer reasonably requires time to prepare for any questioning of the person,
- (g) the need to transport the person to a place where facilities are available to conduct any questioning of the person or any other investigative procedure in which the person is to participate, 15
- (h) the number and availability of other persons who need to be questioned or from whom statements need to be obtained in respect of an offence reasonably suspected of having been committed by the person, 20
- (i) the need to visit the place where the offence concerned is believed to have been committed or any other place reasonably connected with the investigation of the offence, 25
- (j) the time during which the person is in the company of a police officer before and after the person's arrest, 30
- (k) the time taken to complete any searches or other investigative procedures that are reasonably necessary to the investigation (including any search of the person or any other investigative procedure in which the person is to participate), 35

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- (l) the time required to carry out any other activity that is reasonably necessary for the proper conduct of the investigation.

**356E Certain times to be disregarded in calculating detention period**

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- (1) In determining what is a reasonable period to detain a person under this Part, the following times are not to be taken into account:

- (a) the time that is reasonably required to convey the person from the place where the person is arrested to the police station or other place where the person is to be detained,

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- (b) any time during which any questioning of the person or the conduct of any other investigative procedure in which the person is to participate is suspended or delayed:

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- (i) to allow the person (or someone else on the person's behalf) to communicate with a friend, relative, guardian, independent person, legal practitioner or consular official,

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- (ii) to allow such a friend, relative, guardian, independent person, legal practitioner or consular officer to arrive at the police station or other place where the person is being detained,

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- (iii) to arrange for and to allow the person to receive medical attention,

- (iv) to arrange for and to allow an interpreter to arrive at the police station or other place where the person is being detained,

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- (v) to allow the person to rest or receive refreshments or to give the person access to toilet and other facilities as referred to in section 356V,

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- (vi) because of the person's intoxication due to alcohol or another drug (or both),
    - (c) the time that is reasonably required to make and dispose of any application under section 356F.
  - (2) In any criminal proceedings, the burden lies on the prosecution to prove that any particular time was a time that was not to be taken into account because of this section. 5
- 356F Detention warrant to extend maximum investigation period** 10
- (1) A police officer may, before the end of the maximum investigation period in respect of a person who is detained under this Part, apply to an authorised justice for a detention warrant to extend the maximum investigation period beyond 4 hours. 15
  - (2) The authorised justice may issue a detention warrant that extends the maximum investigation period by up to 8 hours.
  - (3) The maximum investigation period cannot be extended more than once. 20
  - (4) An authorised justice must not issue a detention warrant unless satisfied that:
    - (a) the investigation is being conducted diligently and without delay, and
    - (b) a further period of detention without charge is reasonably necessary to preserve or obtain evidence, or to complete the investigation, and 25
    - (c) there is no reasonable alternative means of obtaining the evidence otherwise than by the continued detention of the person, and 30
    - (d) circumstances exist in the matter that make it impracticable for the investigation to be completed within the 4-hour period.



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**356G Procedure for applying for and making detention warrant**

- (1) An application for a detention warrant may be made by the applicant in person or by telephone.
- (2) An application for a detention warrant made in person must be made in writing in the form prescribed by the regulations. The authorised justice must not issue the detention warrant unless the information given by the applicant in or in connection with the application is verified before the authorised justice on oath or affirmation or by affidavit. An authorised justice may administer an oath or affirmation or take an affidavit for the purposes of an application for a detention warrant. 5
- (3) An authorised justice must not issue a detention warrant on an application made by telephone unless satisfied that the warrant is required urgently and that it is not practicable for the application to be made in person. An application for a detention warrant must be made by facsimile (instead of orally by telephone) if the facilities to do so are readily available for that purpose. 10
- (4) If it is not practicable for an application made by telephone to be made directly to an authorised justice, the application may be transmitted to the authorised justice by another person on behalf of the applicant. 15
- (5) An authorised justice who issues a detention warrant on an application made by telephone must: 20  
  - (a) complete and sign the warrant, and
  - (b) furnish the warrant to the person who made the application or inform that person of the terms of the warrant and of the date and time when it was signed. 30
- (6) If a detention warrant is issued on an application made by telephone and the applicant was not furnished with the warrant, the applicant is to complete a form of detention warrant in the terms indicated by the authorised justice under subsection (5) and write on it the name of that authorised justice and the date and time 35

when the warrant was signed. A form of detention warrant so completed is taken to be a detention warrant issued in accordance with this section.

