

NEW SOUTH WALES

Introduced by Mr David Shoebridge, MLC

DRAFT NON-GOVERNMENT BILL

To be introduced by: Mr David Shoebridge, MLC

New South Wales

Law Enforcement (Powers and Responsibilities) Amendment (Drug Detection Dogs and Strip Searches) Bill 2020

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No , 2020

A Bill for

An Act to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* to prohibit the use of drug detection dogs in carrying out drug detection without a warrant; to limit the circumstances and manner in which personal searches may be carried out; to prohibit strip searches of children who are less than 16 years old; and for related purposes.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Law Enforcement (Powers and Responsibilities) Amendment (Drug Detection Dogs and Strip Searches) Act 2020*.

2 Commencement

This Act commences on the date of assent to this Act.

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

[1] Section 3 Interpretation

Omit the definition of *strip search* from section 3(1). Insert instead—
strip search—see section 28B.

[2] Section 28B

Insert before section 29—

28B Definitions

In this Division—

remove, in relation to clothing worn by a person, includes any action to move, adjust, pull, lift or position an article of clothing to reveal the person's bare skin or another article of clothing.

strip search means a search of a person or of articles in the possession of a person that involves—

- (a) the removal of any clothes other than or in addition to the person's coat or jacket or similar article of clothing and any gloves, shoes, socks and hat, and
- (b) an examination of the person's body (but not of the person's body cavities) or of those clothes.

[3] Section 30 Searches generally

Omit "all" from section 30(b). Insert instead "any other".

[4] Section 31 Strip searches

Omit section 31(b). Insert instead—

- (b) in the case where the search is carried out in any other place—
 - (i) the police officer suspects on reasonable grounds that the strip search is necessary for the purposes of the search, and
 - (ii) there are reasonable grounds to believe there is an immediate and serious risk to the life or safety of any person unless the strip search is carried out, and
 - (iii) a senior police officer authorises the carrying out of the strip search, having regard to the matters set out in subparagraphs (i) and (ii).

[5] Section 33 Rules for conduct of strip searches

Omit "at least 10 years of age but under 18" from section 33(3). Insert instead "16 or 17".

[6] Section 33(4)

Omit the subsection. Insert instead—

- (4) A strip search of a person must not—
 - (a) involve an examination of the person's body by touch, or
 - (b) involve a search of the person's body cavities, or
 - (c) require the person—
 - (i) to squat, cough or bend over, or

- (ii) to lift, move or position any part of the person's body for the purposes of a search of the person's genital or anal area or, in the case of a female or transgender person who identifies as a female, the person's breasts.

[7] Section 34, heading

Omit "10". Insert instead "16".

[8] Section 34

Omit "10". Insert instead "16".

[9] Section 34A Searches carried out with consent

Omit section 34A(1). Insert instead—

- (1) A police officer may search a person with the person's consent but only if, before carrying out the search, the police officer has sought the person's consent and has informed the person that the person is entitled to refuse to consent.

[10] Part 11, Division 2, heading

Insert "with warrant" after "dogs".

[11] Section 145 Meaning of "general drug detection"

Omit ", except during a search of a person that is carried out after a police officer reasonably suspects that the person is committing a drug offence" from the definition of *general drug detection*.

[12] Sections 146–148

Omit the sections.

[13] Section 149 General drug detection with dogs by warrant

Insert after section 149(3)—

- (3A) In determining whether there are reasonable grounds to issue a warrant under this section, an authorised officer must (without limiting the matters that may be considered) consider the following matters—
 - (a) whether the execution of the warrant is, having regard to the nature and size of the public place specified in the application, likely to cause unreasonable disruption to persons within the public place,
 - (b) whether the size of the public place specified in the application is reasonably necessary in the circumstances,
 - (c) whether the execution of the warrant is likely to have an unreasonable or disproportionate impact on certain persons or classes of persons.

[14] Section 149(4)

Omit the subsection. Insert instead—

- (4) An application for a warrant under this section must disclose—
 - (a) whether any general drug detection to be carried out under the warrant will be part of a covert police operation, and
 - (b) the proportion of searches in the previous year resulting from the carrying out of general drug detection using a dog that did not find any prohibited drugs or plants in the possession of those persons searched.

Schedule 2 Amendment of other legislation

2.1 Law Enforcement (Powers and Responsibilities) Regulation 2016

[1] Clauses 4(1)(g), 5(g), 6(1)(h) and 13(2)(f) and (7)(c)

Insert “with warrant” after “dogs” wherever occurring.

[2] Clauses 49 and 50

Omit the clauses.

2.2 Tattoo Parlours Act 2012 No 32

Section 31 Police powers of entry with dog

Insert “if the use of a dog is authorised by a warrant under that Division” after “dog” in section 31(a).