



New South Wales

Police Authorities 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 create an offence of having custody of a knife in a public place without reasonable excuse, and
 - (b) to enable a police officer to conduct a search of a person if the police officer suspects on reasonable grounds that the person has unlawful custody of a knife or weapon, and
 - (c) to allow a police officer to confiscate knives, weapons and illegal items found during such a search, and
 - (d) to enable a police officer to give directions to move on or disperse to persons loitering or gathering in public places and who the police officer believes on reasonable grounds have committed or will commit an offence, are breaching the peace, are causing an obstruction or are endangering the safety of any person, and
 - (e) to enable a police officer to request a person's name and residential address, and
 - (f) to enable regulations to be made regulating or prohibiting the sale of knives and providing for the manner in which confiscated knives, weapons and illegal items are to be dealt with.
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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. *Knife* is defined as including a knife blade.

Part 2 Control of knives

Clause 4 creates an offence of having custody of a knife in a public place without a reasonable excuse. Examples of reasonable excuses are having a knife for the lawful pursuit of one's occupation or for sport or other recreational activities. A defendant in proceedings for the offence has the burden of proving that he or she had a reasonable excuse for having custody of the knife in question.

Clause 5 enables a police officer to request a person to undergo a frisk search or electronic search if the police officer suspects on reasonable grounds that the person is carrying a knife or weapon. It is an offence not to comply with such a request.

Clause 6 enables a police officer who conducts such a search of a person to confiscate any knife, weapon or illegal item found in the person's custody. Any thing so confiscated is to be dealt with in accordance with the regulations or in accordance with any relevant provisions of other legislation.

Clause 7 enables regulations to be made with respect to regulating or prohibiting the sale of knives and the manner in which items confiscated under the proposed Act are to be dealt with.

Part 3 Control of behaviour in public places

Clause 8 enables a police officer to give directions to disperse to a person or group of persons loitering in a public place if the police officer has reasonable grounds to believe that an offence has been or is about to be committed, that a breach of the peace has occurred or is about to occur, that an obstruction is being caused or that the safety of any person in the vicinity is in danger. It is an offence to fail to comply with the direction.

Part 4 Authority to demand names and addresses

Clause 9 enables a police officer to request a person's name and residential address. It is an offence not to comply with the request or to give a false name or an address other than the full and correct residential address.

Part 5 Miscellaneous

Clause 10 requires a police officer to make a written record of any action taken under clause 5, 6, 8 or 9.

Clause 11 makes it clear that the authorities conferred on police officers by the proposed Act are in addition to any other authorities that police officers may have.

Clause 12 provides for proceedings for offences against the proposed Act or the regulations to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

Clause 13 enables regulations to be made for the purposes of the proposed Act.

Clause 14 requires the Minister to review the proposed Act after one year from the date of its assent to determine whether its terms are still appropriate for securing its objectives.



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New South Wales

Police Authorities Bill 1998

No. , 1998

A Bill for

An Act to make further provision with respect to the control of knives and the authority of police officers to conduct searches of, give directions to and require information from persons; and for other purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Police Authorities Act 1998*.

2 Commencement

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

3 Definitions

(1) In this Act:

electronic search means a search of a person conducted by operating an electronic metal detector in close proximity to the person and anything that the person is carrying. 10

frisk search means:

(a) a search of a person conducted by quickly running the hands over the person's outer garments or, if the person is wearing a heavy coat or jacket, the person's outer garments under the coat or jacket, and 15

(b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person. 20

illegal item means any stolen or unlawfully obtained property or any other thing that it is an offence to use or to have custody of.

knife includes a knife blade.

public place means:

(a) a place (whether or not covered by water), or 25

(b) a part of premises,

that is open to the public, or is used by the public whether or not on payment of money or other consideration, whether or not the place is ordinarily so open or used and whether or not the public to whom it is open consists of only a limited class of persons. 30

(2) Section 8 of the *Crimes Act 1900* does not apply in relation to the expression *public place* in this Act.

Part 2 Control of knives

4 Custody of knives in public place

- (1) A person must not, without reasonable excuse (proof of which lies on the person), have in his or her custody a knife in a public place. 5

Maximum penalty: 100 penalty units or imprisonment for 5 years, or both.

- (2) Without limiting any other reasonable excuse that a person may have for the purposes of this section, it is a reasonable excuse for the purposes of this section for a person to have custody of a knife, where: 10

(a) the custody is reasonably necessary in all the circumstances for any of the following activities:

- (i) the lawful pursuit of the person's occupation, 15
(ii) a sport or other recreational activity, or

(b) the custody is reasonably necessary in all the circumstances during travel to or from or incidental to an activity referred to in paragraph (a).

5 Police may search for knives or weapons

- (1) A police officer may request any person to undergo a frisk search or an electronic search conducted by the police officer if the police officer suspects on reasonable grounds that the person has unlawful custody of a knife or weapon. 20

- (2) A police officer may only make such a request if the police officer: 25

(a) informs the person of the reason for the proposed search, and

(b) informs the person that failure to comply with the request may be an offence, and

(c) in a case where the police officer is not in uniform, provides evidence that he or she is a police officer. 30

- (3) A person must not, in response to a request made by a police officer in accordance with this section, fail or refuse to comply with the request.

Maximum penalty: 20 penalty units.

6 Confiscation of knives, weapons or illegal items found during search 5

- (1) A police officer who conducts a search of a person under this Part may:
- (a) take possession of any knife, weapon or illegal item found in the person's custody, and 10
 - (b) confiscate the knife, weapon or illegal item.
- (2) The confiscated knife, weapon or illegal item is to be dealt with:
- (a) in accordance with the regulations, or
 - (b) if provision is also made by or under any other Act for the confiscation of the knife, weapon or item—as provided by or under that Act. 15
- (3) Evidence of a thing discovered during or as a result of a search carried out in accordance with this Part, or the seizure of the thing, is not invalidated merely because it is not a knife or weapon for which the search was conducted. 20

7 Regulations relating to knives and confiscated items

The regulations may make provision for or with respect to:

- (a) regulating or prohibiting the sale of knives, and
- (b) the manner in which knives, weapons and illegal items confiscated under this Act are to be dealt with. 25

Part 3 Control of behaviour in public places

8 Police may give directions to persons loitering or gathering in public places

- (1) A police officer may direct any person found loitering in a public place to cease loitering, or any group of persons assembled in a public place to disperse, if the police officer believes on reasonable grounds that:
- (a) an offence has been or is about to be committed by that person or by one or more persons in that group, or
 - (b) a breach of the peace has occurred, is occurring or is about to occur in the vicinity of that person or group, or
 - (c) the movement of pedestrians or vehicular traffic is obstructed or is about to be obstructed by the presence of that person or group, or
 - (d) the safety of a person in the vicinity is in danger.
- (2) A person must not, without reasonable excuse (proof of which lies on the person), fail or refuse to comply with a direction given in accordance with this section.

Maximum penalty: 4 penalty units.

Part 5 Miscellaneous**10 Police officer to make record of exercise of authority under this Act**

A police officer must make a written record of the particulars of every occasion on which the police officer takes action under section 5, 6, 8 or 9. 5

11 Act does not derogate from other police authorities

Nothing in this Act limits any powers, authorities, duties or functions that police officers may have apart from this Act.

12 Proceedings for offences 10

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

13 Regulations

(1) 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. 15

(2) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units. 20

14 Review of Act

(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 one year from the date of assent to this Act. 25

Clause 14 Police Authorities Bill 1998

Part 5 Miscellaneous

- (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 one-year period.