

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*:

- (a) to make it clear that the power to search a person under arrest includes a power to require the person to open his or her mouth or shake his or her hair (so as to enable inspection for concealed drugs or other items), and
- (b) to remove the requirement that the name of the authorised officer who issues a search warrant appear on an occupier's notice, and
- (c) to allow crime scene warrants issued in connection with terrorism offences to be extended so as to have effect for a period of up to 720 hours (30 days) after issue, and
- (d) to allow administrative officers of the NSW Police Force to exercise certain crime scene powers in relation to vehicles in public places that are reported as being stolen, without the necessity of a police officer being present, and
- (e) to repeal the provisions of that Act that provide for police use of medical imaging to search for internally concealed drugs, and
- (f) to allow the use of a tyre deflation device by police for the purpose of preventing the use of a vehicle by a person to escape lawful custody or avoid arrest.

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 that gives effect to the amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002*.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Schedule 1 [2] clarifies that the power to search a person who is under arrest conferred on police officers by section 23 of the *Law Enforcement (Powers and Responsibilities) Act 2002* includes a power to request the person to open his or her mouth or to shake, or otherwise move, his or her hair so as to enable the police officer to search for concealed items (such as prohibited drugs). The provision is similar to the power conferred by existing section 21A of that Act.

Schedule 1 [3] removes the requirement that the name of the authorised officer who issues a search warrant be included in the occupier's notice that is provided to the occupier of the premises that are searched.

At present, the maximum period for which a crime scene warrant may be issued to have effect (taking into account possible extensions) is 144 hours (or 6 days).

Schedule 1 [4] and [5] allow an authorised officer who extends a crime scene warrant to extend the warrant so that it has effect for a period of up to 720 hours (or 30 days) after its issue, but only if the offence in connection with which the warrant is issued is a terrorism offence and the authorised officer is satisfied that there are reasonable grounds for extending the warrant beyond the usual 144 hour period.

Schedule 1 [10] allows a scene of crime officer (who is a member of the NSW Police Force responsible for examining or maintaining crime scenes, and not necessarily a police officer) to establish a crime scene in relation to a vehicle in a public place if the officer has reasonable grounds to suspect that it is a vehicle that has been reported as stolen by an owner or authorised user of the vehicle. The scene of crime officer will be able to exercise certain investigatory powers in relation to that crime scene if

reasonably necessary to preserve, or search for and gather, evidence of the theft of the vehicle. It will no longer be necessary in these circumstances for a police officer

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to establish the crime scene or to authorise the scene of crime officer to exercise the investigatory powers.

Schedule 1 [1] inserts a definition of *scene of crime officer* into the *Law Enforcement (Powers and Responsibilities) Act 2002* and **Schedule 1 [9]** makes amendments that are consequential to the inclusion of that definition. **Schedule 1 [7] and [8]** ensure that police officers are entitled to exercise crime scene powers at a crime scene established by a scene of crime officer under the new provisions.

Schedule 1 [6] moves a provision of the Act that prevents a police officer establishing a crime scene more than once on the same premises in any 24 hour period, so as to facilitate its application to crime scenes established by scene of crime officers.

Schedule 1 [11] repeals the provisions of the *Law Enforcement (Powers and Responsibilities) Act 2002* that provide for the use of medical imaging to search for internally concealed drugs.

Schedule 1 [12] enables the Commissioner of Police to authorise the use of a tyre deflation device by police officers for the purpose of preventing the use of a vehicle by a person to escape from lawful custody or avoid arrest. At present, tyre deflation devices may only be used in connection with a police pursuit that has already commenced.

Schedule 1 [13] enables savings and transitional regulations to be made as a consequence of the amendments.

Schedule 1 [14] provides for transitional matters.