



New South Wales

Terrorism Legislation Amendment (Warrants) Act 2005 No 54

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Terrorism (Police Powers) Act 2002 No 115	2
4 Amendment of Listening Devices Act 1984 No 69	2
5 Amendment of Crimes Act 1900 No 40	2
6 Repeal of amendment of Crimes Act 1900 No 40 and related amendments	2
Schedule 1 Principal amendments to Terrorism (Police Powers) Act 2002	3
Schedule 2 Consequential amendments to Terrorism (Police Powers) Act 2002	24
Schedule 3 Amendment of Listening Devices Act 1984	28
Schedule 4 Amendment of Crimes Act 1900	29



New South Wales

Terrorism Legislation Amendment (Warrants) Act 2005 No 54

Act No 54, 2005

An Act to amend the *Terrorism (Police Powers) Act 2002* to make provision with respect to covert warrants in connection with terrorist acts; to amend the *Listening Devices Act 1984* with respect to the duration of warrants for terrorism offences; to amend the *Crimes Act 1900* to create the offence of being a member of a terrorist organisation; and for other purposes. [Assented to 27 June 2005]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Terrorism Legislation Amendment (Warrants) Act 2005*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Section 6 commences on the second anniversary of the commencement of section 5.

3 Amendment of Terrorism (Police Powers) Act 2002 No 115

The *Terrorism (Police Powers) Act 2002* is amended as set out in Schedules 1 and 2.

4 Amendment of Listening Devices Act 1984 No 69

The *Listening Devices Act 1984* is amended as set out in Schedule 3.

5 Amendment of Crimes Act 1900 No 40

The *Crimes Act 1900* is amended as set out in Schedule 4.

6 Repeal of amendment of Crimes Act 1900 No 40 and related amendments

- (1) The *Terrorism (Police Powers) Act 2002* is amended by omitting section 27A (2) of that Act, as inserted by section 3 and Schedule 1 to this Act.
- (2) The *Crimes Act 1900* is amended by omitting Part 6B of that Act, as inserted by section 5 and Schedule 4 to this Act.

Schedule 1 Principal amendments to Terrorism (Police Powers) Act 2002

(Section 3)

[1] Part 3

Insert after Part 2 (as inserted by Schedule 2 [5]):

Part 3 Covert search warrants

Division 1 Preliminary

27A Definitions

(1) In this Part:

Crime Commissioner means the Commissioner for the New South Wales Crime Commission.

eligible Judge—see section 27B.

eligible police officer means a police officer who is employed within a group of staff of NSW Police who are designated by the Commissioner of Police as the terrorism investigation group for NSW Police.

eligible staff member of the Crime Commission means a person who is employed within a group of staff of the New South Wales Crime Commission that is designated by the Crime Commissioner as the terrorism investigation group for the Crime Commission.

occupier's notice means an occupier's notice referred to in section 27U or 27V.

subject premises, in relation to a warrant or an application for a warrant, means premises the subject of the warrant or the application (as the case may be).

telephone warrant means a warrant referred to in section 27I.

(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.

- (3) For the purpose of this Part, a reference to the search of premises includes a reference to the search for information that may be derived from, or anything on, premises.

27B Eligible Judges

- (1) In this Part:
eligible Judge means a Judge in relation to whom a consent under subsection (2) and a declaration under subsection (3) are in force.
- (2) A Judge of the Supreme Court may, by instrument in writing, consent to be nominated by the Attorney General under subsection (3).
- (3) The Attorney General may, by instrument in writing, declare Judges in relation to whom consents are in force under subsection (2) to be eligible Judges for the purposes of this Part.
- (4) An eligible Judge has, in relation to the exercise of a function conferred on an eligible Judge by this Part, the same protection and immunity as a Judge of the Supreme Court has in relation to proceedings in the Supreme Court.
- (5) A Judge who has given consent under this section may, by instrument in writing, revoke the consent.
- (6) The Attorney General may, by instrument in writing, amend or revoke a declaration under this section.

Division 2 Authorisation to apply for covert search warrant

27C Authorisation to apply for covert search warrant

An authorisation to apply for a covert search warrant issued under this Part may be given in accordance with this Division if the person giving the authorisation suspects or believes on reasonable grounds:

- (a) that a terrorist act has been, is being, or is likely to be, committed, and
- (b) that the entry to and search of premises will substantially assist in responding to or preventing the terrorist act, and
- (c) that it is necessary for the entry and search of those premises to be conducted without the knowledge of any occupier of the premises.

27D Who may be authorised to apply for a covert search warrant

- (1) The Commissioner of Police may authorise an eligible police officer to apply for a covert search warrant issued under this Part.
- (2) The Crime Commissioner may authorise an eligible staff member of the Crime Commission to apply for a covert search warrant under this Part.

