

Terrorism (Police Powers) Act 2002 No 115

[2002-115]



New South Wales

Status Information

Currency of version

Historical version for 13 September 2005 to 15 December 2005 (accessed 28 November 2024 at 3:54)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
 - [Terrorism Legislation Amendment \(Warrants\) Act 2005 No 54](#), sec 6 (1) (not commenced — to commence on the second anniversary of the commencement of sec 5 of that Act)
 - [Terrorism \(Police Powers\) Amendment \(Preventative Detention\) Act 2005 No 114](#) (not commenced)

Authorisation

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File last modified 7 December 2005

Terrorism (Police Powers) Act 2002 No 115



New South Wales

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Terrorism (Police Powers) Act 2002 No 115



New South Wales

An Act to give special powers to police officers to deal with terrorist acts; to amend the *State Emergency and Rescue Management Act 1989* to give police officers additional powers to protect people in emergencies; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Terrorism (Police Powers) Act 2002*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definition of “terrorist act”

(1) **General** In this Act, **terrorist act** means an action where:

- (a) the action falls within subsection (2) and does not fall within subsection (3), and
- (b) the action is done with the intention of advancing a political, religious or ideological cause, and
- (c) the action is done with the intention of:
 - (i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country, or
 - (ii) intimidating the public or a section of the public.

(2) **Action included** Action falls within this subsection if it:

- (a) causes serious harm that is physical harm to a person, or
- (b) causes serious damage to property, or
- (c) causes a person’s death, or
- (d) endangers a person’s life, other than the life of the person taking the action, or

- (e) creates a serious risk to the health or safety of the public or a section of the public, or
- (f) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to:
 - (i) an information system, or
 - (ii) a telecommunications system, or
 - (iii) a financial system, or
 - (iv) a system used for the delivery of essential government services, or
 - (v) a system used for, or by, an essential public utility, or
 - (vi) a system used for, or by, a transport system.

(3) **Action excluded** Action falls within this subsection if it:

- (a) is advocacy, protest, dissent or industrial action, and
- (b) is not intended:
 - (i) to cause serious harm that is physical harm to a person, or
 - (ii) to cause a person's death, or
 - (iii) to endanger the life of a person, other than the person taking the action, or
 - (iv) to create a serious risk to the health or safety of the public or a section of the public.

(4) **Application** In this section:

- (a) a reference to any person or property is a reference to any person or property wherever situated, within or outside the State (including within or outside Australia), and
- (b) a reference to the public includes a reference to the public of another State or Territory or of a country other than Australia.

Note—

The above definition is in the same terms as those used in Part 5.3 of the Commonwealth Criminal Code (as inserted by the [Security Legislation Amendment \(Terrorism\) Act 2002](#) of the Commonwealth), except that threats of terrorist acts are excluded since it is not necessary to refer to threats in the context in which the expression is used in this Act.

4 Other definitions

- (1) In this Act:

exercise a function includes perform a duty.

function includes a power or duty.

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

Police Minister means the Minister administering the *Police Act 1990*.

premises includes a building, structure or place, whether built on or not.

serious indictable offence means an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more.

vehicle includes a vessel or an aircraft.

(2) (Repealed)

(3) Notes included in this Act do not form part of this Act.

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.

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).

(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.

Division 2 Authorisation to exercise special powers

5 Authorisation of special powers to prevent terrorist acts

An authorisation for the exercise of the special powers conferred by this Part may be given in accordance with this Division if the police officer giving the authorisation:

- (a) is satisfied that there are reasonable grounds for believing that there is a threat of a terrorist act occurring in the near future, and
- (b) is satisfied that the exercise of those powers will substantially assist in preventing the terrorist act.

6 Authorisation of special powers to investigate terrorist act in the immediate period after its occurrence

An authorisation for the exercise of the special powers conferred by this Part may also be given in accordance with this Division if the police officer giving the authorisation:

- (a) is satisfied that there are reasonable grounds for believing that a terrorist act has been committed, and
- (b) is satisfied that the exercise of those powers will substantially assist in apprehending the persons responsible for committing the terrorist act.

7 Persons, vehicles or areas targeted by authorisation

(1) An authorisation may authorise the exercise of the special powers conferred by this Part:

- (a) for the purpose of finding a particular person named or described in the authorisation, or
- (b) for the purpose of finding a particular vehicle, or a vehicle of a particular kind, described in the authorisation, or
- (c) for the purpose of preventing a terrorist act in a particular area described in the authorisation (or apprehending in any such area the persons responsible for committing a terrorist act),

or for any combination of those purposes.

(2) The person, vehicle or area is referred to in this Part as the **target** of the authorisation.

(3) Without limiting subsection (1) (a), a person may be described by the use of a photograph or drawing.

8 Who may give an authorisation

(1) An authorisation may be given by the Commissioner of Police or by a Deputy Commissioner of Police.

