The Shopfront
YOUTH LEGAL CENTRE

Police powers update March 2015: recent legislative amendments

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1 Background

This paper serves as a supplement to the January 2013 edition of my *Police Powers Update* paper. Please see also my separate papers on *Recent changes to police powers of arrest* (updated April 2014) and *LEPRA section 201 – recent developments* (updated December 2014). All papers can be found at www.criminalcle.net.au.

Since late 2013 there have been a number of amendments to the *Law Enforcement (Powers and Responsibilities) Act* (LEPRA) and to other relevant legislation, including:

(a) Amendments to the arrest power in section 99 (*Law Enforcement (Powers and Responsibilities) Amendment (Arrest Without Warrant) Act* 2013, commenced 16 December 2013).

(b) Introduction of new powers to conduct breath testing, breath analysis, blood and urine samples on persons under arrest for "assault causing death" offences (*Crimes and Other Legislation Amendment (Assault and Intoxication) Act* 2014, commenced 31 January 2014).

(c) Expansion of powers to direct and detain persons for the purpose of serving apprehended violence orders (*Crimes (Domestic and Personal Violence) Amendment Act* 2013, commenced 20 May 2014).

(d) Amendments to Part 15 (including section 201), (*Law Enforcement (Powers and Responsibilities) Amendment Act* 2014, commenced 1 November 2014).

(e) Amendments to Part 9 and a range of other provisions (*Law Enforcement (Powers and Responsibilities) Amendment Act* 2014, assented to on 24 June 2014 but as of 8 March 2015 these provisions have not been proclaimed to commence).

The amendments referred to in paragraphs (a), (d) and (e) above arose out of two reviews of LEPRA that were completed in 2013.

Initially a statutory review of LEPRA was conducted by what is now the Department of Justice, with input from the Ministry for Police. There was a public call for submissions quite early in the process. The review took some years and in late 2013, the then Premier, Barry O'Farrell, suggested that the review was not moving quickly enough and there was an urgent need to fix up aspects of LEPRA, particularly the power of arrest.

As a result, Paul Whelan (a former ALP Police Minister) and Andrew Tink (a former Coalition Shadow Attorney-General) were commissioned to review certain aspects of LEPRA, including the power to arrest without warrant (s99), the detention after arrest provisions (Part 9), and safeguards (Part 15). It was not a public review process and was conducted without input from stakeholders other than police and the Department of Justice.

The Whelan/Tink report and the more comprehensive statutory review report were released in December 2013. These reports do not appear to be publicly available (at least they are not published on any website that I can find) but nor are they confidential.

2 Amendments to police power of arrest

The arrest power in s99 of LEPRA was amended by the *Law Enforcement (Powers and Responsibilities) Amendment (Arrest Without Warrant) Act* 2013, which commenced on 16 December 2013.

The ostensible reason for the amendments was to clarify police powers in relation to arrest, and to ensure that police have the powers they need to respond to diverse and volatile situations. In my opinion the amending Act, which was poorly drafted and hastily enacted, does not achieve its intended purpose and is likely to cause confusion rather than clarity.

The amended s99 retains the "arrest as a last resort" provision, but waters it down considerably. Firstly, it adds additional grounds justifying arrest, including the vague "because of the nature and seriousness of the offence". Secondly, it arguably replaces an objective test (which required the police officer to "suspect on reasonable grounds that arrest is necessary…") with a subjective test (requiring the police officer to be "satisfied that arrest is reasonably necessary…").

To my knowledge, no significant case law has emerged in relation to the new s99.

For further detail and discussion, please see:

- My separate paper *Arrest without warrant in New South Wales* (updated March 2015).
- Mark Dennis' paper *What The Fuck's Happening? - A Discussion Paper on Sections 99, 105 and 201 of the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)* (April 2014)
- *Changes To Arrest Laws In NSW*, Vicki Sentas and Rebecca McMahon, Current Issues in Criminal Justice Vol.25 No. 3 (March 2014)

3 New powers in relation to breath and blood testing

3.1 Background to amendments

The *Crimes and Other Legislation Amendment (Assault and Intoxication) Act* 2014 commenced on assent on 31 January 2014. It was enacted in response to concerns about "one-punch killings" and "alcohol-fuelled violence" in public places.

The Act created a new offence of "assault causing death" (*Crimes Act* s25A(1)) with a maximum penalty of 20 years' imprisonment.

