



New South Wales

# Terrorism (Police Powers) Amendment Act 2010 No 72

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New South Wales

# **Terrorism (Police Powers) Amendment Act 2010 No 72**

Act No 72, 2010

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An Act to amend the *Terrorism (Police Powers) Act 2002* as a consequence of a review carried out under section 36 of that Act. [Assented to 28 September 2010]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Terrorism (Police Powers) Amendment Act 2010*.

**2 Commencement**

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 1 [20] commences or is taken to have commenced on 13 September 2010.

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## **Schedule 1      Amendment of Terrorism (Police Powers) Act 2002 No 115**

### **[1]      Section 4 Other definitions**

Insert in alphabetical order in section 4 (1):

*impaired intellectual functioning*, in relation to a person, means:

- (a) a total or partial loss of the person's mental functions, or
- (b) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction, or
- (c) a disorder, illness or disease that affects the person's thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour.

### **[2]      Section 23 Supplying police officer's details and other information**

Insert at the end of section 23 (2):

The written statement is to be provided within 30 days of the request being made.

### **[3]      Section 26PA**

Insert after section 26P:

#### **26PA      Supreme Court may order provision of legal aid**

- (1) This section applies to proceedings before the Supreme Court in connection with an application for the making or revocation of a preventative detention order or prohibited contact order.
- (2) The Supreme Court may, if the Court is satisfied it is in the interests of justice to do so, order the Legal Aid Commission to provide legal aid in proceedings to which this section applies to:
  - (a) a person in relation to whom a preventative detention order is being sought, or
  - (b) a person who is subject to such an order.
- (3) If the Supreme Court makes an order under subsection (2), the police officer who is detaining the person must give the person reasonable assistance to enable the person to contact the Legal Aid Commission to obtain the legal aid.

**[4] Section 26W Release of person from preventative detention**

Insert after section 26W (1):

- (1A) The police officer who is detaining a person under a preventative detention order must release the person from detention under the order as soon as is practicable after the police officer is satisfied that the grounds on which the order was made have ceased to exist.

**Note.** A person detained under a preventative detention order may be detained under the order at a correctional centre under an arrangement with the Commissioner of Corrective Services under section 26X.

**[5] Section 26Y Effect of interim preventative detention order to be explained to person detained**

Insert “, 26ZF” after “26ZE” in section 26Y (2) (c).

**[6] Section 26Y (2) (d)**

Insert “and the Police Integrity Commission” after “Ombudsman”.

**[7] Section 26Z Effect of preventative detention order (other than interim order) to be explained to person detained**

Insert “, 26ZF” after “26ZE” in section 26Z (2) (c).

**[8] Section 26Z (2) (d)**

Insert “and the Police Integrity Commission” after “Ombudsman”.

**[9] Section 26ZG Contacting lawyer**

Insert after section 26ZG (3):

- (3A) Without limiting the assistance that may be given to a person under subsection (3), the police officer may refer the person to the Legal Aid Commission.

**[10] Section 26ZGA**

Insert after section 26ZG:

**26ZGA Contacting chaplain**

- (1) The person being detained is entitled to contact an authorised chaplain.
- (2) The form of contact that the person being detained is entitled to have with an authorised chaplain under subsection (1) is limited to visits by the authorised chaplain to the person being detained.

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- (3) In this section, *authorised chaplain* means:
- (a) a person who is authorised under the *Crimes (Administration of Sentences) Act 1999* to perform the functions of a chaplain in a correctional centre, and  
**Note.** Clause 59 of the *Crimes (Administration of Sentences) Regulation 2008* provides for the accreditation of chaplains by the Commissioner of Corrective Services.
  - (b) in relation to a person being detained under a preventative detention order who is under 18 years of age and who is detained in a detention centre within the meaning of the *Children (Detention Centres) Act 1987*—a minister of religion authorised by the Chief Executive of Juvenile Justice, Department of Human Services to minister to detainees at that detention centre.

