

JUSTICE COMMITTEE BILL

NSW YOUTH
PARLIAMENT





NSW Police Force Re-Education and Reform Bill 2021 (NSW)

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Table of Contents

Explanatory Notes	3
Reference list	5
Part 1: Preliminary	6
1. Short Title	6
2. Commencement	6
3. Objects	6
4. Definitions	6
Part 2: Re-Education of the NSW Police Force	9
5. Re-Education Program Overview	9
6. Training Module 1 - Implicit Bias Training	9
7. Training Module 2 - Mental Health First Aid	9
8. Training Module 3 - Revision of NSW Police Force procedures and LEPRA	10
9. Effectiveness of Training	10
10. Failure to comply with training	10
Part 3: Amendments of Acts and instruments relating to NSW Police Force powers and use of power	13
11. Amendment to the LEPRA legislation, specifically relating to Part 2.	11
12. Amendment to the LEPRA legislation, specifically relating to Part 3.	14
13. Amendment to the LEPRA legislation specifically relating to the definitions list.	15
14. Amendments to Children (Criminal Proceedings) Act 1987	15
Part 4: Amendments	17
Amendment One	17
Amendment Three	18
Amendment Three	19
Results of the Vote	20
Appendix 1	19
Appendix 2	23



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NSW Police Force Re-Education and Reform Bill 2021 (NSW)

A Bill

for

An Act to Re-Educate and Reform the NSW Police Force in
Response to Changing Social Values



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Explanatory Notes

Police brutality, misconduct, and misuse of police power occur at local, state and federal levels. An integral aspect of the continued mistreatment of vulnerable persons lies within the dire need for reform and re-education. Achieving the reduction in unlawful, ridiculing and offensive behaviours towards vulnerable populations within the modern society. The reforms outlined within this Bill address excessive use of force by police, outline what is deemed excessive, increasingly regulate police behaviour and revise their use of arms and weaponry. The Bill will additionally profile the re-education required for all police officers in NSW. In efforts to increase police sensitivity, highlight awareness and ensure the actions of law enforcers are just. Furthermore, the Bill will seek to redefine “vulnerable persons” as well as reform the justice system to ensure marginalised communities are not compromised.

First Nations people, queer people, those with disabilities, women, religiously diverse people, and those suffering from mental health conditions are disproportionately impacted by injustice within the system.^[1] With these groups facing countless experiences of abuse, unfair sentencing, prejudice and so forth, the Committee understands there is an imperative to change the narrative. First Nations people are by far the most disproportionately impacted, comprising 27 per cent of the incarcerated population whilst only occupying 2% of the general population.

In Australia, executive powers tend to demonstrate the ‘retributivist justice model’ when concerning the criminal justice process.^[2] This justice model promotes a “zero tolerance” attitude towards crime, and is further impacted if the suspected offender is a person of colour, a person with a disability, or struggling with mental health conditions.^[3] This justice model has a specific focus regarding the general deterrence of the population from crime by inducing severe and unnecessary punishments. Alternatively, there is a ‘welfare model’ that conversely focuses on the rehabilitation of offenders. While the models are specifically linked to youth offenders, the values of the justice model are greatly reflected within the adult criminal justice process.^[4]

These experiences stem from a foundational problem of the modern Australian justice system, as it was constructed to benefit one specific class of people to the exclusion of everyone else.^[5] In doing so, the problems of inequality became baked into this state’s institutions of justice, namely the police, the judiciary and NSW Correctional facilities. These systems of inequality fail to apply the law equally regarding vulnerable persons.^[6] It is for this reason that the Justice Committee is working to fix these gaping issues.

Moreover, in conjunction with the reforms to the use of force, the re-education program aims to provide a basis for a more conscious police force, grounded in social values that will promote



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more positive outcomes in their behaviours. As in many cases, and considering some officers carry implicit bias towards specific minority groups, it is essential that sensitivity training is a key focus of the re-education program.^[7] This training will provide officers with the resources and understanding necessary to deal with issues surrounding vulnerable persons - hence, strengthening relationships between both the justice system and society. With a more considerate and just system, these relationships will deter repeat offenders who may have otherwise been negatively affected by the retribution of the justice system.^[8]



