



New South Wales

Terrorism (Police Powers) Regulation 2016

under the

Terrorism (Police Powers) Act 2002

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Terrorism (Police Powers) Act 2002*.

GABRIELLE UPTON, MP
Attorney General

Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *Terrorism (Police Powers) Regulation 2011*, which is repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) the delegation of functions by the Commissioner of Police,
- (b) the keeping and inspection of documents relating to covert search warrants,
- (c) the certification of documents or parts of documents that are not to be made available for inspection,
- (d) the approval of forms by the Attorney General,
- (e) the provisions of, or made under, the *Crimes (Administration of Sentences) Act 1999* that do not apply in respect of a person detained in a correctional centre when the person is detained under a preventative detention order,
- (f) savings and formal matters.

This Regulation is made under the *Terrorism (Police Powers) Act 2002*, including sections 26X (3), 27E (2), 27L (2) and 32 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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1 Name of Regulation

This Regulation is the *Terrorism (Police Powers) Regulation 2016*.

2 Commencement

This Regulation commences on 1 September 2016 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Terrorism (Police Powers) Regulation 2011*, which is repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

eligible Judge has the same meaning as in Part 3 of the Act.

the Act means the *Terrorism (Police Powers) Act 2002*.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Delegation of powers to give authorisation

For the purposes of section 27E (2) of the Act, the following positions are prescribed:

- (a) the Assistant Commissioner responsible for counter terrorism,
- (b) the Assistant Commissioner responsible for counter terrorism investigations.

5 Keeping and inspection of records

(1) For the purposes of section 27L (2) of the Act, the following documents must be kept in relation to each covert search warrant that is issued:

- (a) any written application for the warrant,
- (b) any record relating to the warrant made by or on behalf of an eligible Judge,
- (c) a copy of any occupier's notice,
- (d) any report on the execution of the warrant.

(2) During the hours that the Supreme Court registry is open to the public, the documents may be inspected by the occupier of the premises to which the covert search warrant relates or by any other person who is given an occupier's notice relating to the warrant under the Act.

6 Certified records not available for inspection

(1) An eligible Judge may at any time issue a certificate to the effect that the Judge is satisfied that:

- (a) a document or part of a document referred to in clause 5 contains matter:
 - (i) that could disclose a person's identity, and

- (ii) that, if disclosed, would be likely to jeopardise that or any other person's safety, or
 - (b) a document or part of a document referred to in clause 5 contains matter that, if disclosed, may seriously compromise the investigation of any matter.
- (2) The document or part of the document to which the certificate relates is not to be made available for inspection under clause 5 (2).
- (3) The certificate is to be kept with the document to which it relates.
- (4) An eligible Judge (whether or not the Judge who issued the certificate) may revoke the certificate if satisfied (after consideration of submissions from any interested party) that disclosure of the matter to which it relates is no longer likely to jeopardise any person's safety or seriously compromise the investigation of any matter.

7 Approved forms

The Attorney General may approve such forms as may be necessary or convenient for the administration of the Act.

8 Exclusion of certain provisions

For the purposes of section 26X (3) of the Act, the following provisions are excluded:

- (a) sections 19–22, 25–38, 41C, 41D, 47–50, 66–71 and 228 of the *Crimes (Administration of Sentences) Act 1999*,
- (b) clauses 5 (f), 20–31, 64, 66, 74–86, 110–118, 165–167 and 169 (to the extent that it would enable an inmate to speak to the Official Visitor) of, and items 6 and 7 of Schedule 1 to, the *Crimes (Administration of Sentences) Regulation 2014*,
- (c) any regulation made under section 79 (i)–(l) of the *Crimes (Administration of Sentences) Act 1999*.

9 Savings

Any act, matter or thing that, immediately before the repeal of the *Terrorism (Police Powers) Regulation 2011*, had effect under that Regulation continues to have effect under this Regulation.