

# LEGISLATIVE COUNCIL

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Read 1° 2 December 1986

*(Brought in by the Honourable B. A. Chamberlain)*

## A BILL

to make further provision for police powers and for other purposes.

### **Police (Powers of Investigation) Act 1986**

The Parliament of Victoria enacts as follows:

**Purpose.**

1. The purpose of this Act is to make further provision for police powers.

**5 Commencement.**

2. This Act comes into operation on a day or days to be proclaimed.

**Power to require statement of name and address.**

3. (1) If a member of the police force has reasonable cause to suspect—

10       (a) that a person has committed, is committing or is about to commit, an offence; or

          (b) that a person may be able to assist in the investigation of an offence or a suspected offence—

15 the member of the police force may require that person to state his or her full name and address.

(2) If a member of the police force has reasonable cause to suspect that a name or address as stated in response to a requirement under

sub-section (1) is false, the member may require the person making the statement to produce evidence of the correctness of the name or address.

(3) A person must not—

- (a) refuse or fail, without reasonable excuse, to comply with a requirement under sub-section (1) or (2); or
- (b) in response to a requirement under sub-section (1) or (2)—
  - (i) state a name or address that is false; or
  - (ii) produce false evidence of his or her name or address.

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Penalty: 10 penalty units or imprisonment for three months.

(4) A person who has been required to state his or her full name and address under sub-section (1) may require the member of the police force who made the requirement to state his or her surname, rank and station.

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#### **Fingerprints etc.**

4. (1) If a person is in lawful custody on a charge of committing an offence, a member of the police force may, if he or she believes on reasonable grounds that it is necessary to do so for the purpose of identifying that person or identifying that person as the person who committed the offence—

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- (a) take, or cause to be taken, photographs of that person and prints of the hands, fingers, feet or toes of that person and may use, or cause to be used, such reasonable force as is necessary for that purpose; and
- (b) cause impressions of the teeth of that person to be taken by a registered dentist; or
- (c) make or cause to be made a recording of the voice of that person; or
- (d) request that person to supply a sample of his or her handwriting.

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(2) A person must not refuse or fail to comply with the reasonable directions of a person acting in accordance with sub-section (1).

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Penalty: 10 penalty units or imprisonment for three months.

(3) If photographs, prints, impressions or recordings are taken in respect of a person under sub-section (1) or a person supplies a sample of his or her handwriting under sub-section (1) and the charge against the person is subsequently withdrawn or dismissed, then all the photographs, prints, impressions, recordings and samples of handwriting must be destroyed.

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#### **Medical examinations.**

5. (1) If a person is in lawful custody on a charge of committing an offence and there are reasonable grounds for believing that an examination of his or her person will afford evidence as to the

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commission of the offence, a legally qualified medical practitioner acting on the request of a member of the police force in charge of a police station, or of or above the rank of sergeant, and a person acting in good faith to assist that member and under the direction of that member  
5 may make such an examination of the person and take such samples as is reasonable in order to ascertain the facts which may afford such evidence and may use such force as is reasonably necessary for that purpose.

10 (2) If a member of the police force intends to request a medical practitioner to examine a person in custody—

(a) the member, before communicating with the medical practitioner for the purpose of making the request, must inform such person of the intention and inquire from that person whether he or she desires to be examined also by  
15 another medical practitioner named by the person; or

(b) if the person states that he or she does so desire and names a medical practitioner, the member must promptly take all reasonable steps to inform that practitioner by telephone message that such person desires the practitioner to attend  
20 and examine the person.

(3) A person examined in accordance with this section is liable for the cost of any medical examination conducted at his or her request under sub-section (2).

25 (4) Failure to comply with sub-section (2) does not affect the legality of the detention of any person in custody or of any medical examination conducted at the request of a member of the police force.

#### **Search of accused persons in custody.**

30 6. (1) If a person is in lawful custody having been arrested and charged with an offence, a member of the police may search that person in any case where the member believes on reasonable grounds that it is necessary to do so—

(a) for the purpose of ascertaining whether there is concealed on the person or in the clothing of the person a weapon or other article capable of being used to inflict injury or to  
35 assist the person to escape from custody; or

(b) for the purpose of preventing the loss or destruction of evidence relating to the offence.

40 (2) Sub-section (1) (b) does not authorize a member of the police force to require a person to remove any of the clothing that he or she is wearing unless the offence with which he or she has been charged is of such a nature or alleged to have been committed under such circumstances that there are reasonable grounds for believing that the removal and examination or detention of any such clothing may afford evidence of the commission of the offence.