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Reference list

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- [2] Juvenile justice models | ALRC. Australian Law Reform Commission. (2010). <https://www.alrc.gov.au/publication/seen-and-heard-priority-for-children-in-the-legal-process-alrc-report-84/18-childrens-involvement-in-criminal-justice-processes/juvenile-justice-models/>.
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- [5] Gladstone, N. (2021). *NSW Police a 'boys club' that protects serial offenders: women in blue*. Smh.com.au. <https://www.smh.com.au/national/nsw/treated-like-a-joke-how-the-nsw-police-boys-club-protects-serial-offenders-20210215-p572lk.html.>>
- [6] Loscialpo, D. (2021). *David Loscialpo v New South Wales Police Service | Australian Human Rights Commission*. Humanrights.gov.au. <https://humanrights.gov.au/our-work/disability-rights/david-loscialpo-v-new-south-wales-police-service>.
- [7] Porter, L., & Prenzler, T. (2012). *Police Integrity Management in Australia: Global Lessons for Combating Police Misconduct*. CRC Press.
- [8] Just Reinvest Calculator - Just Reinvest NSW Inc. Just Reinvest NSW Inc. (2021). <https://www.justreinvest.org.au/jr-calculator/>.
Statistics were collated by Just Reinvest, who sourced information from the Australian Bureau of Statistics, Health Statistics New South Wales, University of Adelaide, NSW Bureau of Crime Statistics and Research, Audit Office of NSW and Corrective Services NSW Annual Reports



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The Youth Parliament of New South Wales enacts –

Part 1: Preliminary

1. Short Title

This Bill may be cited as the *NSW Police Force Re-Education and Reform Bill 2021*.

2. Commencement

This Bill shall commence one (1) day after Royal Assent from the NSW Youth Governor.

3. Objects

The objects of this Act are—

- a) The re-education of the NSW Police Force to bring greater awareness and sensitivity surrounding marginalised communities.
- b) Reform of NSW Police's use of force to prevent unnecessary use and to create awareness of the misuse of 'reasonable grounds'.
- c) The protection of vulnerable persons and marginalised communities from state/police violence, misconduct and discrimination.

4. Definitions

- 1) The dictionary defines words used in this Act.
 - a) **Aboriginal and Torres Strait Islander person** means a person who:
 - i) is a member of the Aboriginal and/or Torres Strait Islander race of Australia;
 - ii) identifies as an Aboriginal and/or Torres Strait Islander person; and/or
 - iii) is accepted by the Aboriginal and/or Torres Strait Islander community as an Aboriginal and/or Torres Strait Islander person.
 - b) **Child** means a person who is of or over the age of 10 years and under the age of 18 years.
 - c) **Dangerous article** includes the following:
 - i) a firearm, a spare barrel for any such firearm, or any ammunition for any such firearm;
 - ii) a prohibited weapon within the meaning of the Weapons Prohibition Act 1998;
 - iii) a spear gun;

- iv) an article or device, not being such a firearm, capable of discharging by any means;
 - v) any irritant matter in liquid, powder, gas or chemical form or any dense smoke;
 - vi) any substance capable of causing bodily harm; and
 - vii) a fuse capable of use with an explosive or a detonator.
- d) **Dangerous implement** includes the following:
- i) a dangerous article;
 - ii) a knife (including a knife blade, razor blade or any other blade);
 - iii) any other implement made or adapted for use for causing injury to a person;
 - iv) anything intended, by the person having custody of the thing, to be used to injure or menace a person or damage property; and
 - v) a laser pointer.
- e) **Exercise** means a function, including performing a duty.
- f) **Face covering** means an item of clothing, helmet, mask or any other object that is worn by a person and prevents the person's face from being seen (whether wholly or partly).
- g) **Firearm** means the same reference in the Firearms Act 1996, and includes an imitation firearm within the meaning of that Act.
- h) **Identity of a person** means the name or residential address of the person (or both), as well as date and place of birth.
- i) **Indictable offence** means an offence for which proceedings may be taken on indictment, whether or not proceedings for the offence may also be taken otherwise than on an indictment.
- j) **Investigating official** means:
- i) a police officer; or
 - ii) a person appointed by or under an Act and whose functions include respect of the prevention or investigation of offences, prescribed by the regulations for the purposes of this definition.
- k) **Lawful custody** means lawful custody of the police.
- l) **NSW Police Force** means the NSW Police Force (as per the Police Act 1990).
- m) **Parent of a child** means
- i) a guardian of the child, and
 - ii) a person who has the lawful custody of the child, but does not include the father or mother of the child if the father or mother, as the case may be, has neither guardianship nor custody of the child.

