

1989

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

ACTS REVISION (ARREST WITHOUT WARRANT) BILL 1989

EXPLANATORY MEMORANDUM

(Circulated by the authority of  
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## ACTS REVISION (ARREST WITHOUT WARRANT) BILL 1989

### OUTLINE

The main statutory provision in the ACT regulating the power to arrest a person without a warrant is section 352 of the Crimes Act 1900 of New South Wales, as it applies in the Territory (the Crimes Act). Section 352 describes the limited circumstances in which a private citizen may lawfully arrest a person and confers wider powers of arrest on the police. In addition, it sets out the several criteria which a police officer must take into account before arresting someone. The effect of section 352 is to ensure that the power to arrest without warrant is used only where strictly necessary.

Apart from the general power in section 352 of the Crimes Act, there were several specific powers of arrest without warrant in 12 other Acts. These powers related to the particular offences in the Act in question. In 1983 and again in 1986 section 352 of the Crimes Act was amended which had the effect of impliedly repealing those other specific arrest provisions. This could lead to some uncertainty about the applicable law.

The Acts Revision (Arrest Without Warrant) Bill 1989 clarifies the ACT law on the power to arrest without warrant by expressly repealing inoperative and redundant provisions from the statute books. In doing so, the Bill confirms that section 352 of the Crimes Act is to be the source of the power to arrest without warrant in most cases. The Bill does not change the substantive law.

### FINANCIAL STATEMENT

The Bill has no effect on Government expenditure or revenue.

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CLAUSE NOTES

Clause 1: Short title

Clause 1 cites the short title of the Act as being the Acts Revision (Arrest Without Warrant) Act 1989.

Clause 2: Careless Use of Fire Act

This clause removes the specific power of arrest without warrant from section 14 of the Careless Use of Fire Act 1936.

Clause 3: Children's Services Act

This clause repeals the specific power of arrest in section 31 of the Children's Services Act 1986 and amends the cross-reference in subsection 34(2) (which limits a police officer's power to charge a child with an offence) to incorporate the criteria listed in paragraph 352(2)(b) of the Crimes Act. Those criteria determine whether an arrest under subsection 352(2) of the Crimes Act is justified.

Clause 4: Dangerous Goods Act 1975 (NSW)

Clause 4 has the effect of deleting the arrest without warrant power from section 43 of the Dangerous Goods Act 1975 (NSW) while retaining the power of a police officer to search a person or a vehicle for suspected explosives.

Clause 5: Enclosed Lands Protection Act

This clause amends section 6 of the Enclosed Lands Protection Act 1943 to omit the power of arrest conferred on the owner, occupier or person in charge of enclosed land. Their power to demand the name and address of a person they suspect of having committed an offence against the Act remains.

Clause 6: Fishing Act

This clause removes the power of arrest from section 24 of the Fishing Act 1967.

Clause 7: Gaming and Betting Act 1906 (NSW)

Clause 7 amends section 12 of the Gaming and Betting Act 1906 (NSW) to remove the specific power conferred on a police officer to arrest a person found in a common gaming house. The amendment also re-expresses in modern language the existing statutory offence of being found in a common gaming house.

**Clause 8: Hawkers Act**

This clause removes the power of arrest from the Hawkers Act 1936 by repealing section 14.

**Clause 9: Motor Traffic Act**

Clause 9 amends section 203 of the Motor Traffic Act 1936 to remove the specific power of arrest for offences under the Act.

**Clause 10: Motor Traffic (Alcohol and Drugs) Act**

Subclause 10(1) amends subsection 18(3) of the Motor Traffic (Alcohol and Drugs) Act 1977 (the Act) to remove a cross-reference to section 45 of the Act and to express more clearly the times and/or events after which a person suspected of committing an offence under the Act may not be held in custody.

Subclause 10(2) amends section 45 of the Act to remove the specific power of arrest. The amendment also has the effect of adding the limitation in subsection 45(2) of the Act as an extra qualification to a police officer's general power of arrest under subsection 352(2) of the Crimes Act. Subsection 45(2) makes the power of arrest for an offence under the Act contingent on the police officer first requiring the person to undergo a screening test.

**Clause 11: Public Parks Act**

This clause amends section 9 of the Public Parks Act 1928 by removing the power of arrest conferred on police officers and rangers.

**Clause 12: Traffic Act**

This clause repeals the power of arrest under section 36 of the Traffic Act 1937.

**Clause 13: Trespass on Territory Land Act**

Clause 13 removes the specific power of arrest from section 9 of the Trespass on Territory Land Act 1932.