



New South Wales

# Summary Offences Amendment (Places of Detention) Bill 2002

## Explanatory note

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

This Bill is cognate with the *Crimes (Administration of Sentences) Amendment Bill 2002*.

## Overview of Bill

The object of this Bill is to enable a correctional officer to stop, detain and search a person or a vehicle in or in the immediate vicinity of a place of detention if the correctional officer has reasonable grounds to suspect that the person may be committing, may have committed or intends to commit an offence under Part 4A (Offences relating to places of detention) of the *Summary Offences Act 1988*.

The offences in Part 4A of that Act relate to the following matters:

- (a) bringing liquor, prohibited drugs, prohibited plants or other specified substances into a place of detention,
- (b) bringing syringes into a place of detention or supplying syringes to an inmate in lawful custody,

- (c) unlawfully possessing an offensive weapon or instrument in a place of detention,
- (d) unlawfully loitering about a place of detention, or entering a place of detention, or communicating with an inmate,
- (e) unlawfully delivering anything to an inmate, or bringing anything into a place of detention, or conveying anything out of a place of detention, or receiving anything for conveyance out of a place of detention, or secreting or leaving anything for the purpose of its being found by an inmate.

A correctional officer must not detain a person in the exercise of the power to detain and search the person any longer than is reasonably necessary for the purpose, and in any event for no longer than 4 hours. A correctional officer may detain a person reasonably suspected of committing an offence under Part 4A until the arrival of a police officer to conduct a search of the person.

A correctional officer must conduct a search with due regard to dignity and self-respect and in as seemly a manner as is consistent with the conduct of an effective search. In particular, a correctional officer must not direct a person to remove any item of clothing (other than a hat, gloves, coat, jacket or shoes) and must not search the person by running the officer's hands over the person's clothing.

A search must, if practicable, be conducted by a person of the same sex as the person being searched. If the person being searched is a minor or is mentally incapacitated, the person is to be searched in the presence of an adult who accompanied the person to the place of detention. If there is no such adult, the person is to be searched in the presence of a member of staff who is not a correctional officer.

## 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.

**Clause 3** is a formal provision giving effect to the amendments to the *Summary Offences Act 1988* set out in Schedule 1.

## **Schedule 1    Amendments**

**Schedule 1 [7]** inserts proposed sections 27F–27N. Proposed section 27F contains the powers described in the Overview above, and proposed section 27G deals with the conduct of a search. Proposed section 27H provides for the use of dogs to conduct searches. Proposed section 27I authorises correctional officers to use reasonable force in the exercise of a function under the proposed sections.

Proposed section 27J stipulates that a person may not be detained in the exercise of a power to search for any longer than is reasonably necessary, and in any case for no longer than 4 hours. In addition, a correctional officer who detains, searches or arrests a person under proposed section 27F must, before or as soon as practicable after exercising the power, provide the person with specified information about the officer and the exercise of the power, and a warning that it is an offence to fail to comply with a request or direction of the officer.

Proposed section 27K creates offences of failing to comply with a request or a direction of a correctional officer under Part 4A, failing or refusing to produce on request anything detected by a search, and resisting or impeding a search.

Proposed section 27L provides that the powers conferred on correctional officers and police officers by the proposed Act do not limit any other powers of correctional officers, police officers or other persons to conduct searches.

Proposed section 27M deals with the admissibility of evidence discovered during a search. Proposed section 27N exempts a person who conducts a search under the direction of a correctional officer from personal liability in respect of the search.

**Schedule 1 [1]** inserts definitions used in the proposed sections. **Schedule 1 [2]–[5]** make amendments consequential on the consolidation of the existing arrest powers of correctional officers in the proposed section 27F (7).

**Schedule 1 [6]** renumbers a provision consequential on the insertion of proposed sections 27F–27N.

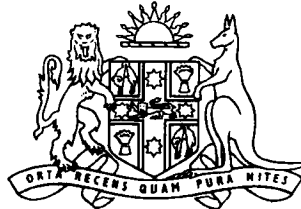


New South Wales

# Summary Offences Amendment (Places of Detention) Bill 2002

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New South Wales

# Summary Offences Amendment (Places of Detention) Bill 2002

No. , 2002

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## A Bill for

An Act to amend the *Summary Offences Act 1988* with respect to powers of correctional officers to stop, detain and search persons or vehicles at places of detention; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1    Name of Act</b>	2
This Act is the <i>Summary Offences Amendment (Places of Detention) Act 2002</i> .	3 4
<b>2    Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6 7
<b>3    Amendment of Summary Offences Act 1988 No 25</b>	8
The <i>Summary Offences Act 1988</i> is amended as set out in Schedule 1.	9

## Schedule 1 Amendments

(Section 3)

### [1] Section 27A Definitions

Insert in alphabetical order:

***adult*** means a person who is of or above the age of 18 years.

***child*** means a person who is under the age of 18 years.

***mentally incapacitated person*** means a person who is incapable of managing his or her affairs.

***non-correctional member of staff*** means:

(a) a person employed in the Department of Corrective Services, or

(b) a person employed at a managed correctional centre (within the meaning of the *Crimes (Administration of Sentences) Act 1999*),

but does not include a correctional officer.