- n) **Person of non-English speaking background** means a person who is born in a country outside Australia and whose first language is not English.
- o) **Person responsible for a child** means:
 - i) a parent of the child; or
 - ii) a person who has the care of the child (whether or not the person has the custody of the child).
- p) **Police officer** means a member of the NSW Police Force holding a position that is designated under the Police Act 1990 as a position to be held by a police officer.
- q) **Senior police officer** means:
 - i) a Police Area Commander;
 - ii) a Police District Commander;
 - iii) a Duty Officer for a police station; or
 - iv) any other police officer of the rank of Inspector or above.
- r) **Serious indictable offence** means an indictable offence that is punishable by imprisonment for a term of five (5) years or more.
- s) **Strip search** means a search of a person or of articles in the possession of a person that may include:
 - i) requiring the person to remove all of his or her clothes; and
 - ii) an examination of the person's body (but not of the person's body cavities) and of those clothes.
- t) **Transgender person** means a person (whether or not the person is a person whose sex is altered under Part 5A of the Births, Deaths and Marriages Registration Act 1995 or under the corresponding provisions of a law of another Australian jurisdiction):
 - i) who identifies as a member of the opposite sex by living, or seeking to live, as a member of the opposite sex;
 - ii) who has identified as a member of the opposite sex by living as a member of the opposite sex; or
 - iii) who, being of indeterminate sex, identifies as a member of a particular sex by living as a member of that sex, and includes a reference to the person being thought of as a transgender person, whether the person is, or was, in fact a transgender person.
- u) **Vulnerable person** means a person who falls into any one or more of the following categories:
 - i) Persons who are under the age of 18 years.
 - ii) Persons who have impaired intellectual or sensory functioning and/or processing.
 - iii) Persons who have impaired physical functioning.

- iv) Persons who are Aboriginal persons or Torres Strait Islanders.
- v) Persons who are of a non-English speaking background or culturally diverse background.
- vi) Persons who identify as members of the LGBTQIA+ community.
- vii) Persons who are over the age of 65.
- viii) Persons who are suffering from a mental health condition/s.

Part 2: Re-Education of the NSW Police Force

5. Re-Education Program Overview

- 1) Re-education of the police force to better protect the rights of vulnerable peoples.
- 2) Each training session will be comprised of three key modules:
 - a) Module 1 - Implicit bias training.
 - b) Module 2 - Mental Health First Aid.
 - c) Module 3 - Revision of NSW Police Force Procedures.
- 3) These modules will then be assessed in a practical format where police officers are given a scenario (e.g., they come in contact with a person with an intellectual disability) and must appropriately react or de-escalate the situation.

6. Training Module 1 - Implicit Bias Training

- 1) All police officers must undertake “implicit bias” training involving a seminar in the psychological theory that unconscious stereotypes can lead people to make unfair judgements.
- 2) This must be undertaken by all police officers before being inducted as well as those already in service.
- 3) The curriculum of this training will be formulated by an external advisory board consisting of senior officers, Indigenous Australian Elders or people, social workers, minority community leaders etc., who will work in conjunction with the government.
- 4) This training will then be provided by this advisory board - available in both physical and online formats.
- 5) A police officer must be aware of the racism and prejudices that exist towards minority groups (e.g., people of colour, LGBTQIA+ communities, individuals with physical or intellectual impairments etc.).

7. Training Module 2 - Mental Health First Aid

- 1) Training sessions regarding issues that affect vulnerable persons ensuring that:
 - a) A police officer must take into consideration the religious or spiritual beliefs of an individual.

- b) A police officer must obtain Mental Health First Aid Training.
- c) A police officer must obtain education surrounding how to appropriately de-escalate a situation involving a vulnerable person with impaired intellectual, sensory or mobility functions, utilising measures that should be taken to reduce unnecessary force.

8. Training Module 3 - Revision of NSW Police Force procedures and LEPR

- 1) NSW Police Force procedures will be revised. All police officers will be made aware of the revisions through a training module.
- 2) A police officer must be aware of the revised procedures regarding arrest and police use of force.
- 3) A police officer must be aware of the revised strip-searching procedures.
- 4) A police officer must understand the revised list of vulnerable persons and subsequent procedures.