27E Delegation of Commissioner of Police's power to give authorisation

- (1) Except as provided by this section, the power of the Commissioner of Police to give an authorisation under this Part may not be delegated to any person.
- (2) The Commissioner of Police may delegate to any of the following persons who are eligible police officers his or her power to give an authorisation:
 - (a) an Assistant Commissioner holding a position that is prescribed by the regulations,
 - (b) a person holding a position of or above the rank of superintendent that is prescribed by the regulations.
- (3) No more than 2 persons may hold delegations under this section at any one time.
- (4) This section has effect despite any other Act or law to the contrary.

27F Delegation of Crime Commissioner's power to give authorisation

- (1) Except as provided by this section, the power of the Crime Commissioner to give an authorisation under this Part may not be delegated to any person.
- (2) The Crime Commissioner may delegate to an eligible staff member of the Crime Commission who holds a position prescribed by the regulations his or her power to give an authorisation.
- (3) No more than 1 person may hold a delegation under this section at any one time.
- (4) This section has effect despite any other Act or law to the contrary.

Division 3 Application for, and issue of, covert search warrant

27G Power to apply for covert search warrant

An eligible police officer, or an eligible staff member of the Crime Commission, who is given an authorisation under Division 2 may apply to an eligible Judge for a covert search warrant in respect of any premises if the officer or staff member suspects or believes on reasonable grounds:

- (a) that a terrorist act has been, is being, or is likely to be, committed, and
- (b) that the entry to and search of the premises will substantially assist in responding to or preventing the terrorist act, and
- (c) that it is necessary for the entry and search of those premises to be conducted without the knowledge of any occupier of the premises.

27H Application for warrant in person

- (1) An application for a covert search warrant must be in writing and must be made by the applicant in person.
- (2) An eligible Judge must not issue a covert search warrant unless the information given by the applicant in or in connection with the application is verified before the Judge on oath or affirmation or by affidavit.
- (3) An eligible Judge may administer an oath or affirmation or take an affidavit for the purposes of an application for a covert search warrant.
- (4) This section does not apply to a telephone warrant.

27I Telephone warrant

- (1) An eligible police officer, or an eligible staff member of the Crime Commission, who is given an authorisation under Division 2 may apply by telephone for a covert search warrant.
- (2) An eligible Judge must not issue a covert search warrant on an application made by telephone unless the Judge is satisfied that the warrant is required urgently and that it is not practicable for the application to be made in person.
- (3) An application must be made by facsimile if the facilities to do so are readily available for that purpose.

- (4) If it is not practicable for an application for a covert search warrant to be made by telephone directly to an eligible Judge, the application may be transmitted to the Judge by another person on behalf of the applicant.
- (5) An eligible Judge who issues a covert search warrant on an application made by telephone must:
 - (a) complete and sign the warrant, and
 - (b) provide the warrant to the person who made the application or inform that person of the terms of the warrant and of the date when it was signed.
- (6) If a covert search warrant is issued on an application made by telephone and the applicant was not provided with the warrant, the applicant must:
 - (a) complete a form of warrant in the terms indicated by the eligible Judge under subsection (5), and
 - (b) write on it the name of that Judge and the date when the warrant was signed, and
 - (c) provide the warrant to that Judge within 2 business days of the issue of the warrant.
- (7) A form of covert search warrant so completed is taken to be a warrant issued in accordance with this Division.
- (8) A covert search warrant is to be provided by an eligible Judge by transmitting it by facsimile if the facilities to do so are readily available, and the copy produced by that transmission is taken to be the original warrant.
- (9) In this section:

facsimile means facsimile transmission, the internet or any other means of electronic transmission of information in a form from which written material is capable of being reproduced with or without the aid of any other device or article.

telephone includes any communication device.

27J Information in application for warrant

- (1) An eligible Judge must not issue a covert search warrant unless the application for the warrant includes the following information:
 - (a) the name of the applicant and details of the authorisation given to the applicant under Division 2,
 - (b) the address or other description of the subject premises,

- (c) particulars of the grounds on which the application is based,
 - (d) the name of the following persons:
 - (i) any person believed to be knowingly concerned in the commission of the terrorist act in respect of which the application is made,
 - (ii) if no such person is an occupier of the subject premises—any occupier (if known) of those premises,
 - (e) if it is proposed that premises adjoining or providing access to the subject premises be entered for the purposes of entering the subject premises—the address or other description of the premises that adjoin or provide such access and particulars of the grounds on which entry to those premises is required,
 - (f) the powers that are proposed to be exercised on entry to the subject premises,
 - (g) a description of the kinds of things that are proposed to be searched for, seized, placed in substitution for a seized thing, copied, photographed, recorded, operated, printed or tested,
 - (h) if a previous application for the same warrant was refused—details of the refusal and any additional information provided as required by section 27M,
 - (i) details of any covert search warrant that has previously been issued in respect of the subject premises,
 - (j) any other information required by the regulations.
- (2) The applicant must provide (either orally or in writing) such further information as the eligible Judge requires concerning the grounds on which the warrant is being sought.

