



New South Wales

# Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Surveillance Devices Amendment (Statutory Review) Bill 2018*.

## Overview of Bill

The object of this Bill is to amend the *Terrorism (Police Powers) Act 2002* (the *Act*) to give effect to the recommendations arising from a statutory review of the Act (the *review*) that was tabled in Parliament on 7 June 2018.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

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

### Definition of “terrorist act”

The Bill retains the Act’s current definition of *terrorist act*. This gives effect to recommendation 1 of the review.

### Alignment of safeguards with LEPRA (Part 2)

**Schedule 1 [1]** notes that the safeguards in Part 15 of the *Law Enforcement (Powers and Responsibilities) Act 2002* apply to the exercise by police of the special powers under Part 2,

Division 3 (Powers) of the *Terrorism (Police Powers) Act 2002*. This gives effect to recommendation 2 of the review. **Schedule 1 [2] and [4]** make consequential amendments.

#### **Annual reporting on exercise of special powers by police (Part 2)**

**Schedule 1 [5]** requires the Commissioner of Police to report annually to the Attorney General and the Minister for Police on the exercise of powers under Part 2 (Special powers) of the Act. This gives effect to recommendation 3 of the review.

#### **Annual reporting on declarations authorising police use of force (Part 2AAA)**

**Schedule 1 [6]** requires the Commissioner of Police to report annually to the Attorney General and the Minister for Police on the number of declarations made under Part 2AAA (Police use of force—ongoing terrorist acts) of the Act. This gives effect to recommendation 4 of the review.

#### **Legal aid for terrorism suspects under investigative detention (Part 2AA)**

**Schedule 1 [11] (proposed section 25MB)** enables the Supreme Court to order that a terrorism suspect be provided legal aid in connection with proceedings relating to the terrorism suspect's investigative detention. This gives effect to recommendation 5 of the review.

#### **Humane treatment of terrorism suspects under investigative detention (Part 2AA)**

**Schedule 1 [11] (proposed section 25MC)** requires a terrorism suspect who is under investigative detention to be treated with humanity and respect for human dignity and not to be subjected to cruel, inhuman or degrading treatment. This gives effect to recommendation 6 of the review.

#### **Informing terrorism suspects of their rights (Part 2AA)**

**Schedule 1 [11] (proposed section 25MA)** requires the police officer who is detaining a terrorism suspect for the purpose of investigation to inform the terrorism suspect of his or her rights to contact a lawyer (under **proposed section 25MD**) and to contact the Law Enforcement Conduct Commission. This gives effect to recommendation 7 of the review. Terrorism suspects already have the right to be given a copy of a detention warrant under section 25I (7) (a) of the Act. **Schedule 1 [16]** makes a consequential amendment.

#### **Postponed sunset of preventative detention order scheme (Part 2A)**

**Schedule 1 [23]** extends the operation of Part 2A (Preventative detention orders) of the Act so that existing preventative detention orders can continue to have effect, and new orders can continue to be applied for and made, until 16 December 2021 (instead of 16 December 2018). This gives effect to recommendation 8 of the review.

#### **Recording injury and illness of detainees (Parts 2AA and 2A)**

**Schedule 1 [9] and [21]** enable a police officer to take photographs, or make video recordings, of a detainee to document an illness or injury suffered by the detainee while being detained. This gives effect to recommendation 9 of the review. **Schedule 1 [20]** makes a consequential amendment.

#### **Informing detainees that contact will be monitored (Parts 2AA and 2A)**

**Schedule 1 [10] and [19]** require a police officer to inform a detainee that contact between the detainee and others will be monitored. This gives effect to recommendation 10 of the review.

#### **Alignment of search requirements with LEPR (Parts 2 and 2AA)**

**Schedule 1 [3] and [14]** apply the provisions relating to personal searches under the *Law Enforcement (Powers and Responsibilities) Act 2002* to searches under the *Terrorism (Police Powers) Act 2002*. This gives effect to recommendation 11 of the review. **Schedule 1 [26]** makes a consequential amendment.

### **Contact rights for underage and intellectually impaired detainees (Part 2A)**

**Schedule 1 [17]** increases, from 2 hours to 4 hours, the minimum daily period during which a child, or a person with impaired intellectual functioning, who is subject to a preventative detention order may have contact with a parent or other person. **Schedule 1 [18]** requires police to offer such a detainee further assistance and information in relation to the detainee's contact rights. This gives effect to recommendation 12 of the review.