There is also an aggravated form of the offence (s25A(2)), applying to a person aged 18 or over who was intoxicated at the time (unless the intoxication is not self-induced or the accused has a significant cognitive impairment). This offence carries a maximum penalty of 25 years' imprisonment and a mandatory minimum non-parole period of 8 years.

Section 25A also contains evidentiary provisions relating to intoxication.

Police have been given new powers to conduct breath, blood and urine testing, in the form of Part 10 Division 4 of LEPRA.

3.2 New Part 10 Division 4 of LEPRA

Section 138D provides that the Division applies to a person who has been arrested by a police officer for an alleged offence under *Crimes Act* s25A(2), or for any other assault if

the police officer believes that the person would be liable to be charged with a s25A(2) offence if the victim dies.

Section 138E defines "breath test", "breath analysis", and other words and expressions to have the same meaning as they have in Schedule 3 to the *Road Transport Act* 2013.

Section 138F provides that a police officer may require a person covered by s138D to undertake a breath test or a breath analysis to test for the presence of alcohol. This may only be required to be undertaken within 2 hours after the commission of the alleged offence. These procedures are to be carried out in accordance with the procedural provisions in Schedule 3 to the *Road Transport Act* 2013.

Importantly, subs(5) provides that "evidence of the presence or concentration of any alcohol in an accused's breath as determined by breath analysis carried out in accordance with the section may be used only in proceedings for an offence under s25A(2) of the *Crimes Act*".

Section 138G provides that a police officer may require a person to provide blood and urine samples, but only if the person has refused to undertake (or cannot be required to undertake) a breath analysis under s138F, or if the police officer has a reasonable belief that the person is under the influence of a substance other than alcohol. If a person has undertaken a breath analysis under s138F, the person may also request that blood or urine samples be taken under s138G.

The provision of a sample may only be required within 4 hours after the alleged offence. A person may be taken to and detained at a hospital for the purpose of taking a sample under s138G.

As with s138F, procedures in Schedule 3 to the *Road Transport Act* apply, and evidence obtained from such an analysis may only be used in proceedings for an offence under s25A(2) of the *Crimes Act*.

3.3 Further proposed legislation

A second Bill, the *Crimes Amendment (Intoxication) Bill* 2014, was introduced to Parliament in February 2014.

This creates a number of aggravated assault-related offences with mandatory minimum non-parole periods.

It would also amend Part 10 Division 4 of LEPRA to allow for the testing of persons under arrest for the proposed new aggravated offences. It would also create an offence of consuming alcohol or drugs after an assault in order to alter the presence or concentration of alcohol or a narcotic drug in the person's breath, blood or urine.

The Bill also proposes some amendments to correct some of the problems arising from the hasty drafting of the earlier *Crimes and Other Legislation Amendment (Assault and Intoxication) Act*.

This Bill was rejected by the upper house and to date has not been enacted.

4 Expansion of powers to issue directions and to detain persons for the purpose of applying for and serving AVOs

4.1 Background to amendments

The *Crimes (Domestic and Personal Violence) Amendment Act* 2013 commenced on 20 May 2014. It made a range of amendments to the *Crimes (Domestic and Personal Violence) Act* 2007.

These include expanding the power of police officers to issue directions and detain people so as to enable provisional orders to be made and served. It is also worth noting (although not covered in this paper) that senior police officers now have the power to make provisional orders.

Note that the section references below are to the *Crimes (Domestic and Personal Violence) Act* 2007, not LEPRA.

4.2 Power to issue directions for purpose of making and serving orders

Under s89(1), a police officer applying for a *provisional apprehended personal violence order* may direct a person to:

(a) remain at the scene of the incident that gave rise to the application; or

(b) if the person has left the scene, to remain at another place.

Under s89A(1), a police officer applying for a *provisional apprehended domestic violence order* may make either of the above directions, or any of the following additional directions, to a person against whom the order is sought:

(c) that the person remain at the scene where the incident occurred that was the reason for making the application,

(d) in a case where the person has left the scene of that incident-that the person remain at another place where the police officer locates the person,

(e) to go to and remain at another place that has been agreed to by the person,

(f) to go to and remain at a specified police station,

(g) that the person accompany a police officer to a police station and remain at the police station,

(h) that the person accompany a police officer to another place that has been agreed to by the person, or to another place (whether or not agreed to by the person) for the purpose of receiving medical attention, and remain at that other place.