27K Determining application for covert search warrant

- (1) An eligible Judge to whom an application for a covert search warrant is made may, if satisfied that there are reasonable grounds for doing so, issue a covert search warrant.
- (2) An eligible Judge, when determining whether there are reasonable grounds to issue a covert search warrant, is to consider (but is not limited to considering) the following matters:
 - (a) the reliability of the information on which the application is based, including the nature of the source of the information,

- (b) whether there is a connection between the terrorist act in respect of which the application has been made and the kinds of things that are proposed to be searched for, seized, placed in substitution for a seized thing, copied, photographed, recorded, operated, printed or tested,
- (c) the nature and gravity of the terrorist act,
- (d) the extent to which the exercise of powers under the warrant would assist in the prevention of, or response to, the terrorist act,
- (e) alternative means of obtaining the information sought to be obtained,
- (f) the extent to which the privacy of a person who is not believed to be knowingly concerned in the commission of the terrorist act is likely to be affected if the warrant is issued,
- (g) if it is proposed that premises adjoining or providing access to the subject premises be entered for the purposes of entering the subject premises:
 - (i) whether this is reasonably necessary in order to enable access to the subject premises, or
 - (ii) whether this is reasonably necessary in order to avoid compromising the investigation of the terrorist act,
- (h) whether any conditions should be imposed by the Judge in relation to the execution of the warrant.

27L Record of determination by eligible Judge

- (1) An eligible Judge who determines an application for a covert search warrant must cause a record to be made of all relevant particulars of the grounds the eligible Judge has relied on to justify the issue of the warrant or the refusal to issue the warrant (as the case may be).
- (2) The regulations may make provision for or with respect to:
 - (a) the keeping of records in connection with the issue and execution of covert search warrants, and
 - (b) the inspection of any such records, and
 - (c) any other matter in connection with any such records.
- (3) Any matter that might disclose the name or residential address of a person must not be recorded pursuant to this section if the eligible Judge is satisfied that to do so might jeopardise the safety of any person.

27M Further application for warrant after refusal

If an application by a person for a covert search warrant is refused by an eligible Judge, that person (or any other person who is aware of the application) may not make a further application for the same warrant to that or any other eligible Judge unless the further application provides additional information that justifies the making of the further application.

27N Contents of covert search warrant

A covert search warrant is to specify the following matters:

- (a) the name of the person who applied for the warrant,
- (b) the address or other description of the subject premises,
- (c) the name of the following persons:
 - (i) any person believed to be knowingly concerned in the commission of the terrorist act in respect of which the warrant is issued,
 - (ii) if no such person is an occupier of the subject premises—any occupier (if known) of those premises,
- (d) a description of the kinds of things that may be searched for, seized, placed in substitution for a seized thing, copied, photographed, recorded, operated, printed or tested,
- (e) the date on which the warrant is issued,
- (f) the date on which the warrant expires (being a date that is not more than 30 days from the date on which the warrant is issued),
- (g) any conditions imposed in relation to the execution of the warrant,
- (h) any other matter required by the regulations.

Division 4 Execution of covert search warrant and provisions applying after warrant executed

27O Powers conferred by covert search warrant

- (1) A covert search warrant authorises an eligible person:
 - (a) to enter, without any occupier's knowledge, the subject premises, and
 - (b) to impersonate another person for the purposes of executing the warrant, and

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- (c) to use such force as is reasonably necessary for the purposes of entering the subject premises, and
 - (d) if the warrant authorises entry to premises adjoining or providing access to the subject premises—to enter premises adjoining or providing access to the subject premises, using such force as is reasonably necessary, for the purposes of entering the subject premises, and
 - (e) to search the subject premises for any kind of thing described in the warrant, and
 - (f) to break open any receptacle in or on the subject premises for the purposes of that search if it is reasonably necessary to do so, and
 - (g) if the warrant authorises the seizure of a kind of thing—to seize and detain a thing of that kind and any relevant thing that the person finds in the course of executing the warrant, and
 - (h) to seize and detain any other thing that the person finds in the course of executing the warrant and that is connected with a serious indictable offence, and
 - (i) if the warrant authorises the placing of a kind of thing in substitution for a seized thing—to place a thing of that kind on the subject premises in substitution for a thing seized under paragraph (g), and
 - (j) if the warrant authorises the copying, photographing or recording of a kind of thing—to copy, photograph or otherwise record a thing of that kind and any relevant thing that the person finds in the course of executing the warrant, and
 - (k) if the warrant authorises the operation of a kind of electronic equipment:
 - (i) to operate any electronic equipment of that kind and any relevant electronic equipment that the person finds in the course of executing the warrant, and
 - (ii) to print, copy or otherwise record from that equipment information that is of a kind that the warrant authorises to be printed, copied or recorded and any relevant information that the person finds in the course of executing the warrant, and
 - (l) if the warrant authorises the testing of a kind of thing—to test a thing of that kind and any relevant thing that the person finds in the course of executing the warrant.