- (3) A member of the police force may take and retain—
- (a) any weapon or other article referred to in sub-section (1) (a); and
  - (b) any article of clothing or other thing which may afford evidence of the commission of the offence— 5
- found as a result of a search made in accordance with sub-section (1).
- (4) A member of the police force may use such force as is reasonably necessary for the purpose of exercising powers under this section.
- (5) Sub-section (1) shall not be construed as preventing a search of a person in lawful custody in any circumstances where, apart from the sub-section, it is lawful to search such a person. 10
- Interception of telecommunications.**
7. (1) In this section—
- “**Relevant warrant**” means a warrant issued under section 44 of the Commonwealth provisions to a member of the police force. 15
  - “**The Commonwealth provisions**” means Part VII of the *Telecommunications (Interception) Act 1979* of the Commonwealth as amended and in force for the time being.
- (2) A judge of the Supreme Court may perform the functions of an eligible judge of Victoria under the Commonwealth provisions. 20
- (3) The Chief Commissioner of Police may approve members of the police force, or classes of members of the police force, as persons who may exercise the authority conferred by relevant warrants.
- (4) The Minister may approve a class of equipment to be used in the exercise of the authority conferred by a relevant warrant, to intercept communications passing over a telecommunications system. 25
- (5) The Chief Commissioner of Police must ensure that—
- (a) each relevant warrant issued upon the application of a member of the police force, other than a warrant issued upon an application made by telephone; and 30
  - (b) each copy of a relevant warrant sent under section 44 (6) of the Commonwealth provisions to the applicant for the warrant; and
  - (c) each form of warrant completed under section 44 (7) by or on behalf of a member of the police force; and 35
  - (d) each instrument issued under section 45 of the Commonwealth provisions by the Chief Commissioner of Police—
- are retained in the records of the police force. 40
- (6) The Chief Commissioner of Police must ensure that proper records are kept relating to—

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- (a) interceptions pursuant to relevant warrants of communications passing over a telecommunications system;
  - (b) the use made of information obtained by such interceptions;
  - (c) the communication of such information to persons other than members of the police force; and
  - (d) the destruction of records and copies of the kinds referred to in sub-section (9)—

and must ensure that the records relating to those matters are retained in the records of the police force.

10 (7) The Chief Commissioner of Police must furnish to the Minister particulars of each relevant warrant and of each instrument issued under section 45 of the Commonwealth provisions revoking a relevant warrant at intervals of not more than one month after the issue or revocation of the warrant.

15 (8) The Chief Commissioner of Police must cause a record or copy that was made (whether before or after the commencement of this section) of a communication intercepted pursuant to a warrant, or a copy of a telegram that was made (whether before or after the commencement of this section) pursuant to a warrant under section  
20 11, 11A or 21 of the Commonwealth provisions, and that is in the possession or custody, or under the control, of the police force to be kept, except when it is otherwise dealt with in accordance with the Commonwealth provisions and this Act, in a secure place where it is not accessible to persons other than persons who are entitled so to deal  
25 with the record or copy.

(9) The Chief Commissioner of Police must cause a record or copy of a kind referred to in sub-section (9) to be destroyed if the Chief Commissioner of Police is satisfied—

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- (a) that the record or copy will not assist, and is not likely to assist, members of the police force in or in connexion with—
    - (i) the investigation of a prescribed offence; or
    - (ii) a proceeding by way of prosecution for an offence against the law of the State that is a prescribed offence under the Commonwealth provisions; and
  - 35 (b) that the record or copy is not required, and is not likely to be required, in, or in connexion with, the exercise by the Chief Commissioner or Police of the powers conferred on the Chief Commissioner by section 7AA (12) or (14) of the Commonwealth provisions as the case requires.

40 (10) A prescribed authority must make regular inspections of the records of the police force for the purpose of ascertaining the extent of compliance with—

- (a) the requirements referred to in sub-sections (5), (6), (7), (8) and (9); and

- (b) the provisions of this Act requiring the Chief Commissioner of Police to cause a record or copy of a kind referred to in sub-section (9) to be destroyed forthwith if the Chief Commissioner is satisfied as mentioned in sub-section (10); and 5
- (c) the provisions of the Commonwealth provisions, insofar as those provisions relate to the Chief Commissioner of Police or members of the police force.

(11) A prescribed authority that has conducted an inspection of the records of the police force for the purposes of ascertaining the extent of compliance with the requirements and provisions referred to in sub-section (10) must furnish to the Minister a report setting out the results of the inspection and the opinion of the prescribed authority concerning the extent of that compliance. 10

**Provisions of this Act in addition to general powers.** 15

8. The provisions of this Act are in addition to any powers that a member of the police force has under any other Act or law.

**Regulations.**

9. The Governor in Council may make regulations for or with respect to prescribing any matter which is authorized or required to be prescribed for carrying out or giving effect to this Act. 20