**[11] Section 26ZH Special contact rules for person under 18 or with impaired intellectual functioning**

Omit section 26ZH (1) (b). Insert instead:

- (b) has impaired intellectual functioning.

**[12] Section 26ZH (7)**

Insert after section 26ZH (6):

- (7) The police officer who is detaining a person under a preventative detention order is, as far as is reasonably practicable, to assist the person in exercising the person's entitlement to contact under this Division.

**[13] Sections 26ZI (1) and 26ZJ**

Insert “, 26ZGA” after “26ZG” wherever occurring.

**[14] Section 26ZI Monitoring contact with family members, lawyers etc under sections 26ZE, 26ZG, 26ZGA and 26ZH**

Insert after section 26ZI (6):

- (7) However, a monitor does not commit an offence under subsection (6) in relation to the disclosure of information to a lawyer for the purpose of obtaining advice as to:
  - (a) whether the information is information communicated between the detainee and the detainee's lawyer for one of the purposes referred to in section 26ZG, and
  - (b) the monitor's obligations under this Act in relation to that information.

**[15] Section 26ZL Taking fingerprints, recordings, samples of handwriting or photographs**

Omit section 26ZL (5) (b) and (6) (b). Insert instead:

(b) has impaired intellectual functioning,

**[16] Section 26ZL (11)**

Omit “incapable of managing his or her affairs”.

Insert instead “has impaired intellectual functioning”.

**[17] Section 26ZO Monitoring by Ombudsman**

Omit “For the period of 5 years after the commencement of this Part, the” from section 26ZO (1).

Insert instead “The”.

**[18] Section 26ZO (4) (c)**

Insert at the end of section 26ZO (4) (b):

and

(c) every 3 years after that,

**[19] Section 26ZO (8)**

Omit “may”. Insert instead “is to”.

**[20] Section 27A Definitions (as amended by the Courts and Crimes Legislation Amendment Act 2008)**

Insert after section 27A (1):

(2) In this Part, *terrorist act* includes an offence against section 310J of the *Crimes Act 1900* (Membership of terrorist organisation). In that case, a reference in this Part:

(a) to a terrorist act that has been, is being, or is likely to be, committed is a reference to an offence against that section that is being committed, and

(b) to responding to or preventing a terrorist act is a reference to obtaining or providing evidence of the commission of an offence against that section.

**[21] Section 27W Destruction of records**

Omit the section.

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**[22] Section 27ZC Monitoring by Ombudsman**

Omit “For the period of 2 years after the commencement of this Part (as inserted by the *Terrorism Legislation Amendment (Warrants) Act 2005*), the” from section 27ZC (1).

Insert instead “The”.

**[23] Section 27ZC (3)**

Omit “as soon as practicable after the expiration of that 2-year period”.

Insert instead “every three years”.

**[24] Section 27ZC (4) and (5)**

Omit “Minister” wherever occurring. Insert instead “Attorney General”.

**[25] Section 27ZC (7) and (8)**

Omit section 27ZC (7). Insert instead:

- (7) The report is to be included with the report prepared by the Ombudsman under section 26ZO so long as the requirements of this section are complied with in relation to the report prepared under this section.
- (8) The first report under this section after the commencement of the *Terrorism (Police Powers) Amendment Act 2010* is to be prepared at the same time as the next report under section 26ZO is to be prepared.

**[26] Section 36 Review of Act**

Omit section 36 (2). Insert instead:

- (2) The review is to be undertaken, every 3 years, as soon as possible after the reports of the Ombudsman under sections 26ZO and 27ZC have been tabled in each House of Parliament.

**[27] Schedule 1 Conduct of personal searches**

Omit clause 6 (9) of the Schedule.

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Schedule 1      Amendment of Terrorism (Police Powers) Act 2002 No 115

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**[28] Schedule 2 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Terrorism (Police Powers) Amendment Act 2010*

[Agreement in principle speech made in Legislative Assembly on 24 June 2010  
Second reading speech made in Legislative Council on 22 September 2010]

BY AUTHORITY