***search observation staff member*** means a non-correctional member of staff (or member of a class of such persons) prescribed by the regulations for the purposes of this definition.

### [2] Section 27B Trafficking

Omit section 27B (6).

### [3] Section 27C Introduction or supply of syringes

Omit section 27C (4).

### [4] Section 27D Unlawful possession of offensive weapons or instruments

Omit section 27D (2A).

### [5] Section 27E Miscellaneous offences

Omit section 27E (3).

<b>[6] Section 27F Time within which proceedings may be taken</b>	1
Renumber section 27F as section 27O.	2
<b>[7] Sections 27F–27N</b>	3
Insert after section 27E:	4
<b>27F Powers of correctional officers</b>	5
<b>(1) Power to stop, detain and search persons</b>	6
A correctional officer may stop, detain and search a person, and	7
anything in the possession of or under the control of a person,	8
if:	9
(a) the person is in or in the immediate vicinity of a place	10
of detention, and	11
(b) the correctional officer suspects on reasonable grounds	12
that the person has in his or her possession or under his	13
or her control anything that has been used, is being used	14
or is intended to be used in or in connection with the	15
commission of an offence under this Part.	16
<b>(2) Power to stop, detain and search vehicles</b>	17
A correctional officer may stop, detain and search a vehicle that	18
is in or in the immediate vicinity of a place of detention if the	19
correctional officer suspects on reasonable grounds that:	20
(a) the vehicle contains anything that has been used, is	21
being used or is intended to be used in or in connection	22
with the commission of an offence under this Part, or	23
(b) the vehicle has been used, is being used or is intended	24
to be used in or in connection with the commission of	25
an offence under this Part.	26
<b>(3) Power to detain for purpose of search by police</b>	27
A correctional officer who stops and detains a person or a	28
vehicle under this section (whether or not the correctional	29
officer searches the person or vehicle) may request a police	30
officer to conduct a search or a further search of the person or	31
vehicle, and may detain the person or vehicle while waiting for	32
the arrival of a police officer at the place where the person or	33
vehicle is being detained for the police officer to conduct the	34
search.	35

(4) <b>Request to police to be made as soon as practicable</b>	1
A request to a police officer under subsection (3) must be made	2
as soon as practicable after the correctional officer stops and	3
detains the person or vehicle, or searches the person or vehicle.	4
(5) <b>Power of correctional officer to seize things</b>	5
A correctional officer may seize all or part of a thing that the	6
correctional officer suspects on reasonable grounds may	7
provide evidence of the commission of an offence under this	8
Part found as a result of a search under this section.	9
(6) <b>Power to arrest</b>	10
In respect of any offence under this Part, the powers of arrest	11
of a police officer may be exercised by a correctional officer.	12
(7) <b>Arrested person to be taken to police or to authorised justice</b>	13
A correctional officer who arrests a person under this section	14
must, as soon as practicable, take the person, and any property	15
found on the person:	16
(a) to a police officer, or	17
(b) before an authorised justice to be dealt with according	18
to law.	19
<b>27G Conduct of search</b>	20
(1) A correctional officer, in conducting a search under	21
section 27F, may direct a person to do any or all of the	22
following:	23
(a) to submit to scanning by means of an electronic	24
scanning device,	25
(b) to empty the pockets of the person's clothing,	26
(c) to remove any hat, gloves, coat, jacket or shoes worn by	27
the person,	28
(d) to empty the contents of any bag or other thing, or to	29
open any thing, that the person has with him or her, or	30
has left in a vehicle,	31
(e) in the case of a visitor to the place of detention—to	32
make available for inspection and search any item stored	33
in a storage facility allocated to the visitor,	34

Summary Offences Amendment (Places of Detention) Bill 2002

Schedule 1

Amendments

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- |     |   |                            |
|-----|---|----------------------------|
| (f) | in the case of a correctional officer or a non-correctional member of staff—to make available for inspection and search any room or locker that is under the officer's or member of staff's control at the place of detention,  | 1<br>2<br>3<br>4           |
| (g) | in the case of an adult accompanying a child or a mentally incapacitated person—to assist the child or mentally incapacitated person to co-operate with a search.   | 5<br>6<br>7<br>8           |
| (2) | A correctional officer, in conducting a search under section 27F, may direct a person to produce:   | 9<br>10                    |
| (a) | anything that the correctional officer has detected or seen during the search on or with the person, or in a vehicle in which the person is or was present, and has reasonable grounds to suspect may provide evidence of the commission of an offence under this Part, or  | 11<br>12<br>13<br>14<br>15 |
| (b) | anything detected during the search by an electronic detection device, or   | 16<br>17                   |
| (c) | anything indicated by a dog reacting positively to its presence.  | 18<br>19                   |
| (3) | In conducting a search of a person under section 27F, a correctional officer:   | 20<br>21                   |
| (a) | must conduct the search with due regard to dignity and self-respect and in as seemly a manner as is consistent with the conduct of an effective search, and   | 22<br>23<br>24             |
| (b) | must not direct a person to remove any item of clothing being worn by the person, other than a hat, gloves, coat, jacket or shoes, and  | 25<br>26<br>27             |
| (c) | must not search a person by running the officer's hands over the person's clothing.   | 28<br>29                   |
| (4) | A search of a person conducted by a correctional officer under section 27F must, if practicable, be conducted by a correctional officer of the same sex as the person being searched or by a person of the same sex (being a non-correctional member of staff) under the direction of the correctional officer concerned. | 30<br>31<br>32<br>33<br>34 |