### **Providing information to Law Enforcement Conduct Commission (Parts 2A and 3)**

**Schedule 1 [22] and [25]** require the Commissioner of Police to provide information to the Law Enforcement Conduct Commission, but allow the Commissioner to provide it subject to conditions aimed at preventing sensitive information being accessed or made public. The amendments also enable limited redaction or withholding of information. This gives effect to recommendation 13 of the review.

### **Other amendments**

**Schedule 1 [7], [8] and [13]** insert clarifying headings.

**Schedule 1 [12]** updates a cross-reference.

**Schedule 1 [15] and [24]** update the title of a position and the name of a Department.



New South Wales

# Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018

## Contents

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		Page
	1 Name of Act	2
	2 Commencement	2
<b>Schedule 1</b>	<b>Amendment of Terrorism (Police Powers) Act 2002 No 115</b>	<b>3</b>



New South Wales

# Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018

No. , 2018

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## **A Bill for**

An Act to amend the *Terrorism (Police Powers) Act 2002* to give effect to the recommendations arising from a statutory review of that Act.

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

1

**1 Name of Act**

2

This Act is the *Terrorism (Police Powers) Amendment (Statutory Review) Act 2018*.

3

**2 Commencement**

4

This Act commences on the date of assent to this Act.

5

<b>Schedule 1</b>	<b>Amendment of Terrorism (Police Powers) Act 2002 No 115</b>	1
		2
<b>[1] Part 2, Division 3, note</b>		3
Insert after the heading to the Division:		4
	<b>Note.</b> Part 15 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> sets out safeguards relating to the exercise of powers under this Division.	5
		6
<b>[2] Section 16 Power to obtain disclosure of identity</b>		7
Omit the note from the end of the section.		8
<b>[3] Section 17 Power to search persons</b>		9
Omit section 17 (2). Insert instead:		10
	(2) Division 4 of Part 4 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> extends to the search of a person conducted under this section. However, in addition to section 31 of that Act, a police officer may only strip search a person under this section if the police officer suspects on reasonable grounds that the person is the target of an authorisation.	11
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		14
		15
<b>[4] Section 23</b>		16
Omit the section. Insert instead:		17
	<b>23 Statement regarding search</b>	18
	The Commissioner of Police is to arrange for a written statement to be provided, on request made within 12 months of the search, to a person who was searched, or whose vehicle or premises were searched, under this Part stating that the search was conducted in pursuance of this Part. The written statement is to be provided within 30 days of the request being made.	19
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		23
<b>[5] Part 2, Division 4</b>		24
Insert after Division 3:		25
	<b>Division 4 Miscellaneous</b>	26
	<b>24 Annual reports to be given to Attorney General and Police Minister</b>	27
	(1) The Commissioner of Police must report annually on the exercise of powers under this Part by police officers.	28
		29
	(2) Each report is to be provided, within 4 months after each 30 June, to the Police Minister and the Attorney General.	30
		31
	(3) The report is to specify the following matters in relation to the year ended on that 30 June:	32
		33
	(a) the number of authorisations given under this Part,	34
	(b) the powers exercised under each authorisation given under this Part.	35
	(4) The report may be combined with any other annual report of the NSW Police Force.	36
		37
	(5) The report is to be tabled in each House of Parliament as soon as practicable after it is received by the Attorney General.	38
		39

<b>[6] Section 25</b>	1
Insert after section 24B:	2
<b>25 Annual reports to be given to Attorney General and Police Minister</b>	3
(1) The Commissioner of Police must report annually on the number of declarations made under this Part in relation to each year ended on 30 June.	4 5
(2) Each report is to be provided, within 4 months after each 30 June, to the Police Minister and the Attorney General.	6 7
(3) The report may be combined with any other annual report of the NSW Police Force.	8 9
(4) The report is to be tabled in each House of Parliament as soon as practicable after it is received by the Attorney General.	10 11
<b>[7] Part 2AA, Division 1, heading</b>	12
Insert after the heading to Part 2AA:	13
<b>Division 1 Preliminary</b>	14
<b>[8] Part 2AA, Division 2, heading</b>	15
Insert after section 25D:	16
<b>Division 2 Investigative detention powers and detention warrants</b>	17
<b>[9] Section 25GA</b>	18
Insert after section 25G:	19
<b>25GA Taking photographs and video recordings of injury and illness</b>	20
(1) A police officer who is of the rank of sergeant or higher may take a photograph, or make a video recording, of a terrorism suspect, or cause a photograph of the terrorism suspect to be taken, or a video recording of the terrorism suspect to be made, if the police officer believes on reasonable grounds that it is necessary to do so for the purpose of documenting an illness or injury suffered by the terrorism suspect while under investigative detention.	21 22 23 24 25 26
(2) The photograph or video recording may only be used:	27
(a) for the purpose for which it is taken or made, or	28
(b) in connection with a complaint about, an investigation into, or any proceedings (including civil or criminal proceedings) that relate to, police misconduct.	29 30 31
(3) A person who uses a photograph or video recording in contravention of subsection (2) is guilty of an offence. Maximum penalty: Imprisonment for 2 years.	32 33 34
(4) As soon as practicable after 12 months elapses from the taking of the photograph, or the making of the video recording, the Commissioner of Police is to ensure that the photograph or video recording is destroyed if proceedings in respect of either of the following have not been brought, or have been brought and discontinued or completed:	35 36 37 38 39
(a) the investigative detention,	40
(b) the treatment of the terrorism suspect in connection with the investigative detention.	41 42



