



New South Wales

Law Enforcement (Powers and Responsibilities) Amendment Bill 2014

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 (LEPRA)* to give effect to the recommendations of the statutory review of LEPRA, including the recommendations in a report to the Government on the statutory review by Mr Andrew Tink and the Hon Paul Whelan that relate to Part 9 (Investigations and questioning) and Part 15 (Safeguards relating to police powers) of LEPRA. In particular, the Bill amends LEPRA as follows:

- (a) to clarify and revise the safeguards under Part 9 relating to investigations and questioning, and in particular:
 - (i) to provide separate safeguards for persons detained after arrest (*detained persons*) and for suspects who are in the company of a police officer for the purpose of an investigation but who have been told they are free to leave (*protected suspects*), and to remove references to persons deemed to be under arrest, and
 - (ii) to provide that the safeguards under Division 2 of Part 9 apply only to detained persons and not to protected suspects (eg the time limits on the investigation period), and to provide that the safeguards under Division 3 of Part 9 apply to both detained persons and protected suspects (eg the giving of a caution that they do not have to say anything; their right to contact a friend, relative, guardian or independent person; their right to medical attention; and their right to reasonable refreshment and facilities), and
 - (iii) to extend the initial investigation period for a detained person from 4 hours to 6 hours but to retain the overall maximum investigation period of 12 hours by limiting the additional period of investigation under a detention warrant issued by an authorised officer to 6 hours instead of 8 hours, and

- (iv) to require an authorised officer to whom an application is made for a detention warrant to take into account the period before detention during which the person was a protected suspect in the company of a police officer, and
 - (v) to apply Part 9 to a detained person or protected suspect who remains at premises that are being searched under a search warrant (including provision for an independent police officer to exercise the functions of a custody manager; provision to dispense with requirements relating to contact with friends, relatives, guardians or independent persons if there is a reasonable suspicion that it may result in bodily injury to any other person; and provision to enable the custody record to be included in a video recording of the execution of the search warrant), and
 - (vi) to enable information required to be given to detained persons and protected suspects to be given in summary form prescribed by the regulations,
- (b) to clarify and simplify the provisions of Part 15 (relating to safeguards applying to the exercise of police powers) by recasting the provisions in plain language, and in particular:
- (i) to clarify the time at which police officers exercising a relevant police power must provide evidence they are a police officer (if not in uniform), provide their name and place of duty and provide the reason for exercising the power (so that it is to be provided as soon as reasonably practicable or, in the case of direction, requirement or request to a single person, before exercising the power), and
 - (ii) to consolidate the warnings to a person to whom a direction, requirement or request is given to a single warning that the person must by law comply with the direction, requirement or request (instead of a warning that the person must comply and a warning that failure to comply is an offence), and
 - (iii) to retain the requirement that a police officer provide his or her name and place of duty, but to provide that a failure to do so does not render the exercise of the power unlawful (except in the case of a direction, requirement or request to a single person), and
 - (iv) to provide that the Ombudsman is to monitor the operation of the Part relating to the provision of the name and place of duty of a police officer and provide a report for tabling in Parliament,
- (c) to make miscellaneous amendments, including:
- (i) to amalgamate existing provisions relating to ordinary and frisk searches, and
 - (ii) to remove the requirement that a strip search may be carried out at a police station or other place of detention only if the seriousness or urgency of the circumstances require the search to be carried out but to provide that such a requirement will continue to apply to strip searches carried out in any other place, and
 - (iii) to limit the circumstances in which a strip search of a child or person with impaired intellectual functioning can be carried out in the absence of a parent, guardian or support person, and
 - (iv) to allow persons while they are being searched to be asked questions that relate to issues of personal safety associated with the search, and
 - (v) to expand the powers that may be exercised at a crime scene before a crime scene warrant is obtained (including extending the period during which such powers may be exercised before obtaining a warrant), and
 - (vi) to provide that a crime scene warrant may relate to more than one set of premises.

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 or days to be appointed by proclamation.