9. Effectiveness of Training

- 1) Steps in relation to monitoring and ensuring the effectiveness of the program. The effectiveness of the program will be regularly monitored and assessed.
 - a) A compulsory survey of all police officers will be implemented. Content will include questions on:
 - i) Whether the police officer felt that program benefited them (i.e., they learnt something new).
 - ii) Whether they felt the program was missing anything.
 - b) This will be conducted and analysed by the NSW Department of Justice.
 - c) This will be run at the conclusion of the training modules.
- 2) Outcomes will be measured after the program by:
 - a) Monitoring claims of discrimination made by people arrested by officers.
 - b) Interviewing vulnerable persons who felt their needs were compromised when arrested.
 - c) Conducting an optional survey for Australian citizens regarding their personal experiences or views towards the police force.
- 3) The advisory board will continue to review the program after the aforementioned monitoring and surveying has been undertaken and ensure that the training sessions are tailored accordingly.



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10. Failure to comply with training

- 1) Should an officer fail in their line of duty to adhere to their training as part of the re-education, they may face disciplinary action and/or must undergo the re-education program again.



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Part 3: Amendments of Acts and instruments relating to NSW Police Force powers and use of power

11. Amendment to the LEPRA legislation, specifically relating to Part 2.

[1] Section 9 (1)

Insert 'only' and 'with written permission from an officer of the rank of sergeant or higher and,'. to amend sentence to read:

*A police officer may enter premises **only with written permission from an officer of the rank of sergeant or higher and** if the police officer believes on reasonable grounds that*

[2] Section 9 (1A)

Insert phrase as outlined to amend sentence to read:

*a breach of the peace is being or is likely to be committed and it is necessary to enter the premises immediately to end or prevent the breach of peace **with reasonable force (outlined in Procedures with Regards to Police Use of Force), or***

[3] Section 9 (3)

Insert additional section which reads:

Any and all officers who do not follow the legislation may face disciplinary action.

[4] Section 10 (2)

Insert phrase as outlined to amend sentence to read:

*However, the police officer may enter a dwelling to arrest or detain a person only if the police officer believes on reasonable grounds that the person to be arrested or detained is **likely** in the dwelling. **Should the person not be in the dwelling, the officer must remain in the dwelling only as long as is reasonably necessary to return at a later date.***

[5] Section 10 (3)

Insert phrase as outlined to amend sentence to read:



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*A police officer who enters premises under this section may search the premises for the person **should they believe on reasonable grounds that a search is necessary.***

[6] Section 10 (6)

Insert additional section which reads:

Any and all officers who do not follow the legislation may face disciplinary action.

12. Amendment to the LEPRA legislation, specifically relating to Part 3.

[1] Section 12

Insert 'their' to amend sentence to read:

A person who is required by a police officer in accordance with section 11 to disclose **their** identity must not fail or refuse to comply with the requirement unless:

- (a) Doing so would conflict with a person's religious or gender identity; or
- (b) That person has reasonable cause to refuse the officer's request.

[2] Section 12

Insert additional section which reads:

Should an officer force someone to disclose his or her identity while they fulfil either (a) or (b) that officer may face disciplinary action and undergo re-education as per Re-Education of the NSW Police Force.

[3] Section 19A

Insert the phrase as outlined to amend sentence to read:

(3) A police officer who requires a person to remove a face covering under this section must, as far as is reasonably practicable, ensure that the following procedures are followed:

- (a) The police officer must ask for the person's co-operation.
- (b) The viewing of the person's face must be conducted:
 - (i) in a way that provides reasonable privacy for the person if the person requests privacy;



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(ii) in a way that does not conflict with the person's religious and gender identity; and

(iii) as quickly as is reasonably practicable.

13. Amendment to the LEPRA legislation specifically relating to the definitions list.

[1] A redefinition of vulnerable persons as stated in LEPRA. The proposed definition follows:

Vulnerable person means a person who falls into any one or more of the following categories:

- (a) Persons who are under the age of 18 years;
- (b) Persons who have impaired intellectual or sensory functioning and/or processing;
- (c) Persons who have impaired physical functioning;
- (d) Persons who are Aboriginal persons or Torres Strait Islanders;
- (e) Persons who are of a non-English speaking background or culturally diverse background;
- (f) Persons who identify as members of the LGBTQIA+ community;
- (g) Persons who are over the age of 65;
- (h) Persons who are suffering from a mental health condition/s; and/or
- (i) Persons who are considered elderly, at age of pension or suffering from age related debilitation.