Section 90 (which was already in force before the amendments) provides that a police officer who reasonably suspects that a person is the defendant in relation to an AVO may direct the person to remain where the person is for the purpose only of serving on the person a copy of the order, or a variation of the order, that is required to be served personally under the Act.

4.3 Power to detain if person refuses to comply with direction

If the person fails or refuses to comply with a direction under s89(1), s89A(1) or s90(1), each of these sections has a subs(2) which empowers the police officer to detain the person where they are, or detain the person and take them to a police station.

4.4 Detention in vehicle

A person the subject of an ADVO application who is directed to accompany a police officer to a police station or other place under s89A(1)(e) or (f) may be detained in a vehicle for the purpose of transporting the person to the police station (s89A(3)). There is a list of factors which a police officer may have regard to in deciding whether to detain someone in a vehicle (s89A(4)).

4.5 Period for which a person may be directed to remain at a place or detained

Section 90A(1) provides that a person may be directed to remain at a place for as long as is reasonably necessary for:

(a) the provisional order to be made and served (in the case of a direction under s89 or 89A); or

(b) copy of order or variation to be served (in the case of a direction under s90).

In the case of a person who is detained, s90A(2) provides that the person may be detained for no longer than the time that it takes to do either of (a) or (b) above. This is subject to an upper limit of 2 hours (excluding any reasonable amount of time for travel to the place or police station).

4.6 Rights of detained people

The new s90B sets out the rights of a person being detained such as being given an opportunity to contact a responsible person, being given food, drink and bedding, and (if practicable) being kept separately from persons who have committed offences and not in a cell.

4.7 Search of detained people

The new s90C enables a police officer to search a person who has been detained and take possession of their personal property (which must be returned when they are released).

4.8 Record-keeping

The new s90D requires records to be made in accordance with the Regulations in relation to the detention of a person.

5 Amendments to Part 15

Part 15 of LEPRA provides that, when exercising certain powers, police must provide information including evidence that they are a police officer, their name and place of duty, and the reason for the exercise of the power. Until recently, these requirements were all set out in s201.

Schedule 2 of the *Law Enforcement (Powers and Responsibilities) Amendment Act* 2014 (which commenced on 1 November 2014) amended s201, and in fact substituted a whole new Part 15.

The main amendment is that a police officer's failure to provide their name and place of duty will no longer render the exercise of the power invalid or take the police officer

outside the lawful execution of their duty. Officers are still required to provide their name and place of duty, but with apparently no consequences except possibly a complaint. The operation of this amendment is to be monitored by the Ombudsman over 12 months.

There are also amendments to provide that the information required by Part 15 must simply be provided "as soon as it is reasonably practicable to do so" (subject to a few exceptions).

Further, the two-stage warning that is currently required when issuing a move-on direction has been reduced to one warning only in most situations.

For further information about these amendments and recent case law, see my separate paper *LEPRA section 201 - recent developments* (updated December 2014).

6 Amendments to Part 9

The "detention after arrest" provisions in Part 9 have also been amended by Schedule 1 of the *Law Enforcement (Powers and Responsibilities) Amendment Act 2014* (assented to on 24 June 2014 but uncommenced as of 8 March 2015).

6.1 Lengthening of investigation period

Controversially, the investigation period in s115 has been extended from 4 hours to 6 hours. However, the maximum total investigation period remains at 12 hours (ie a detention warrant may only extend the investigation period for up to 6 hours).

The increase to the initial investigation period is a matter of serious concern, and appears to have little justification. Despite the fact that "Police we consulted advised us that in the great majority of cases 4 hours investigation time is sufficient", the Tink and Whelan review report supported the extension of the investigation period on the basis that applying for a detention warrant was a time-consuming process, and that the time spent applying for such a warrant often greatly exceeded the extension of time required.

It is important to remember that s115(1) provides

> The investigation period is a period that begins when the person is arrested and ends at a time that is reasonable having regard to all the circumstances, but does not exceed the maximum investigation period.

It is likely that, after the amendments take effect, suspects will routinely be detained for longer periods and 6 hours will become the default period. If this transpires, we may see more argument in court as to whether the investigation period was reasonable in the circumstances, with police officers being cross-examined as to the necessity for such a long period of detention.

6.2 Replacement of "deemed arrest" with "protected suspect"

The Bill abolishes the concept of "deemed arrest" that currently exists in Part 9, and replaces it with the concept of "protected suspect".

A "protected suspect" is someone who is free to leave (and thus not subject to the provisions regarding detention for the investigation period) but who is still entitled to the protections afforded by Part 9.