<b>[10] Section 25L Monitoring contact with family members and others (except legal representatives)</b>	1
	2
Insert after section 25L (4):	3
(5) The police officer who is detaining the terrorism suspect must, before the contact takes place, inform the terrorism suspect, and any person with whom the terrorism suspect has contact, that the contact (whether it takes place by telephone, by audiovisual link or in person) will be monitored.	4
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<b>[11] Part 2AA, Division 3</b>	8
Insert after section 25M:	9
<b>Division 3      Safeguards</b>	10
<b>25MA Matters to be explained to terrorism suspect</b>	11
As soon as practicable after a terrorism suspect is arrested for the purpose of investigative detention under this Part, the police officer who is detaining the terrorism suspect must inform the terrorism suspect of the following:	12
	13
	14
(a) any right the person has to complain to the Law Enforcement Conduct Commission in accordance with the <i>Law Enforcement Conduct Commission Act 2016</i> ,	15
	16
	17
(b) the person's entitlement under section 25MD to contact a lawyer.	18
<b>25MB Supreme Court may order provision of legal aid</b>	19
(1) This section applies to any proceedings before the Supreme Court that relate to a detention warrant.	20
	21
(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:	22
	23
	24
(a) a terrorism suspect in relation to whom a detention warrant is being sought, or	25
	26
(b) a terrorism suspect who is subject to a detention warrant.	27
(3) If the Supreme Court makes an order under subsection (2), the police officer who is detaining the terrorism suspect must give the terrorism suspect reasonable assistance to enable the terrorism suspect to contact the Legal Aid Commission to obtain the legal aid.	28
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	31
<b>25MC Humane treatment of terrorism suspect under investigative detention</b>	32
(1) A terrorism suspect who is under investigative detention:	33
(a) must be treated with humanity and with respect for human dignity, and	34
(b) must not be subjected to cruel, inhuman or degrading treatment,	35
by anyone exercising authority under the investigative detention or implementing or enforcing the investigative detention.	36
	37
(2) A person who contravenes subsection (1) is guilty of an offence.	38
Maximum penalty: Imprisonment for 2 years.	39
<b>25MD Contacting lawyer</b>	40
(1) A terrorism suspect who is under investigative detention is entitled to contact a lawyer but solely for the purpose of:	41
	42

- (a) obtaining advice from the lawyer about the terrorism suspect's legal rights in relation to:
    - (i) the investigative detention, or
    - (ii) the treatment of the terrorism suspect in connection with the investigative detention, or
  - (b) arranging for the lawyer to act for the terrorism suspect, and instructing the lawyer, in relation to proceedings in the Supreme Court relating to the issue of a detention warrant in relation to the terrorism suspect, or
  - (c) arranging for the lawyer to act for the person, and instructing the lawyer, in relation to any other proceedings in a court for a remedy relating to:
    - (i) the investigative detention, or
    - (ii) the treatment of the terrorism suspect in connection with the investigative detention, or
  - (d) arranging for the lawyer to act for the terrorism suspect, and instructing the lawyer, in relation to a complaint to the Law Enforcement Conduct Commission in accordance with the *Law Enforcement Conduct Commission Act 2016*, or
  - (e) arranging for the lawyer to act for the terrorism suspect in relation to an appearance, or hearing, before a court that is to take place while the terrorism suspect is under investigative detention.
- (2) The form of contact the terrorism suspect is entitled to have with a lawyer under subsection (1) includes:
- (a) being visited by the lawyer, and
  - (b) communicating with the lawyer by telephone.
- (3) The police officer who is detaining the terrorism suspect must give the terrorism suspect reasonable assistance to choose another lawyer for the terrorism suspect to contact under subsection (1) if:
- (a) the terrorism suspect asks to be allowed to contact a particular lawyer under subsection (1), and
  - (b) either:
    - (i) the terrorism suspect is not entitled to contact that lawyer because of a prohibited contact direction, or
    - (ii) the terrorism suspect is not able to contact that lawyer.
- (4) Without limiting the assistance that may be given to the terrorism suspect under subsection (3), the police officer may refer the terrorism suspect to the Legal Aid Commission.
- (5) The police officer who is detaining the terrorism suspect must give the terrorism suspect reasonable assistance (including, if appropriate, by arranging for the assistance of an interpreter) to choose and contact a lawyer under subsection (1) if the police officer has reasonable grounds to believe that:
- (a) the terrorism suspect is unable, because of inadequate knowledge of the English language or a disability, to communicate with reasonable fluency in that language, and
  - (b) the terrorism suspect may have difficulties in choosing or contacting a lawyer because of that inability.
- (6) In recommending lawyers to the terrorism suspect as part of giving the terrorism suspect assistance under subsection (3), the police officer who is