- (2) A reference in this section to an eligible person, in relation to a warrant, is a reference to:
 - (a) an eligible police officer if the applicant for the warrant was an eligible police officer, or
 - (b) an eligible staff member of the Crime Commission if the applicant for the warrant was an eligible staff member of the Crime Commission.
- (3) A reference in this section to a relevant thing (including electronic equipment and information) found by an eligible person is a reference to a thing that the person has reasonable grounds to suspect or believe will substantially assist in responding to or preventing a terrorist act.
- (4) For the purposes of this section, a thing is connected with a serious indictable offence only if it is:
 - (a) a thing with respect to which there are reasonable grounds for suspecting or believing the offence has been, is being, or will be committed, or
 - (b) a thing that there are reasonable grounds for suspecting or believing will provide evidence of the commission or intended commission of the offence, or
 - (c) a thing that there are reasonable grounds for suspecting or believing has been, is being, or is intended to be used, in or in connection with the offence.

27P Use of assistants to execute warrant

A person who is authorised under section 27O to execute a warrant may do so with the aid of such assistants as the person considers necessary.

27Q Expiry of covert search warrant

Subject to section 27R, a covert search warrant ceases to have effect:

- (a) on the expiry date specified in the warrant, or
 - (b) if it is withdrawn by the eligible Judge who issued the warrant—when it is withdrawn, or
 - (c) when it is executed,
- whichever occurs first.

27R Return or retrieval of a thing seized or placed

- (1) A covert search warrant may authorise the return of a thing seized under section 27O (1) (g), or the retrieval of a thing placed under section 27O (1) (i), if the warrant expressly authorises such a return or retrieval.
- (2) If the warrant authorises the return or retrieval of a thing, the subject premises may be re-entered by a person authorised under section 27O to execute the warrant, but only for the purpose of returning or retrieving the thing (as the case may be) and any such re-entry must occur within 7 days of the first entry under the warrant (or such longer period as is allowed, prior to the expiration of the 7-day period, by an eligible Judge).
- (3) A person authorised to re-enter premises and return or retrieve a thing under this section may do so with the aid of such assistants as the person considers necessary.

27S Report to eligible Judge on execution of warrant

- (1) A person who executes a covert search warrant must provide a report in writing to the eligible Judge who issued the warrant:
 - (a) stating the address or other description of the subject premises, and
 - (b) stating whether or not the warrant was executed, and
 - (c) if the warrant was executed:
 - (i) stating the date on which the warrant was executed, and
 - (ii) stating the name of any person who executed the warrant, and
 - (iii) stating the name of any police officer, staff member of the New South Wales Crime Commission or intelligence gathering officer who assisted in the execution of the warrant and the nature of the assistance provided, and
 - (iv) stating the name of any person believed to be knowingly concerned in the commission of the terrorist act in respect of which the warrant was executed and, if no such person is an occupier of the premises, any occupier (if known) of the premises at which the warrant was executed, and
 - (v) stating the powers that were exercised under the warrant, and

- (vi) setting out briefly the result of the execution of the warrant (including a brief description of anything seized, placed in substitution for a seized thing, copied, photographed, recorded, operated, printed or tested), and
 - (vii) if a thing was found in the course of executing the warrant and, under section 27O, that thing was (but was not of a kind expressly authorised by the warrant to be) copied, photographed, recorded, operated, printed or tested—specifying particulars of the grounds on which the thing was believed to be a relevant thing or connected with a serious indictable offence (as the case may be),
 - (viii) if a thing was tested or was seized for the purposes of testing—including a description of the thing and the type of information obtained (or proposed to be obtained) by testing, and
 - (ix) stating whether or not the execution of the warrant assisted in the prevention of, or response to, the terrorist act in respect of which the warrant was executed and, if so, how it assisted, and
 - (x) stating whether or not the execution of the warrant assisted in the prevention of, or response to, any other terrorist act or any serious indictable offence and, if so, how it assisted, and
 - (d) if the warrant was not executed—setting out briefly the reasons why the warrant was not executed, and
 - (e) containing such other particulars as may be prescribed by the regulations.
- (2) The report must be provided:
- (a) if the warrant was executed—within 10 days after it was executed, or
 - (b) if the warrant was not executed—within 10 days after:
 - (i) the expiry date specified in the warrant, or
 - (ii) the date the warrant was withdrawn by the eligible Judge who issued the warrant.
- (3) If premises are entered for the purposes of returning or retrieving a thing under section 27R, a report must also be provided in writing to the eligible Judge who issued the warrant:
- (a) stating the address or other description of the premises, and
 - (b) stating the date on which the premises were re-entered, and