The definition is to be inserted into section 110(1) as follows:

> Protected suspect means a person who is in the company of a police officer for the purpose of participating in an investigative procedure in connection with an offence if:
>
> (a) the person has been informed that he or she is entitled to leave at will, and
>
> (b) the police officer believes that there is sufficient evidence that the person has committed the offence.

In my view there is merit in doing away with the concept of "deemed arrest", as this has never been well understood by police.

However, there appears to be a serious flaw in the definition of "protected suspect". A vulnerable suspect who is not under arrest, but who has not been explicitly told they are free to leave, could potentially be deprived of protection under Part 9.

The term "sufficient evidence that the person has committed the offence" also lacks clarity. Does this mean sufficient evidence to arrest the person, to commence criminal proceedings, or to make out a prima facie case?

6.3 Application of Part 9 when executing search warrants

Part 9 has also been amended so that it applies in the field during the execution of a search warrant.

The Tink and Whelan report notes that "Police are currently required to freeze the search and take the person back to the police station to ensure Part 9 provisions are complied with. The person is then "invited" back to the premises to continue participating in the search."

A new s112A has been added:

> **112A Application of Part in connection with execution of search warrants**
>
> (1) This Part applies to a person in the company of a police officer for the purpose of an investigative procedure at premises that are being searched under a search warrant issued under this Act or under a provision specified in Schedule 2 if:
>
> (a) the person has been arrested and is in custody at those premises, or
>
> (b) the person is at the premises and is a protected suspect.
>
> (2) For that purpose:
>
> (a) the functions of the custody manager under this Part are exercisable by a police officer who is at the premises but who is not connected with the investigation concerned and who does not participate in the execution of the search warrant, and
>
> (b) the police officer exercising the functions of the custody manager is not required to comply with any obligation under this Part relating to communication with a friend, relative, guardian or independent person if the police officer suspects on reasonable grounds that doing so may result in bodily injury to any other person, and
>
> (c) the custody record for the detained person or protected suspect may form part of a video recording of the execution of the search warrant, and
>
> (d) this Part applies with such other modifications as are prescribed by the regulations.

7 Amendments to search powers

Schedule 3 of the *Law Enforcement (Powers and Responsibilities) Amendment Act* 2014 (assented to on 24 June 2014 but uncommenced as of 8 March 2015) makes various amendments to search powers. The main ones are summarised below.

7.1 Requirement to open mouth

Sections 21A and 23A have been amended to clarify that, when a person is required to open their mouth, this is for the purpose of enabling it to be searched.

Section 3, the definition section, has been amended to clarify that "body cavities" do not include a person's mouth.

7.2 Search of person after arrest

Section 24 has been amended so that instead of "a person in lawful custody (whether at a police station or any other place)" it now reads "a person in lawful custody after arrest".

In addition, a new s24(2) provides:

> Any such search may be carried out at a police station or other place of detention or immediately before or during transportation of the person to or from a police station or other place of detention.

This amendment was recommended by the statutory review, in response to concerns expressed in a coronial inquest into the death of Jason Lee Plum, who died from a self-inflicted gunshot wound while in police custody. The Deputy State Coroner recommended that the police should adopt a policy of searching all persons taken into police custody before placing them in police vehicles or transporting them, unless there are sound reasons not to do so. The Coroner recommended that the definition of "lawful custody" in s24 should be precisely defined to remove ambiguity.

7.3 Abolition of distinction between frisk and ordinary search

The amendment Act abolishes the distinction between a frisk search and an ordinary search currently set out in s30. A new s30 has been inserted as follows:

> In conducting the search of a person, a police officer may:
>
> (a) quickly run his or her hands over the person's outer clothing, and
>
> (b) require the person to remove his or her coat or jacket or similar article of clothing and any gloves, shoes, socks and hat (but not, except in the case of a strip search, all of the person's clothes), and
>
> (c) examine anything in the possession of the person, and
>
> (d) pass an electronic metal detection device over or in close proximity to the person's outer clothing or anything removed from the person, and
>
> (e) do any other thing authorised by this Act for the purposes of the search.

7.4 Rules for conduct of searches generally

Section 32, which deals with preservation of privacy and indignity during searches, has been amended by amending subs(7) and inserting a new subs(7A). This gives added

protection in relation to searches being carried out by a police officer or other person of the same sex as the suspect.