Schedule 1 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103 relating to investigations and questioning under Part 9

The Schedule amends the provisions of Part 9 of LEPRA to give effect to paragraph (a) of the Overview above.

Schedule 2 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103 relating to safeguards under Part 15

The Schedule amends the provisions of Part 15 of LEPRA to give effect to paragraph (b) of the Overview above.

Schedule 3 Miscellaneous amendments to Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Personal searches generally

Schedule 3 [14] makes it clear that, in conducting a personal search, any requirement by a police officer that the person open his or her mouth is to enable the mouth to be searched. **Schedule 3 [1]** is a consequential amendment which provides that a person's body cavities (which are not authorised to be searched under LEPRA) do not include the person's mouth.

Schedule 3 [15] and [16] make it clear that the power to search a person who is in lawful custody of the police is a power that may be exercised following the person's arrest and that the power may be exercised immediately before or during the transportation of the person after being arrested to or from a police station or other place of detention.

Schedule 3 [20] provides that the provisions of LEPRA applying to personal searches extend to searches carried out by a police officer after obtaining the person's consent to carry out the search. In such a case, the purpose for carrying out the search will be the purpose for which the police officer obtained consent to search. **Schedule 3 [29]** provides that a consensual search may only be carried out if the police officer has sought the person's consent before carrying out the search and the officer provides the person with evidence that the officer is a police officer and with the officer's name and place of duty.

Schedule 3 [21] amalgamates existing provisions relating to ordinary searches and frisk searches and continues the powers that may be exercised for the purposes of carrying out the search of a person currently set out in the definitions of "ordinary search" and "frisk search" which are being consequentially omitted. **Schedule 3 [2] and [17]** are consequential amendments.

Schedule 3 [24] restates an existing provision that requires a search to be conducted by a police officer who is of the same sex as the person to be searched. However, in the case where no such officer is available, the power to conduct the search may be delegated to a person who is of the same sex as the person to be searched and who is of a class of persons prescribed by the regulations. **Schedule 3 [3]** provides that references in LEPRA to persons of the same sex or opposite sex will cover transgender persons. **Schedule 3 [1], [23] and [26]** are consequential amendments.

Schedule 3 [25] provides that the prohibition on asking a person questions while the person is being searched will not apply to questions that relate to issues of personal safety associated with the search.

Strip searches

Schedule 3 [22] provides that a police officer may conduct a strip search at a police station or other place of detention if the police officer conducting the search reasonably suspects that the strip search is necessary for the purposes of conducting the search. A strip search may be conducted

elsewhere if the police officer conducting the search reasonably suspects that the strip search is necessary for the purposes of the search and that the seriousness and urgency of the circumstances make the strip search necessary.

Schedule 3 [27] makes it clear that the prohibition on a strip search being conducted in the presence or view of a person who is of the opposite sex to the person being searched does not prevent a parent, guardian or personal representative of the opposite sex to the person being searched from being present during the search.

Schedule 3 [28] provides that a strip search of a child or person with impaired intellectual functioning may be conducted in the absence of a parent, guardian or support person but only if a police officer reasonably suspects that delaying the search is likely to result in evidence being concealed or destroyed or an immediate search is necessary to protect the safety of a person. In such a case, the police officer conducting the strip search must record the reasons for conducting the search in the absence of a parent, guardian or support person.

Crime scene powers

Schedule 3 [32] authorises a police officer to remain in a dwelling on which a domestic violence offence is being or may have been committed and to exercise functions similar to those in relation to a crime scene (such as directing a person to leave, or not to enter, the dwelling) so that evidence of the commission of the offence can be preserved. **Schedule 3 [31] and [33]–[35]** are consequential amendments and **Schedule 3 [36]** makes it an offence to obstruct or hinder a police officer who is exercising crime scene powers in relation to a domestic violence offence.

Schedule 3 [37] provides that the prohibition on establishing a crime scene on the same premises more than once in any 24 hour period does not prevent a subsequent crime scene being established during that period on the same premises for the purposes of investigating a separate offence that is not related to the offence for which the initial crime scene was established.