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- (c) stating the name of any person who entered the premises for the purposes of the return or retrieval, and
 - (d) stating the name of any other police officer, staff member of the New South Wales Crime Commission or intelligence gathering officer who assisted in the re-entry of the premises or the return or retrieval of the thing and the nature of any assistance provided, and
 - (e) setting out a brief description of the thing, and
 - (f) if the thing was not returned or retrieved—setting out the reasons why the thing was not returned or retrieved, and
 - (g) containing such other particulars as may be prescribed by the regulations.
- (4) The report is to be provided within 10 days after the entry to the premises for the purposes of retrieving or returning the thing under section 27R.
- (5) The Commissioner of Police or the Crime Commissioner is to ensure that a copy of any report provided under this section is given to the Attorney General.
- (6) In this section:
- intelligence gathering officer*** means a person employed by or in the Australian Security Intelligence Organisation or any other intelligence gathering agency prescribed for the purposes of this definition.
- police officer*** means a member of:
- (a) NSW Police, or
 - (b) the Australian Federal Police, or
 - (c) a police force or police service (however described) of another State, a Territory or another country.

27T Defects in covert search warrants

A covert search warrant is not invalidated by any defect, other than a defect that affects the substance of the warrant in a material particular.

27U Notice to occupiers of execution of covert search warrant

- (1) A person who executes a covert search warrant is to cause an occupier's notice to be prepared under this section.
- (2) The occupier's notice:
 - (a) is to specify the name of the person who applied for the warrant, and

- (b) is to specify the name of the eligible Judge who issued the warrant, and
 - (c) is to specify the date when the warrant was issued, and
 - (d) is to specify the date when the warrant was executed, and
 - (e) is to specify the address or other description of the subject premises, and
 - (f) is to specify the number of police officers, staff members of the New South Wales Crime Commission or intelligence gathering officers who entered the subject premises for the purposes of executing, or assisting in the execution of, the warrant, and
 - (g) is to contain a summary of the nature of the warrant (including the grounds on which a covert search warrant may be issued) and the powers conferred and exercised under the warrant, and
 - (h) is to describe any thing seized or placed in substitution for a seized thing, and
 - (i) is to describe any thing returned or retrieved under section 27R and the date on which the thing was returned or retrieved, and
 - (j) if the occupier was not, at the time that the warrant was executed, believed to be knowingly concerned in the commission of the terrorist act in respect of which the warrant was executed—is to state this, and
 - (k) is to specify or contain any other matters required by the regulations.
- (3) Within 6 months of executing the covert search warrant, the person who executed the warrant is to provide the occupier's notice to the eligible Judge who issued the warrant for that Judge's approval.
- (4) The person must provide such further information (either orally or in writing) as the eligible Judge requires for the purposes of assisting the Judge in determining whether to approve the occupier's notice.
- (5) As soon as practicable after the eligible Judge approves the occupier's notice, the person who executed the warrant is to cause the notice to be given to:
- (a) any person who, at the time the warrant was executed, was believed to be knowingly concerned in the commission of the terrorist act in respect of which the warrant was executed, and

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- (b) if no such person was an occupier of the subject premises when the warrant was executed—a person of or above the age of 18 years known to have occupied the premises at the time the warrant was executed.
- (6) If no such person is known, or the person's whereabouts are unknown to the person who executed the warrant, the person who executed the warrant is to report back to the eligible Judge who issued the warrant and the Judge may give such directions about the giving of the occupier's notice as the Judge thinks fit.
- (7) The giving of an occupier's notice under this section may be postponed by the eligible Judge who issued the warrant if that eligible Judge is satisfied that there are reasonable grounds for that postponement.
- (8) Directions under subsection (6) may be given at the same time as a postponement is granted.
- (9) The giving of an occupier's notice under this section may be postponed on more than one occasion, but:
- (a) must not be postponed on any one occasion for a period exceeding 6 months, and
 - (b) must not be postponed for a total period of more than 18 months unless the eligible Judge is satisfied that there are exceptional circumstances justifying the postponement.
- (10) In this section:
intelligence gathering officer and *police officer* have the same meanings as in section 27S.
- (11) A reference in this section and in section 27V to a person who executes a warrant includes a reference to another eligible police officer (if the person was an eligible police officer) or another eligible staff member of the Crime Commission (if the person was such a staff member), but only if the person who executed the warrant:
- (a) has died, or
 - (b) has ceased to be an eligible police officer or eligible staff member of the Crime Commission (as the case may be), or
 - (c) is absent from duty.