- (7) A detention warrant issued on an application made by telephone is to be furnished by the authorised justice by transmitting it by facsimile, if the facilities to do so are readily available, and the copy produced by that transmission is taken to be the original document. 5
- (8) As soon as practicable after a detention warrant is issued, a copy of the warrant must be given to the person in respect of whom the warrant has been issued. 10
- (9) In any criminal proceedings, if the detention warrant signed by an authorised justice in accordance with subsection (5) (a) or referred to in subsection (6) or (7) is not produced in evidence, the burden lies on the prosecution to prove that the warrant was issued. 15
- (10) In this section, a reference to facsimile includes a reference to any electronic communication device which transmits information in a form from which written material is capable of being reproduced with or without the aid of any other device or article. 20

### **356H Information in application for detention warrant**

- (1) An authorised justice must not issue a detention warrant unless the application for the warrant includes the following information: 25
- (a) the nature of the offence under investigation,
- (b) the general nature of the evidence on which the person was arrested,
- (c) what investigation has taken place and what further investigation is proposed, 30
- (d) the reasons for believing that the continued detention without charge of the person is reasonably necessary to preserve or obtain evidence, or to complete the investigation,

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- (e) the extent to which the person who is under arrest is co-operating in the investigation,
- (f) if a previous application for the same, or substantially the same, warrant was refused, details of the refusal and any additional information required by section 356J, 5
- (g) any other information required by the regulations.
- (2) The applicant must provide (either orally or in writing) such further information as the authorised justice requires concerning the grounds on which the detention warrant is being sought. 10
- (3) Nothing in this section requires an applicant for a detention warrant to disclose the identity of a person from whom information was obtained if the applicant is satisfied that to do so might jeopardise the safety of any person. 15

**356I False or misleading information in applications**

- (1) A person must not, in or in connection with an application for a detention warrant, give information to an authorised justice that the person knows to be false or misleading in a material particular. 20
- Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.
- (2) This section applies to an application made by telephone as well as in person. 25
- (3) This section applies whether or not the information given is also verified on oath or affirmation or by affidavit.
- (4) Proceedings for an offence under this section are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone. 30



**356J Further application for detention warrant after refusal**

If an application by a person for a detention warrant is refused by an authorised justice, that person (or any other person who is aware of the application) may not make a further application for the same, or substantially the same, warrant to that or any other authorised justice unless the further application provides additional information that justifies the making of the further application. 5

**356K Detention warrant records** 10

- (1) An authorised justice who issues a detention warrant is to cause a record to be made of all relevant particulars of the grounds the authorised justice has relied on to justify the issue of the warrant.
- (2) The regulations may make provision for or with respect to: 15
  - (a) the keeping of records in connection with the issue and execution of detention warrants, and
  - (b) the inspection of any such records, and
  - (c) any other matter in connection with any such records. 20
- (3) Any matter that might disclose the identity of a person must not be recorded under this section if the authorised justice is satisfied that to do so might jeopardise the safety of any person. 25

**356L Form of detention warrant**

A detention warrant must be in the form prescribed by the regulations.

**356M Defects in detention warrant**

A detention warrant is not invalidated by any defect other than a defect that affects the substance of the warrant in a material particular. 30



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**356N Investigative procedures**

The following procedures may, subject to section 356 (1) (c), be conducted while a person is detained under this Part:

- (a) questioning the person, 5
- (b) obtaining a statement from the person,
- (c) questioning witnesses or other persons who may have relevant information relating to the offence under investigation,
- (d) obtaining statements from witnesses or other persons who may have relevant information relating to the offence under investigation, 10
- (e) searching the person,
- (f) searching of premises, a vehicle or other conveyance, 15
- (g) taking of finger-prints,
- (h) taking of palm-prints,
- (i) taking of photographs,
- (j) filming,
- (k) videotaping, 20
- (l) examining the person's body,
- (m) obtaining blood, urine or other bodily samples,
- (n) subjecting things or matter to analysis,
- (o) conducting identification parades,
- (p) taking voice samples, 25
- (q) taking handwriting samples,
- (r) any other procedure prescribed by the regulations for the purposes of this section.