14. Amendments to Children (Criminal Proceedings) Act 1987

Section 1

[1] Fines may not be imposed upon a child, instead the Police Officer, with advice and recommendations of another officer, is to order community service for the individual.

- [2] Hours may be lessened or extended based upon:
- (a) the child's intellectual and physical capabilities;
 - (b) the age of the child;
 - (c) the severity of the offence;
 - (d) potential for rehabilitation or deterrence; or
 - (e) accessibility to rehabilitation services.



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Section 2

- [1] Law enforcement agencies must employ a quota of licensed psychologists, mental health professionals and special needs workers to assist with offenders or alleged offenders that may be affected by a physical, intellectual or sensory impairment, or mental health condition.
- [2] Amount of workers is reliant on:
 - a) The size of population the law enforcement agency applies to.
 - b) The statistical analysis of people with disabilities and mentally ill offenders in the area.
 - c) The assignment and accessibility of resources including incentives for support officers relocating to regional areas.

Section 3

- [1] As per the recommendation of NSW Ombudsman, there is the mandated implementation of a Public Advocate. They are specifically knowledgeable in cases of abuse against persons with a disability and the elderly. This allows for cases that do not qualify for NSW Police assistance to still seek appropriate care and consideration. This mechanism will also promote the reporting of unlawful behaviour against the aforementioned vulnerable persons. To be a Public Advocate, one must:
 - (a) hold a bachelor degree;
 - (b) have a minimum three years' experience within the social work sector; or
 - (c) have a minimum three years' experience within the police force with additional training regarding vulnerable persons.

Section 4

- [1] The NSW Police Force are not permitted to use firearms in the process of arresting or pursuing an offender that is a minor or affected by a disability. They may use handcuffs in the situation of arrest, and only if there is serious threat to the livelihood of another may Oleoresin Capsicum Spray (OC) or batons be used.

Part 4: Amendments

Amendment One

Clause number

Clause Number 8

Amendment request (bold the appropriate option):

- **AMENDMENT**
- OMITTING
- NEW CLAUSE

Original clause:

8. Training Module 3 - Revision of NSW Police Force procedures

Amendment request:

Add a new section as follows to clause 8 regarding the training, specifying how often NSW Police Force procedures must be amended to ensure low crime rates.

New clause should now read:

8. Training Module 3 - Revision of NSW Police Force procedures.
- 1) Revision of NSW Police Force procedures with consideration paid to issues addressed in training module 1 and training module 2.
 - 2) A police officer must be aware of the revised procedures with regards to arrest and police use of force.
 - 3) A police officer must be aware of the revised strip-searching procedures.
 - 4) A police officer must understand the revised list of vulnerable persons and subsequent procedures.
 - 5) **The members of the NSW Police Advisory Board are required to revise the protocols and procedures every 1.5 years.**



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Amendment Two

Clause number

Clause number 9

Amendment request (bold the appropriate option):

- **AMENDMENT**
- OMITTING
- NEW CLAUSE

Original clause (paste entire wording):

9. Effectiveness of Training

Amendment request:

If crime rates remain constant or steadily increase, indicating the ineffectiveness of the training in place, then a parliamentary committee will be commissioned to investigate non-compliance by NSW police officers with said training. Thus, amend Section 3 of Clause 9 to specify how often these training methods should be refined to ensure consistent effectiveness.

New clause should now read:

9. Effectiveness of Training.

- 1) Steps in relation to monitoring and ensuring the effectiveness of the program.
 - a) A compulsory survey from all police officers on:
 - i) Whether the program benefited them (i.e., they learnt something new).
 - ii) Whether they felt the program was missing anything.
- 2) Measuring policing outcomes after the program:
 - a) Monitoring claims of discrimination made by people arrested by officers.
 - b) Interviewing vulnerable persons who felt their needs were compromised when arrested.
 - c) Conducting an optional survey for Australian citizens regarding their personal experiences or views towards the police force.



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3) The advisory board will continue to review the program after the aforementioned monitoring and surveying has been undertaken and ensure that the training sessions are tailored accordingly **and refined/revised yearly.**

Amendment Three

Clause number

Clause number 10

Amendment request (bold the appropriate option):

- **AMENDMENT**
- OMITTING
- NEW CLAUSE

Original clause (paste entire wording):

10. Failure to comply with training

Amendment request:

Add the word “suspension,”

Specify what “disciplinary action” that NSW police officers that refuse to comply with training will face.