27V Notice to adjoining occupiers of execution of covert search warrant

- (1) A person who executes a covert search warrant is to cause an occupier's notice to be prepared under this section if the

execution of the warrant involved entering under section 27O (1) (d) premises (the *adjoining premises*) adjoining or providing access to the subject premises.

- (2) The occupier's notice:
 - (a) is to specify or state the matters set out in section 27U (2) (a)–(e), and
 - (b) is to specify or contain any other matters required by the regulations.
- (3) The occupier's notice is to be provided to the eligible Judge who issued the warrant for that Judge's approval at the same time as the occupier's notice prepared under section 27U in relation to the execution of the warrant is provided under section 27U (3).
- (4) As soon as practicable after the eligible Judge approves the occupier's notice under this section, the person who executed the warrant is to cause the notice to be given to a person of or above the age of 18 years known to have occupied the adjoining premises.
- (5) The provisions of section 27U apply in relation to an occupier's notice prepared under this section as follows:
 - (a) section 27U (4) and (6)–(9) apply as if a reference in those provisions to an occupier's notice were a reference to an occupier's notice prepared under this section,
 - (b) section 27U (6) applies as if a reference in that provision to a person referred to in section 27U (5) were a reference to an occupier referred to in subsection (4).

27W Destruction of records

- (1) Within 12 months of the execution of a covert search warrant, the Commissioner of Police or the Crime Commissioner is to determine whether any copy, photocopy or other record made in the execution of the warrant is reasonably required for the purpose of an investigation or proceedings.
- (2) Within each subsequent period of 12 months, the Commissioner of Police or the Crime Commissioner is to further determine whether any such record is reasonably required for that purpose for so long as the record remains in existence.
- (3) The Commissioner of Police or the Crime Commissioner is to ensure that any such record is destroyed as soon as practicable after determining that its retention is no longer reasonably required for that purpose.

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- (4) A requirement imposed under this section on the Commissioner of Police applies only in relation to a record made in the execution of a warrant by an eligible police officer.
 - (5) A requirement imposed under this section on the Crime Commissioner applies only in relation to a record made in the execution of a warrant by an eligible staff member of the Crime Commission.

Division 5 Miscellaneous

27X Death or absence of eligible Judge who issued covert search warrant

If the eligible Judge who issued a covert search warrant has died, has ceased to be an eligible Judge or is absent:

- (a) a warrant required to be provided to that Judge under section 27I, or
- (b) a report required to be provided to that Judge under section 27S, or
- (c) an occupier's notice required to be provided to that Judge under section 27U or 27V, or
- (d) a power exercisable by that Judge under section 27U or 27V,

may be provided to, or may be exercised by, as the case may be, any other eligible Judge.

27Y Applications to be dealt with in absence of public

Applications under this Part and any other matters arising under this Part that are dealt with by an eligible Judge are to be dealt with in the absence of the public.

27Z False or misleading information in applications or reports to eligible Judge

- (1) A person must not, in or in connection with an application for a covert search warrant, a report or an occupier's notice, give information to an eligible Judge that the person knows to be false or misleading in a material particular.
Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.
- (2) This section applies to an application for a telephone warrant as well as an application for a covert search warrant made in person.

- (3) This section applies whether or not the information given is also verified on oath or affirmation or by affidavit.

27ZA Publication of documents

- (1) A person must not intentionally or recklessly publish an application for a covert search warrant, a report prepared under section 27S, an occupier's notice or any information directly derived from such an application, report or notice unless:
- (a) an occupier's notice that relates to the execution of the warrant has been given under section 27U, or
 - (b) directions have been given in relation to the giving of the occupier's notice under section 27U (6).

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) This section does not make it an offence to publish any application, report, notice or information if the publication is for the purposes of:
- (a) exercising any functions under this Part, or
 - (b) the internal management of NSW Police, the New South Wales Crime Commission, the Supreme Court or the Attorney General's Department.