Schedule 3 [38] expands the powers that may be exercised at a crime scene without a crime scene warrant to include investigative powers (including the power to search the crime scene but not powers to seize or detain things). **Schedule 3 [40]** provides that the police may, in exercising crime scene powers without a warrant, open a thing that is locked only if it is possible to do so without causing any damage.

Schedule 3 [39] extends from 3 to 4 hours the period during which crime scene powers may be exercised before a crime scene warrant is obtained (in the case of a rural area the period is extended to 6 hours). **Schedule 3 [41]** is a consequential amendment.

Schedule 3 [42] provides that a crime scene warrant may, if a crime scene relating to an offence is established on more than one set of premises, apply to each such set of premises.

Schedule 3 [43] enables the occupier of private premises in respect of which a crime scene warrant is issued to apply to an authorised officer for a review of the grounds on which the warrant is issued. Any such application does not stay the operation of the warrant.

Schedule 3 [45] provides that, in the case where crime scene powers are exercised on premises with the occupier's consent, the consent may only be given if the occupier has been informed by the police of the powers proposed to be exercised, the reasons for exercising those powers and that the occupier has the right to refuse to give consent. **Schedule 3 [44]** requires the occupier's consent to be in writing if reasonably practicable.

Miscellaneous amendments

Schedule 3 [10] makes it clear that the direction by a police officer to stop a vehicle is not given under the provisions of LEPRA that relate to the power of police officers to require drivers or passengers to disclose their identity.

Schedule 3 [4]–[9], [11]–[13] and [18] ensure that, in the case of certain police powers under LEPRA that must be complied with by the person in respect of whom the power is exercised, the power is expressed as a requirement rather than as a request by a police officer. The amendments merely bring certain provisions into line with other provisions of LEPRA that contain police powers that must be complied with.

Schedule 3 [19] rearranges the order of existing provisions that authorise the carrying out of personal searches so that the power to search for knives and other dangerous implements, which is based on a reasonable suspicion that a person has such an implement in his or her possession, will immediately follow other existing search powers that are also based on a reasonable suspicion and will precede those powers relating to the search of persons on arrest or while in custody (which involve a different test). **Schedule 3 [48]** is a consequential amendment.

Schedule 3 [30] simplifies the grounds on which a notice to an authorised deposit-taking institution to produce documents is issued.

Schedule 3 [46] repeals a provision that prevents police in-car video equipment from being used to record a conversation between a police officer and a person after the person has been arrested.

Schedule 3 [47] makes it clear that the recording of a conversation between police officers by means of police in-car video equipment does not constitute the use of a listening device for the purposes of the *Surveillance Devices Act 2007*.

Schedule 3 [49] enables the Commissioner of Police to order the destruction of any identification particulars of a person taken while the person is in custody. Such a power does not affect any existing requirement relating to destruction of identification particulars.

Schedule 3 [54] transfers the provisions of Part 12 of LEPR (which contains police powers relating to the regulation of traffic and vehicles, including the use of tyre deflation devices and preventing intoxicated drivers from driving) to the *Road Transport Act 2013*. **Schedule 3 [50]–[53]** are related amendments.

Schedule 3 [55] enables the regulations to prescribe a code of practice relating to the power of police to give directions under Part 14 of LEPR.

Schedule 4 Amendment of Law Enforcement (Powers and Responsibilities) Regulation 2005

Schedule 4 [1] provides that a receipt of the items seized during the execution of a covert search warrant must be provided to the occupier of the premises when the occupier is notified of the search unless the provision of the receipt would result in a person's safety being jeopardised or would compromise the investigation of a matter. **Schedule 4 [2]** requires a copy of any such receipt that is provided to the occupier to be kept.

Schedule 4 [3] provides that, in the case of a crime scene warrant that relates to more than one set of premises, the occupier's right to inspect the warrant is restricted only to the part that relates to the occupier's premises.

Schedule 4 [4] and [5] make consequential amendments to forms.

Schedule 5 Consequential amendment of other legislation

The Schedule makes amendments to other Acts and a regulation that refer to provisions of Part 15 of LEPR as a consequence of the substitution of that Part by the proposed Act.