



New South Wales

# Law Enforcement (Powers and Responsibilities) Amendment (Digital Evidence Access Orders) Bill 2022

## Explanatory note

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

This Bill is cognate with the *Crimes Amendment (Money Laundering) Bill 2022*.

## Overview of Bill

The object of this Bill is to prevent and disrupt organised and other serious crime by making amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002* (**the Act**) and the *Criminal Procedure Act 1986* to—

- (a) provide for digital evidence access orders, and
- (b) require a specified person to provide reasonable and necessary information or assistance to enable access to data held in a relevant computer, and
- (c) prevent an application for review of a crime scene warrant causing a stay on the operation of a digital evidence access order in connection with the warrant, and
- (d) require the Minister to conduct a review of the proposed provisions set out in the proposed Act, and
- (e) provide that the offence of giving false or misleading information in applications for a digital evidence access order is a summary offence.

## 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 1 February 2023.

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

**Schedule 1[1]** inserts definitions for the purposes of Part 5 and Division 4A of that Part.

**Schedule 1[2]** inserts a definition of *digital evidence access order* and replaces definitions of *eligible applicant*, *eligible issuing officer* and *executing officer* for Part 5.

**Schedule 1[3] and [4]** relate to persons to whom a warrant is issued relating to a digital evidence access order issued in connection with the warrant. The provisions inserted by Schedule 1[3] and [4] require the person to provide a brief description of the use of the order in the written report to the eligible issuing officer who issued the warrant.

**Schedule 1[5]** inserts proposed Part 5, Division 4A into the Act to provide for digital evidence access orders that authorise an executing officer to require a specified person to provide reasonable and necessary information or assistance to enable access to data held in a computer. Proposed Subdivision 2 sets out the particulars of applications for digital evidence access orders, provides the information an application must contain and makes it an offence to give false or misleading information to an eligible officer in connection to a digital evidence access order, with a maximum penalty of 100 penalty units or imprisonment for 2 years, or both. Proposed Subdivision 3 sets out the particulars the eligible officer must consider when determining an application for a digital evidence access order and the particulars that must be satisfied before the eligible officer may grant an application for a digital evidence access order. Proposed Subdivision 4 sets out the form a digital evidence access order must be in, the period of time the order is in force, the effect of the order on the specified person and the requirements to show the order, and makes it an offence to fail to comply with a digital evidence access order, with a maximum penalty of 100 penalty units or imprisonment for 5 years, or both. Proposed section 76AP provides the record-keeping requirements of an eligible issuing officer in relation to digital evidence access orders. Proposed section 76AQ deals with the validity of digital evidence access orders containing defects.

**Schedule 1[6]** amends the Act, section 94A(3) to set out that an application by an occupier for review by a Magistrate of a crime scene warrant does not stay the operation of a digital evidence access order issued in connection with the warrant.

**Schedule 1[7]** inserts proposed section 237A to require the Minister to conduct a review of the provisions inserted into the Law Enforcement (Powers and Responsibilities) Act 2002 and the *Criminal Procedure Act 1986* by the proposed Act as soon as practicable after the period of 2 years after the commencement date.

**Schedule 1[8]** inserts proposed section 238(3) to set out matters the regulations made under the Act may provide for about digital evidence access orders.

## **Schedule 2      Amendment of Law Enforcement (Powers and Responsibilities) Regulation 2016**

**Schedule 2[2]** inserts proposed clause 4(4) to provide for the form of an application for a digital evidence access order. **Schedule 2[1]** makes a consequential amendment.

**Schedule 2[4]** inserts proposed clause 6(3) to provide for the form of a digital evidence access order. **Schedule 2[3]** makes a consequential amendment.

**Schedule 2[5]–[8]** amend clause 13 to provide for the keeping and inspection of records of digital evidence access orders.

**Schedule 2[9]** inserts the proposed form of an application for a digital evidence access order into Schedule 1.

### **Schedule 3      Consequential amendment of Criminal Procedure Act 1986 No 209**

**Schedule 3** inserts an item into the *Criminal Procedure Act 1986*, Schedule 1, Table 2, Part 6 to make an offence under the *Law Enforcement (Powers and Responsibilities) Act 2002*, section 76AG(1) one that may be dealt with summarily.