27ZB Annual reports to be given to Attorney General and Police Minister

- (1) The Commissioner of Police and the Crime Commissioner must each report annually on the exercise of powers under this Part by eligible police officers and eligible staff members of the Crime Commission respectively.
- (2) Each report is to be provided, within 4 months after each 30 June, to the Police Minister and the Attorney General.
- (3) The report is to specify the following matters in relation to the year ended on that 30 June:
- (a) the number of applications for covert search warrants made under this Part and the number of those applications granted,
 - (b) the number of applications for telephone warrants and the number of those applications granted,
 - (c) the number of covert search warrants executed,
 - (d) the number of covert search warrants under which any things were seized,

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- (e) the number of covert search warrants under which any things were placed in substitution for seized things,
 - (f) the number of covert search warrants under which any things were returned or retrieved,
 - (g) the number of covert search warrants under which any things were copied, photographed or otherwise recorded,
 - (h) the number of covert search warrants under which any electronic equipment was operated by eligible police officers or eligible staff members of the Crime Commission,
 - (i) the number of covert search warrants under which any things were tested,
 - (j) the number of arrests made in connection with a terrorist act in respect of which a covert search warrant was executed and the number of those arrests that have led to the laying of charges in relation to the terrorist act,
 - (k) the number of complaints that are made under any Act about conduct relating to the execution of a covert search warrant by an eligible police officer or an eligible staff member of the Crime Commission and the number of those complaints that are, or have been, the subject of an investigation under any Act,
 - (l) any other matters requested by the Police Minister or the Attorney General.
- (4) The reports may be combined with any other annual report of NSW Police or the New South Wales Crime Commission.
 - (5) The reports are to be tabled in each House of Parliament as soon as practicable after they are received by the Attorney General.

27ZC Monitoring by Ombudsman

- (1) For the period of 2 years after the commencement of this Part (as inserted by the *Terrorism Legislation Amendment (Warrants) Act 2005*), the Ombudsman is to keep under scrutiny the exercise of powers conferred on members of NSW Police, the Crime Commissioner and members of staff of the New South Wales Crime Commission by this Part.
- (2) For that purpose, the Ombudsman may require the Commissioner of Police, the Crime Commissioner or the Director-General of the Attorney General's Department to provide information about the exercise of those powers.

- (3) The Ombudsman must, as soon as practicable after the expiration of that 2-year period, prepare a report on the exercise of those powers and furnish a copy of the report to the Minister, the Commissioner of Police and the Crime Commissioner.
- (4) The Minister is to lay (or cause to be laid) a copy of the report before both Houses of Parliament as soon as practicable after the Minister receives the report.
- (5) If a House of Parliament is not sitting when the Minister seeks to lay a report before it, the Minister may present copies of the report to the Clerk of the House concerned.
- (6) The report:
 - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and
 - (d) is to be recorded:
 - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
 - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

[2] Section 29A

Insert after section 29:

29A Ministerial arrangements for things seized in connection with extra-territorial offences

The Minister may enter into arrangements with a Minister of the Commonwealth under which:

- (a) things seized under this Act that may be relevant to the investigation of an offence against the law of the Commonwealth:
 - (i) are to be transmitted to the Commissioner of the Australian Federal Police for the purposes of the investigation of, or proceedings in respect of, that offence, and
 - (ii) when no longer required for the purposes of any such investigation or proceedings, are (unless

disposed of by order or direction of a court or Magistrate) to be returned to the Commissioner of Police or (if the things have been seized by a member of staff of the New South Wales Crime Commission) the Commissioner for the New South Wales Crime Commission, and

- (b) things seized under the law of the Commonwealth that may be relevant to the investigation of an offence against the law of this State:
 - (i) are to be transmitted to the Commissioner of Police, and
 - (ii) when no longer required for the purposes of the investigation of an offence, or proceedings in respect of an offence, are (unless disposed of by order or direction of a court or Magistrate) to be returned to the Commissioner of the Australian Federal Police.

[3] Section 36 Review of Act

Insert after section 36 (1):

- (1A) For the purpose of the review, the Minister may require the Commissioner of Police or the Commissioner for the New South Wales Crime Commission to provide information about the exercise of functions in respect of covert search warrants under this Act by members of NSW Police, members of the Crime Commission or members of staff of the Crime Commission.

Schedule 2 Consequential amendments to Terrorism (Police Powers) Act 2002

(Section 3)

[1] **Section 4 Other definitions**

Omit the definitions of *authorisation*, *recognised law enforcement officer* and *target* from section 4 (1).

[2] **Section 4 (1)**

Insert in alphabetical order:

exercise a function includes perform a duty.

function includes a power or duty.

occupier of premises includes a person in charge of the premises.

[3] **Section 4 (2)**

Omit the subsection.

[4] **Section 4A**

Insert after section 4:

4A Extraterritoriality of terrorist act no barrier

To avoid doubt, functions conferred by this Act in relation to a terrorist act may be exercised whether or not the terrorist act has been, is being, or is likely to be committed in New South Wales.