A new subs(8A) has been inserted, clarifying that the prohibition in subs(8) on searches being carried out while the person is being questioned does not prevent the asking of questions that only relate to issues of personal safety associated with the search.

The definition of "transgender person" has been removed from s32(11) and placed in s3.

7.5 Strip searches

Section 31, concerning strip searches, has been amended to read as follows:

> A police officer may carry out a strip search of a person if:
>
> > (a) in the case where the search is carried out at a police station or other place of detention-the police officer suspects on reasonable grounds that the strip search is necessary for the purposes of the search, or
> >
> > (b) in the case where the search is carried out in any other place-the police officer suspects on reasonable grounds 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.

This is a change from the current position, which requires police to hold a reasonable suspicion as to the necessity *and* the seriousness and urgency of the circumstances, no matter where the search is carried out.

This amendment was recommended by the NSW Ombudsman in its review of LEPRA, and also by the statutory review, on the basis that "the primary reason for conducting strip searches in custody is for the safety of the person being searched as well as police".

Section 33, which sets out rules for the conduct of strip searches, has been amended so that a child or a person with impaired intellectual functioning may be strip searched without a parent, guardian or support person if a police officer suspects on reasonable grounds 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 this case police must make a record of the reasons for conducting the search in the absence of a support person.

7.6 Searches with consent

A new s34A has been added, relating to searches carried out with consent. It provides:

> **34A Searches carried out with consent**
>
> (1) A police officer may search a person with the person's consent but only if the police officer has sought the person's consent before carrying out the search.
>
> (2) A police officer must, before carrying out any such consensual search, provide the person with:
>
> > (a) evidence that the police officer is a police officer (unless the police officer is in uniform), and
> >
> > (b) the name of the police officer and his or her place of duty.

This is a commendable amendment, but arguably does not go far enough, as there is no positive obligation on the police to tell the person that they are not required to consent.

The introduction of such an obligation was not supported by the statutory review. The review report cited the case of *DPP v Leonard* (2001) NSWSC 797 in which the court held that a person may validly consent to a search even if they are not aware of the right to refuse. The review report went on to say "NSWPF advised that a process of informed consent would add an additional layer of complexity to the decision making process the police have to undertake before conducting a search."

The review report supported the introduction of some safeguards in relation to consensual searches, however "there will be no need to explain the reason for the exercise of the power as a search conducted with consent is not an exercise of power."

If the courts agree that a search by consent is not an exercise of power, Part 15 will not apply to searches carried out with consent. I do not necessarily agree with this interpretation, given that s34A sits within Part 4 which is headed "search and seizure powers without warrant", and imposes some preconditions on a police officer's ability to search a person with consent.

8 Other amendments

Schedule 3 of the *Law Enforcement (Powers and Responsibilities) Amendment Act* 2014 (assented to on 24 June 2014 but uncommenced as of 8 March 2015) makes various other amendments. Most of these are based on recommendations made by the statutory review. In my view the most significant ones are as follows:

8.1 Distinction between requests and requirements

Schedule 3 [4] to [13], [18] amends numerous sections of LEPRA to replace the word "request" with "require" or "requirement" in a range of situations (eg power to demand name and address).

The word "request" is now used only where compliance is voluntary and failure to comply is not an offence.

8.2 Powers of entry

Schedule 3 [31] to [36] amends ss82 to 84, concerning entry to premises in domestic violence situation.

Section 82 has been amended by adding subss (3A) to (3C), which provide that a police officer who has entered a dwelling in accordance with subs(1) may remain there until such time as a warrant is issued under s33, and may exercise certain powers including directing people to leave, removing anyone who fails to comply with such a direction, preventing people from entering, and preventing people from removing or interfering with evidence.

These powers may be exercised only if the police officers suspect on reasonable grounds that a domestic violence offence is being (or may have been recently) committed in the dwelling, and the exercise of the powers necessary to preserve evidence.

Police may exercise these powers even though an occupier expressly refuses authority for police to remain in the dwelling.

Section 83 has been amended to clarify that a warrant may be sought and issued not only if a police officer has been denied entry to a dwelling, but also if they are refused authority to remain in a dwelling.

Section 85 has been amended so it is an offence to obstruct or hinder a person exercising a power under Part 6, as well as a person executing a warrant.

8.3 Crime scene powers

Schedule 3 [37] to [45] make amendments to sections 91 to 95, and insert a new section 94A.