**356O Right to communicate with friend, relative, guardian, independent person and legal practitioner**

- (1) After a person is arrested and before the first questioning of the person or the conduct of any other investigative procedure in which the person is to participate starts, the police officer concerned must inform the person that he or she may: 5
- (a) communicate, or attempt to communicate, with a friend, relative, guardian or independent person to inform that person where the person is being detained and arrange, or attempt to arrange, for a friend, relative, guardian or independent person to attend the police station or other place where the person is being detained, and 10
  - (b) communicate, or attempt to communicate, with a legal practitioner of the person's choice and arrange, or attempt to arrange, for a legal practitioner of the person's choice to be present during the questioning or the conduct of any other investigative procedure in which the person is to participate. 15 20
- (2) If the person wishes to make any communication referred to in subsection (1), the police officer concerned must, as soon as practicable:
- (a) give the person reasonable facilities to enable the person to do so, and 25
  - (b) in the case of a communication with a legal practitioner—allow the person to do so in circumstances in which, so far as is practicable, the communication will not be overheard. 30
- (3) The police officer concerned must defer the questioning of the person or the conduct of any other investigative procedure in which the person is to participate for a reasonable period to allow the person to make, or attempt to make, the communication and: 35

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- (a) if the person has arranged for a friend, relative, guardian or independent person to attend the police station or other place where the person is being detained, to allow that person to arrive at that place, and 5
- (b) if the person has arranged for a legal practitioner of the person's choice to be present, to allow the legal practitioner to be present at the questioning of the person or the conduct of any other investigative procedure in which the person is to participate. 10
- (4) The police officer concerned must, if the person arranges for a legal practitioner of the person's choice to be present during the questioning of the person or the conduct of any other investigative procedure in which the person is to participate: 15
- (a) allow the person to consult with the legal practitioner in private and must provide reasonable facilities for that consultation, and
- (b) allow the legal practitioner to be present during the questioning of the person or the conduct of any other investigative procedure in which the person is to participate and give advice to the person. 20
- (5) Anything said by the legal practitioner during the questioning or the conduct of any other investigative procedure in which the person participates is to be recorded and form part of the formal record of the investigation. 25
- (6) The police officer concerned is not required to defer the questioning of the person or any other investigative procedure in which the person is to participate for more than 2 hours, from the time the person made, or attempted to make, any communication referred to in subsection (1), for the person contacted to arrive at the police station or other place where the person who is under arrest is being detained. 30 35



- (7) The duties of a police officer under this section to a person who is under arrest referred to in section 356P are in addition to those set out in that section.

**356P Right of foreign national to communicate with consular official** 5

- (1) After a person is arrested and before the first questioning of the person or the conduct of any other investigative procedure in which the person is to participate starts, the police officer concerned must inform the person that he or she may communicate, or attempt to communicate, with a consular official of the country of which the person is a citizen if the person appears to the police officer concerned not to be an Australian citizen. 10
- (2) The police officer concerned must, as soon as practicable, if the person wishes to communicate with a consular official: 15
- (a) give the person reasonable facilities to enable the person to do so, and
- (b) allow the consular official to communicate with the person in circumstances in which, so far as is practicable, the communication will not be overheard. 20
- (3) The police officer concerned must defer the questioning of the person or the conduct of any other investigative procedure in which the person is to participate for a reasonable period to allow the person to make, or attempt to make, the communication and, if the person has arranged for a consular official to attend the police station or other place where the person is being detained, to allow the consular official to arrive at that place. 25 30
- (4) The police officer concerned is not required to defer the questioning of the person or the conduct of any other investigative procedure in which the person is to participate for more than 2 hours, from the time the person communicated, or attempted to communicate, with the consular official, for the consular official to arrive at the police station or other place where the person is being detained. 35



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**356Q Circumstances in which questioning or other investigative procedure in which arrested person is to participate need not be deferred**

- (1) An investigative procedure need not be deferred in accordance with section 356O or 356P if the police officer concerned believes on reasonable grounds that doing so is likely to result in: 5
- (a) an accomplice of the person who is under arrest avoiding apprehension, or
  - (b) the concealment, fabrication, destruction or loss of evidence or the intimidation of a witness, or 10
  - (c) hindering the recovery of any person or property concerned in the offence under investigation.
- (2) Any such investigative procedure need not be deferred in accordance with section 356O or 356P if the police officer concerned believes on reasonable grounds that the investigation is so urgent, having regard to the safety of other people, that it should not be deferred in accordance with that section. 15
- (3) However, this section does not permit a police officer to proceed with any such investigative procedure without complying with a requirement under section 356P relating to communication with, or the presence of, a legal practitioner. 20

**356R Provision to friends, relatives and others of information about arrested person** 25

- (1) The police officer concerned must, if a friend, relative, guardian or legal representative of a person who is under arrest requests information as to the police station or other place where the person is being detained, inform the person who is under arrest of the request. 30
- (2) The police officer concerned must provide, or arrange for the provision of, that information to the person who made the request unless:
- (a) the person who is under arrest does not agree to that information being provided, or 35

- (b) the police officer believes on reasonable grounds that the person requiring the information is not a friend, relative, guardian or legal representative of the person who is under arrest.