[5] **Part 2**

Insert after Part 1:

Part 2 Special powers

Division 1 Preliminary

4B Interpretation

(1) In this Part:

authorisation means an authorisation given under this Part in accordance with Division 2.

recognised law enforcement officer means a person appointed under Division 4.

target of an authorisation—see section 7 (2).

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- (2) For the purposes of this Part:
- (a) a person in an area that is the target of an authorisation includes a person who is about to enter the area or who has recently left the area, and
 - (b) a vehicle in an area that is the target of an authorisation includes a vehicle that is about to enter the area or that has recently left the area.

[6] Parts 2–4

Renumber as Divisions 2–4 of Part 2 (as inserted by item [5]).

[7] Sections 5, 6, 8 (2), 11 (3), 13 (1), 15, 19A (1), 20 (1), 21, 22, 23 (1), 24 (5) and 26

Omit “this Part” wherever occurring. Insert instead “this Division”.

[8] Sections 5–7, 10 (3) (a), 14 (and the note to the section), 14A (1), 15, 23 (2), 24 (1) and 25 (1)

Omit “this Act” wherever occurring. Insert instead “this Part”.

[9] Section 14, note

Omit “Part 4”. Insert instead “Division 4”.

[10] Part 2 (as inserted by item [5]), Division 3 (as renumbered by item [6])

Omit “Special powers” from the heading. Insert instead “Powers”.

[11] Section 26 Report to be given to Attorney General and Police Minister

Renumber section 26 as section 14B and transfer to the end of Division 2 of Part 2 (as renumbered by item [6]).

[12] Part 5 Miscellaneous

Renumber as Part 4.

[13] Section 27 Return of seized things

Omit “special” from section 27 (1).

[14] Section 27 (1) (a)

Omit “as evidence”.

[15] Section 28 Disposal of property on application to court

Omit “special” from section 28 (1).

[16] Section 29 Protection of police acting in execution of Part 2 authorisation

Omit “this Act”. Insert instead “Part 2”.

[17] Section 35

Insert after section 34:

35 Savings and transitional provisions

Schedule 2 has effect.

[18] Schedule 2

Insert after Schedule 1:

Schedule 2 Savings and transitional provisions

(Section 35)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
Terrorism Legislation Amendment (Warrants) Act 2005
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provision consequent on enactment of Terrorism Legislation Amendment (Warrants) Act 2005

2 Covert search warrants

Part 3 of this Act (as inserted by the *Terrorism Legislation Amendment (Warrants) Act 2005*) applies in relation to a terrorist act, whether committed before or after the commencement of that Part.

Schedule 3 Amendment of Listening Devices Act 1984

(Section 4)

[1] Section 16 Warrants authorising use of listening devices

Insert “or, if the offence is a terrorism offence, 90 days” after “days” in section 16 (4) (c).

[2] Section 16 (8)

Insert after section 16 (7):

(8) In this section:

terrorism offence means an offence under Part 6B of the *Crimes Act 1900* or an offence against section 101.1, 101.2, 101.4, 101.5, 101.6, 102.2, 102.3, 102.4, 102.5, 102.6, 102.7 or 103.1 of the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth.

Schedule 4 Amendment of Crimes Act 1900

(Section 5)

Part 6B

Insert after Part 6A:

Part 6B Terrorism

Note. This Part is to be repealed on the second anniversary of its commencement.

310I Definitions

In this Part:

Commonwealth Criminal Code means the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth.

terrorist organisation and *member of a terrorist organisation* have the meaning they are given by section 102.1 of the Commonwealth Criminal Code.

310J Membership of terrorist organisation

- (1) A person commits an offence if:
 - (a) the person intentionally is a member of a terrorist organisation, and
 - (b) the organisation is a terrorist organisation, and
 - (c) the person knows the organisation is a terrorist organisation.

Maximum penalty: Imprisonment for 10 years.

- (2) Subsection (1) does not apply if the person proves that he or she took all reasonable steps to cease to be a member of the organisation as soon as practicable after the person knew that the organisation was a terrorist organisation.

310K Multiplicity of offences

If:

- (a) an act or omission is an offence against both this Part and the Commonwealth Criminal Code, and

Terrorism Legislation Amendment (Warrants) Act 2005 No 54

Schedule 4 Amendment of Crimes Act 1900

- (b) the offender has been punished for that offence under the Commonwealth Criminal Code,
the offender is not liable to be punished for the offence under this Part.

[Second reading speech made in—
Legislative Assembly on 9 June 2005
Legislative Council on 22 June 2005]

BY AUTHORITY