	detaining the terrorism suspect may give priority to lawyers who have been given a security clearance at an appropriate level by the Commonwealth.	1 2
(7)	Despite subsection (6) but subject to any prohibited contact direction, the terrorism suspect is entitled under this section to contact a lawyer who does not have a security clearance of the kind referred to in subsection (6).	3 4 5
(8)	The police officer who is detaining the terrorism suspect must, before any contact with a lawyer takes place, inform the terrorism suspect, and the lawyer, that the contact (whether it takes place by telephone, by audiovisual link or in person) will be monitored.	6 7 8 9
<b>[12]</b>	<b>Section 25N Additional safeguards for detained persons</b>	10
	Omit “ <i>Law Enforcement (Powers and Responsibilities) Regulation 2005</i> ” from the note to the section.	11 12
	Insert instead “ <i>Law Enforcement (Powers and Responsibilities) Regulation 2016</i> ”.	13
<b>[13]</b>	<b>Part 2AA, Division 4, heading</b>	14
	Insert after section 25O:	15
	<b>Division 4      Miscellaneous</b>	16
<b>[14]</b>	<b>Section 26V Power to search persons for seizable items</b>	17
	Omit section 26V (5). Insert instead:	18
(5)	Division 4 of Part 4 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> extends to the search of a person conducted under this section. However, in addition to section 31 of that Act, a police officer may only strip search a person under this section if the police officer suspects on reasonable grounds that the person is the target of an authorisation within the meaning of Part 2.	19 20 21 22 23
<b>[15]</b>	<b>Section 26X Arrangement for detainee to be held in prison</b>	24
	Omit “Director-General of the Department of Juvenile Justice” from section 26X (5).	25
	Insert instead “Secretary of the Department of Justice”.	26
<b>[16]</b>	<b>Section 26ZG Contacting lawyer</b>	27
	Omit “the Attorney-General’s Department of” from section 26ZG (5).	28
<b>[17]</b>	<b>Section 26ZH Special contact rules for person under 18 or with impaired intellectual functioning</b>	29 30
	Omit “2 hours” from section 26ZH (5) (a). Insert instead “4 hours”.	31
<b>[18]</b>	<b>Section 26ZH (8) and (9)</b>	32
	Insert after section 26ZH (7):	33
(8)	Without limiting subsection (7), the police officer who is detaining a person under a preventative detention order is to assist in locating any person with whom the person being detained is entitled to have contact under this Division.	34 35 36
(9)	If the person being detained under a preventative detention order is not entitled to have contact with another person because the other person is not acceptable to the police officer who is detaining the person, the police officer must:	37 38 39
(a)	give the person being detained reasons the other person is not acceptable to the police officer (unless doing so would result in the	40 41