**356S Provision of interpreter** 5

- (1) The custody officer for a person who is under arrest may arrange for an interpreter to be present for the person in connection with the questioning or any other investigative procedure in which the person is to participate. 10
- (2) In deciding whether an interpreter is required, the custody officer is to consider the following matters:
  - (a) any request by the person for an interpreter,
  - (b) whether the person is unable, because of inadequate knowledge of the English language, to communicate orally with reasonable fluency in English, 15
  - (c) the difficulty of obtaining an interpreter,
  - (d) the urgency of the investigation, having regard to the safety of other people. 20
- (3) The custody officer must, if a decision is made that an interpreter is required, ensure that any questioning or other investigative procedure in which the person is to participate is deferred until the interpreter arrives.

**356T Provision of interpreting assistance if arrested person has physical or intellectual disability** 25

- (1) The custody officer for a person who is under arrest may arrange for an interpreter to be present for the person in connection with the questioning or any other investigative procedure in which the person is to participate if the person has a physical or intellectual disability. 30

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- (2) In deciding whether an interpreter is required, the custody officer is to consider the following matters:
- (a) any request by the person for an interpreter,
  - (b) whether the person is unable, because of physical or intellectual disability, to communicate orally with reasonable fluency, 5
  - (c) the difficulty of obtaining an interpreter,
  - (d) the urgency of the investigation, having regard to the safety of other people.
- (3) The custody officer must, if a decision is made that an interpreter is required, ensure that any questioning or other investigative procedure in which the person is to participate is deferred until the interpreter arrives. 10

**356U Right to medical assistance**

The custody officer for a person who is under arrest must arrange immediately for the person to receive medical attention if it appears to the custody officer that the person requires medical attention or the person requests it on grounds that appear reasonable to the custody officer. 15  
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**356V Provision of reasonable refreshments and facilities**

- (1) The custody officer for a person who is under arrest must ensure that the person is provided with reasonable refreshments and reasonable access to toilet facilities.
- (2) The custody officer for a person who is under arrest must ensure that the person is provided with facilities to wash, shower or bathe and (if appropriate) to shave if: 25
- (a) it is reasonably practicable to provide access to such facilities, and
  - (b) the custody officer is satisfied that the investigation will not be hindered by providing the person with such facilities. 30



**356W Custody records to be maintained**

The custody officer for a person who is under arrest is to record the particulars prescribed by the regulations relating to the detention of persons who are under arrest.

**356X Regulations**

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- (1) The Governor may make regulations, not inconsistent with this Part, for or with respect to any matter that is required or permitted to be prescribed under this Part or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part. 10
- (2) In particular, the regulations may make provision for or with respect to the following:
  - (a) a code of practice relating to persons who are under arrest,
  - (b) requiring police officers to observe any such code of practice, 15
  - (c) the consultation process to be undertaken in the preparation of the code of practice,
  - (d) the manner in which breaches of the code of practice are to be dealt with, 20
  - (e) the keeping of records relating to the detention of persons who are under arrest, including the formal record of the conduct of investigative procedures in which a person who is under arrest participates.

**[6] Part 10B, heading**

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Insert "**Part 10B Powers of search, powers of entry and discharge of persons in custody**" before the heading "*Powers of search*" appearing before section 357.



**[7] Section 442C**

Insert after section 442B:

**442C Detention after arrest for purposes of investigation to count towards sentence**

In passing sentence on a person convicted of an offence, a court must take into account any period during which the person was detained under Part 10A in respect of the offence and may accordingly reduce the sentence it would otherwise have passed.

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**Schedule 2 Amendment of Children (Criminal Proceedings) Act 1987**

(Section 4)

**Section 9 Expedition where child in custody**

Insert after section 9 (2):

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- (3) Nothing in this section prevents a child being detained in accordance with Part 10A of the *Crimes Act 1900*.