A new s91(4) clarifies that a subsequent crime scene may be established on the same premises in a 24-hour period, for the purpose of investigating an offence unrelated to the one in respect of which the initial crime scene was established.

The current s92(1) allows the powers listed in s95(1)(a) to (f) to be exercised without applying for a crime scene warrant if the police officer suspects on reasonable grounds that it is necessary to preserve evidence. The amendment will allow police to also exercise the powers listed in s95(1)(g) to (l) without the need to apply for a warrant.

The 3-hour limit on exercising crime scene powers without a warrant (provided by s92(3)) has been extended to 4 hours (or 6 hours in the case of a crime scene established in a rural area prescribed by the Regulations).

A new s92(5A) has been inserted to provide that a police officer at a crime scene may open a thing that is locked only if possible to do so without causing any damage to the thing or the lock. [Note that this only applies to powers exercised under s92(1) without a warrant. Presumably a crime scene warrant could authorise breaking/damaging of locks.]

A new s94(2A) has been inserted to clarify that, if a crime scene is established on more than one set of premises, a crime scene warrant may apply to each of those premises.

A new s94A has been added, applying to crime scene warrants issued in relation to premises that are not a public place. It provides that the occupier may apply to an authorised officer for a review of the grounds on which the warrant was issued. Any such review does not stay the operation of the warrant. The officer conducting the review may revoke the warrant (by order in writing) or refuse to revoke it.

Section 95(3), which currently provides “nothing in this part prevents a police officer who is lawfully on premises from exercising a crime scene power or doing any other thing, if the occupier of the premises consents”, has been amended to add “Any such consent must, as far as reasonably practicable, be in writing”.

A new s95(4) has been added to provide that the occupier may consent only if he or she is first informed by a police officer of:

(a) the crime scene powers proposed to be exercised on the premises,

(b) the reason to exercising those powers, and

(c) the right of the occupier to refuse consent.

8.4 In-car video

Schedule 3 [46] to [47] repeals s108E, which provides that recording by way of in-car video (ICV) must cease if the suspect is arrested. It seems that no-one (including Howie J in *Carlton v R* [2010] NSWCCA 81) could see a sound policy reason for s108E.

Section 108F, which provides that the recording of a conversation using ICV pursuant to Part 8A does not constitute the use of a listening device for the purposes of the *Surveillance Devices Act* 2007, has been amended to ensure this also extends to conversations between police officers recorded by ICV.

8.5 Destruction of identification material

Schedule 3 [49] inserts a new s137C:

> **137C Commissioner may order destruction of identification particulars**
>
> (1) The Commissioner may, in such cases as the Commissioner considers it to be appropriate, order the destruction of any photograph, finger-prints or palm-prints of a person that have been taken under this Division in relation to an offence.
>
> (2) This section does not affect any requirement under this Division relating to the destruction of a person's photograph, finger-prints or palm-prints.

This is an important amendment which remedies a current injustice. In relation to adult offenders at least, the Commissioner may currently order destruction of identification particulars only in cases where their offence is not proven. It is also worth noting that the current s137A, which provides for fingerprints and palm prints to be destroyed if an offence is not proven, does not extend to photographs. The new s137C gives the Commissioner a discretion to order destruction of photographs as well.

8.6 Miscellaneous powers relating to police and traffic

Schedule 3 [51] to [54] transfers Part 12 of LEPRA (ss185 to 192) to the *Road Transport Act* 2013 as Part 5.5 (ss148A to 148K). Some minor consequential amendments have also been made to these sections.

8.7 Provision for code of practice relating to issue of directions

There are already codes of practice covering the exercise of a range of police powers (eg, the code of Practice for CRIME, which deals with arrest, detention, questioning, powers of entry, searches and other investigative procedures).

Schedule 3 [55] inserts a new s200A to provide that the Regulations may provide for a code of practice relating to the exercise of police powers to give directions under Part 14, and the right to persons to whom such directions are given. This was recommended by the Ombudsman in its *Policing Public Safety* report as far as back as 1999 .

8.8 Amendments to regulations

Schedule 4 of the *Law Enforcement (Powers and Responsibilities) Amendment Act* 2014 makes amendments to the Law Enforcement (Powers and Responsibilities) Regulation 2005 in relation to warrants (including covert search warrants and crime scene warrants).

8.9 Consequential amendment of other legislation

Schedule 5 of the *Law Enforcement (Powers and Responsibilities) Amendment Act* 2014 makes consequential amendments to a number of other Acts, which will not be detailed in this paper.

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