	disclosure of criminal intelligence within the meaning of section 25K), and	1 2
	(b) give the person being detained an opportunity to nominate another person with whom the person being detained is entitled to have contact, and	3 4 5
	(c) offer the person being detained, as an alternative to contact with any other person who is not acceptable to the police officer, a person who has specialist expertise in working with children and young people and, if appropriate in the circumstances, with culturally and linguistically diverse communities.	6 7 8 9 10
<b>[19]</b>	<b>Section 26ZI Monitoring contact with family members, lawyers etc under sections 26ZE, 26ZG, 26ZGA and 26ZH</b>	11 12
	Insert after section 26ZI (4):	13
	(4A) The police officer who is detaining the person must, before the contact takes place, inform the person being detained, and any person with whom the person being detained has contact, that the contact (whether it takes place by telephone, by audiovisual link or in person) will be monitored.	14 15 16 17
<b>[20]</b>	<b>Section 26ZL Taking fingerprints, recordings, samples of handwriting or photographs</b>	18 19
	Insert “or section 26ZLA” after “this section” in section 26ZL (2).	20
<b>[21]</b>	<b>Section 26ZLA</b>	21
	Insert after section 26ZL:	22
	<b>26ZLA Taking photographs and video recordings of injury and illness</b>	23
	(1) A police officer who is of the rank of sergeant or higher may take a photograph, or make a video recording, of a person who is being detained under a preventative detention order, or cause a photograph of the person to be taken, or a video recording of the person to be made, if the police officer believes on reasonable grounds that it is necessary to do so for the purpose of documenting an illness or injury suffered by the person while being detained under the order.	24 25 26 27 28 29 30
	(2) The photograph or video recording may only be used:	31
	(a) for the purpose for which it is taken or made, or	32
	(b) in connection with a complaint about, an investigation into, or any proceedings (including civil or criminal proceedings) that relate to, police misconduct.	33 34 35
	(3) A person who uses a photograph or video recording in contravention of subsection (2) is guilty of an offence. Maximum penalty: Imprisonment for 2 years.	36 37 38
	(4) As soon as practicable after 12 months elapses from the taking of the photograph, or the making of the video recording, the Commissioner of Police is to ensure that the photograph or video recording is destroyed if proceedings in respect of either of the following have not been brought, or have been brought and discontinued or completed:	39 40 41 42 43
	(a) the preventative detention order,	44
	(b) the treatment of the person in connection with the person’s detention under the order.	45 46

<b>[22] Section 26ZO Monitoring by Law Enforcement Conduct Commission</b>	1
Insert after section 26ZO (2):	2
(2A) The Commissioner of Police must provide the information required by the Law Enforcement Conduct Commission, but may provide it subject to any one or more of the following conditions:	3
(a) that any officer of the Commission (within the meaning of the <i>Law Enforcement Conduct Commission Act 2016</i> ) who is to have access to the information has been given a security clearance at an appropriate level by the Commonwealth,	4
(b) that the information is not made public by the Commission without consulting the Commissioner of Police on whether making the information public would reveal police methodology or ongoing operations, or would jeopardise relevant information-sharing relationships,	5
(c) in the case of information of particular sensitivity identified by the Commissioner of Police, that only Commissioners of the Commission are to have access to the information.	6
(2B) The Commissioner of Police may only redact or withhold information required by the Law Enforcement Conduct Commission for either or both of the following reasons, and must specify when and the reason the information is redacted or withheld:	7
(a) the information identifies an informant or a police officer operating covertly,	8
(b) provision of the information contravenes a law of the Commonwealth.	9
<b>[23] Section 26ZS Sunset provision</b>	10
Omit “16 December 2018” wherever occurring. Insert instead “16 December 2021”.	11
<b>[24] Section 27ZC Monitoring by Law Enforcement Conduct Commission</b>	12
Omit “Director-General of the Attorney General’s Department” from section 27ZC (2).	13
Insert instead “Secretary of the Department of Justice”.	14
<b>[25] Section 27ZC (2A) and (2B)</b>	15
Insert after section 27ZC (2):	16
(2A) The Commissioner of Police must provide the information required by the Law Enforcement Conduct Commission, but may provide it subject to any one or more of the following conditions:	17
(a) that any officer of the Commission (within the meaning of the <i>Law Enforcement Conduct Commission Act 2016</i> ) who is to have access to the information has been given a security clearance at an appropriate level by the Commonwealth,	18
(b) that the information is not made public by the Commission without consulting the Commissioner of Police on whether making the information public would reveal police methodology or ongoing operations, or would jeopardise relevant information-sharing relationships,	19
(c) in the case of information of particular sensitivity identified by the Commissioner of Police, that only Commissioners of the Commission are to have access to the information.	20

- (2B) The Commissioner of Police may only redact or withhold information required by the Law Enforcement Conduct Commission for either or both of the following reasons, and must specify when and the reason the information is redacted or withheld:
- (a) the information identifies an informant or a police officer operating covertly,
  - (b) provision of the information contravenes a law of the Commonwealth.

**[26] Schedule 1 Conduct of personal searches** 8  
Omit the Schedule. 9