New clause should now read:

10. Failure to comply with training.

- 1) Should an officer fail in their line of duty to adhere to their training as part of the re-education, they may face disciplinary action such as:
 - a) **A strike against their name which is carried on their record;**
 - b) **Suspension; or**
 - c) **They must undergo the Re-Education Program modules.**



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Results of the Vote

The results of the vote on the amendments were 31 Ayes, 11 Noes, and 3 Abstained. As such, the amendments were resolved in the affirmative.

The results of the vote on the Bill were 36 Ayes, 9 Noes, and 1 Abstained. As such, the Bill was passed.

The NSW Police Force Re-Education and Reform Bill 2021 was **passed in its amended form.**



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Appendix 1

Amendments are proposed to the NSW LEPRA. See below the original LEPRA sections to be amended as outlined in this Bill. Amendments are being made to: *Part 2: powers of entry*

9 Power to enter in emergencies

- (1) A police officer may enter premises if the police officer believes on reasonable grounds that
 - (a) a breach of the peace is being or is likely to be committed and it is necessary to enter the premises immediately to end or prevent the breach of peace, or
 - (b) a person has suffered significant physical injury or there is imminent danger of significant physical injury to a person and it is necessary to enter the premises immediately to prevent further significant physical injury or significant physical injury to a person, or
 - (c) the body of a person who has died, otherwise than as a result of an offence, is on the premises and there is no occupier on the premises to consent to the entry.

(1A) Before entering premises under subsection (1)(c), the police officer must obtain approval to do so (orally or in writing) from a police officer of or above the rank of Inspector.

(2) A police officer who enters premises under this section is to remain on the premises only as long as is reasonably necessary in the circumstances.

10 Power to enter to arrest or detain someone or execute warrant

(1) A police officer may enter and stay for a reasonable time on premises to arrest a person, or detain a person under an Act, or arrest a person named in a warrant.

(2) However, the police officer may enter a dwelling to arrest or detain a person only if the police officer believes on reasonable grounds that the person to be arrested or detained is in the dwelling.

(3) A police officer who enters premises under this section may search the premises for the person.

(4) This section does not authorise a police officer to enter premises to detain a person under an Act if the police officer has not complied with any requirements imposed on the police officer under that Act for entry to premises for that purpose.



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(5) In this section—arrest of a person named in a warrant includes apprehend, take into custody, detain, and remove to another place for examination or treatment.

Part 3 - Division 1 General powers to require identity to be disclosed - Failure to disclose identity

11 Identity may be required to be disclosed (cf [Crimes Act 1900, s 563](#))

(1) A police officer may require a person whose identity is unknown to the officer to disclose their identity if the officer suspects on reasonable grounds that the person may be able to assist in the investigation of an alleged indictable offence because the person was at or near the place where the alleged indictable offence occurred, whether soon before, when, or soon after it occurred.

(2) A police officer may require a person whose identity is unknown to the officer to disclose his or her identity if the officer proposes to give a direction to the person in accordance with Part 14 for the person to leave a place.

12 Failure to disclose identity(cf [Crimes Act 1900, s 563](#))

A person who is required by a police officer in accordance with section 11 to disclose his or her identity must not, fail or refuse to comply with the requirement unless,

- (a) Doing so would conflict with a person's religious or gender identity
- (b) That person has reasonable cause to refuse the officer's request

Maximum penalty—2 penalty units.

13 False or misleading information about identity(cf [Crimes Act 1900, s 563](#))

A person must not, without reasonable excuse, in response to a requirement made by a police officer give an address other than the person's full and correct address.

99 Power of police officers to arrest without warrant (cf Crimes Act 1900, s 352, Cth Act, s 3W)

A police officer without a warrant may only arrest a person if, beyond reasonable doubt, an offence has or is being committed, and is accompanied by at least x officers.

Maximum penalty —2 penalty units



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Appendix 2

Amendments are proposed to the Children (Criminal Proceedings) Act 1987. Amendments are being made around the abandonment of the use of fines for youth, and allocating jurisdiction to police officers to reduce court crowding.

The original clause states—

Before making an order imposing a fine on a child, the Children’s Court is to consider the age of the child and the following matters, where information is available in relation to those matters—

- (a) the child’s ability to pay the fine,*
- (b) the potential impact of the fine on the rehabilitation of the child.*