(5)	A search of a child or of a mentally incapacitated person must be conducted in the presence of:	1
		2
(a)	an adult who accompanied the child or the mentally incapacitated person to the place of detention (or its immediate vicinity), or	3
		4
		5
(b)	if there is no such adult—a search observation member of staff.	6
		7
(6)	Regulations may be made for or with respect to the manner in which correctional officers are to conduct searches under section 27F.	8
		9
		10
<b>27H</b>	<b>Use of dogs</b>	11
(1)	A correctional officer is authorised to use a dog to conduct any search under section 27F.	12
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(2)	A correctional officer using a dog to conduct such a search is to take all reasonable precautions to prevent the dog touching a person.	14
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		16
(3)	A correctional officer is required to keep a dog under control when the officer is using the dog to conduct such a search.	17
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<b>27I</b>	<b>Use of reasonable force</b>	19
	In exercising a function under this Part, a correctional officer may use such force as is reasonably necessary to exercise the function.	20
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<b>27J</b>	<b>Safeguards</b>	23
(1)	A correctional officer who detains a person in the exercise of a power under section 27F must not detain the person any longer than is reasonably necessary for the purpose, and in any event for no longer than 4 hours.	24
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(2)	A correctional officer must, before exercising a power to detain, search or arrest a person under section 27F, or as soon as is reasonably practicable after exercising the power, provide the person subject to the exercise of the power with the following:	28
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		32
(a)	evidence that the correctional officer is a correctional officer (unless the correctional officer is in uniform),	33
		34

(b)	the name of the correctional officer,	1
(c)	the reason for the exercise of the power,	2
(d)	a warning that failure or refusal to comply with a request or direction of the correctional officer, in the exercise of the power, is an offence.	3 4 5
(3)	Subsection (2) extends to a direction given by a correctional officer to a person in the exercise of a power to stop, detain and search a vehicle.	6 7 8
(4)	A correctional officer is not required to comply with subsection (2) if the correctional officer believes on reasonable grounds that:	9 10 11
(a)	the circumstances are of such urgency that complying with subsection (2) would render a search ineffective, or	12 13
(b)	it is not reasonably possible to comply with subsection (2).	14 15
<b>27K</b>	<b>Failure to comply with search</b>	16
	A person must not, without reasonable excuse (proof of which lies on the person):	17 18
(a)	fail or refuse to comply with a request made, or a direction given, by a correctional officer under this Part, or	19 20 21
(b)	fail or refuse to produce anything detected or seen on or with the person, or in a vehicle in which the person was present at the time the thing was detected or seen, in a search when requested to do so by a correctional officer, or	22 23 24 25 26
(c)	resist or impede a search of a person or vehicle under this Part.	27 28
	Maximum penalty: 10 penalty units.	29
<b>27L</b>	<b>Part does not derogate from other powers</b>	30
(1)	Nothing in this Part limits any powers, authorities, duties or functions that correctional officers or police officers may have apart from this Part.	31 32 33

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	(2) In particular, the fact that a police officer or correctional officer conducts a search of a person under this Part does not prevent the police officer or correctional officer from exercising, whether during or after the search, any other powers of search or seizure that the police officer or correctional officer may have.	1 2 3 4 5 6
	(3) Nothing in this Part limits any power under the <i>Crimes (Administration of Sentences) Act 1999</i> or any other law for a person to conduct a search of an inmate, a correctional officer, a non-correctional member of staff or any other person, or a vehicle.	7 8 9 10 11
<b>27M</b>	<b>Admissibility of search evidence</b>	12
	Evidence of a thing discovered during or as a result of a search carried out in accordance with this Part is not inadmissible merely because the thing is different in nature from a thing referred to in the reason given under section 27J (2) (c).	13 14 15 16
<b>27N</b>	<b>No personal liability for person conducting search under direction of correctional officer</b>	17 18
	A search conducted by a person under and in accordance with the direction of a correctional officer as referred to in section 27G (4) does not, if the search would be lawful if conducted by a correctional officer, subject the person making the search personally to any action, liability, claim or demand.	19 20 21 22 23