



New South Wales

Terrorism (Police Powers) Regulation 2021

under the

Terrorism (Police Powers) Act 2002

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

MARK SPEAKMAN, MP

Attorney General, and Minister for Prevention of Domestic and Sexual Violence

Explanatory note

The object of this Regulation is to repeal and remake, without substantial changes, the provisions of the *Terrorism (Police Powers) Regulation 2016*, which would otherwise be repealed on 1 September 2021 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation provides for the following—

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

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, 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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Terrorism (Police Powers) Regulation 2021

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1 Name of Regulation

This Regulation is the *Terrorism (Police Powers) Regulation 2021*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note— This Regulation repeals and replaces the *Terrorism (Police Powers) Regulation 2016*, which would otherwise be repealed on 1 September 2021 by the *Subordinate Legislation Act 1989*, section 10(2).

3 Definitions

In this Regulation—

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

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

Note— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

4 Detainees under preventative detention orders—exclusion of certain provisions

For the purposes of the Act, section 26X(3), the subject is excluded from the application of the following provisions—

- (a) the *Crimes (Administration of Sentences) Act 1999*, sections 19–22, 25–38, 41C, 41D, 47–50, 66–71 and 228,
- (b) the *Crimes (Administration of Sentences) Regulation 2014*, clauses 5(f), 20–32, 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, and Schedule 1, items 6 and 7,
- (c) provisions of a regulation made under the *Crimes (Administration of Sentences) Act 1999*, section 79(1)(i)–(l).

5 Covert search warrants—delegates who may authorise applications for warrants

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

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

6 Covert search warrants—keeping and inspection of records

- (1) For the purposes of the Act, section 27L(2), the following records must be kept—
 - (a) a written application for a covert search warrant,
 - (b) a record relating to the warrant made by or on behalf of an eligible Judge,

- (c) a copy of an occupier's notice,
 - (d) a report on the execution of the warrant.
- (2) The records must be made available, at the Supreme Court registry, for inspection by the following persons during the ordinary business hours of the registry—
- (a) a person who, when the warrant was executed, occupied the premises to which the warrant relates,
 - (b) another person who is given an occupier's notice relating to the warrant under the Act.

7 Covert search warrants—certified records unavailable for inspection

- (1) An eligible Judge may, at any time, issue a certificate to the effect that the Judge is satisfied that a document or part of a document referred to in section 6 contains matter that—
- (a) may disclose a person's identity which, if disclosed, may jeopardise the safety of the person or another person, or
 - (b) if disclosed, may seriously compromise the investigation of a matter.
- (2) The document or part of the document to which the certificate relates must not be made available for inspection under section 6(2).
- (3) The certificate must 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 considering submissions from an interested party, that disclosure of the matter to which it relates—
- (a) may not jeopardise a person's safety, or
 - (b) may no longer seriously compromise the investigation of a matter.

8 Attorney General may approve forms

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

9 Repeal and saving

- (1) The *Terrorism (Police Powers) Regulation 2016* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Terrorism (Police Powers) Regulation 2016*, had effect under that Regulation continues to have effect under this Regulation.