- (2) If the Commissioner of Police or a Deputy Commissioner of Police is not able to be contacted when an authorisation is sought as a matter of urgency, a police officer above the rank of superintendent who is able to be contacted may give an authorisation in accordance with this Division.

9 Ministerial concurrence or confirmation

- (1) An authorisation may only be given with the concurrence of the Police Minister, except as provided by subsection (2).
- (2) An authorisation may be given without the concurrence of the Police Minister if he or she is not able to be contacted at the time it is given.
- (3) If the authorisation is given without the concurrence of the Police Minister:
 - (a) the Police Minister is to be notified of the authorisation as soon as the Police Minister is available to be notified, and
 - (b) in the case of an authorisation under section 5—the authorisation ceases to have effect if the Police Minister has not confirmed the authorisation within 48 hours after the authorisation was given.

Note—

The Police Minister may at any time direct that an authorisation be revoked—see section 12 (1).

10 Authorisation may be given orally or in writing

- (1) An authorisation may be given orally or by instrument in writing.
- (2) If the authorisation is given orally, it must be confirmed by instrument in writing as soon as it is reasonably practicable to do so.
- (3) An authorisation must:
 - (a) state that it is given under this Part, and
 - (b) describe the general nature of the threatened terrorist act or suspected terrorist act to which it applies, and
 - (c) name or describe the person, vehicle or area targeted by the authorisation, and
 - (d) specify the time it ceases to have effect.

11 Duration of authorisation

- (1) An authorisation given has effect, unless sooner revoked, during the period beginning at the time it is given and ending at the time specified in the authorisation.
- (2) The period an authorisation has effect must not exceed:

- (a) in the case of an authorisation under section 5—7 days beginning with the day on which it is given, or
 - (b) in the case of an authorisation under section 6—24 hours beginning with the time at which it is given.
- (3) The period an authorisation has effect may be extended by the giving of a further authorisation, with the concurrence of the Police Minister, in accordance with this Division so long as the combined period does not exceed:
- (a) in the case of an authorisation under section 5—14 days beginning with the day on which it was first given, or
 - (b) in the case of an authorisation under section 6—48 hours beginning with the time at which it was first given.

12 Revocation of authorisation

- (1) The police officer who gives an authorisation, or a police officer of a more senior rank, may revoke it at any time, and must revoke it if directed to do so by the Police Minister.
- (2) The cessation of an authorisation (by revocation or otherwise) does not affect anything lawfully done in reliance on the authorisation before it ceased to have effect.

13 Authorisation not open to challenge

- (1) An authorisation (and any decision of the Police Minister under this Division with respect to the authorisation) may not be challenged, reviewed, quashed or called into question on any grounds whatsoever before any court, tribunal, body or person in any legal proceedings, or restrained, removed or otherwise affected by proceedings in the nature of prohibition or mandamus.
- (2) For the purposes of subsection (1), **legal proceedings** includes an investigation into police or other conduct under any Act (other than the [Police Integrity Commission Act 1996](#)).

14 Exercise of special powers conferred by authorisation by police officers

- (1) The special powers conferred by this Part may be exercised by any police officer.
- (2) A police officer may exercise those powers whether or not the officer has been provided with or notified of the terms of the authorisation.

Note—

The special powers of a police officer under this Part may also be exercised by a recognised law enforcement officer as referred to in Division 4.

14A Power to give directions to government agencies

- (1) The Commissioner of Police or other police officer referred to in section 8 may, for the purposes of facilitating the exercise of the special powers conferred by this Part, give a government agency directions with respect to the exercise of the powers or functions of the agency.
- (2) The government agency is authorised and required to comply with the direction.
- (3) In this section:

government agency includes a government department, a public or local authority, a State owned corporation and any member or officer of any such department, authority or corporation, but does not include a parliamentary or judicial body or its members or officers.

14B Report to be given to Attorney General and Police Minister

As soon as practicable after an authorisation given under this Act ceases to have effect, the Commissioner of Police is to furnish a report, in writing, to the Attorney General and the Police Minister:

- (a) setting out the terms of the authorisation and the period during which it had effect, and
- (b) identifying as far as reasonably practicable the matters that were relied on for giving the authorisation, and
- (c) describing generally the powers exercised pursuant to the authorisation and the manner in which they were exercised, and
- (d) specifying the result of the exercise of those powers.

Division 3 Powers

15 Purposes for which special powers may be exercised

The special powers under this Division may be exercised for the purposes for which an authorisation is given under this Part.

Note—

See section 7 for purposes of an authorisation.

16 Power to obtain disclosure of identity

- (1) A police officer may request a person whose identity is unknown to the officer to disclose his or her identity if:
 - (a) the officer suspects on reasonable grounds that the person is the target of an authorisation (or the person is found in suspicious circumstances in the company

of the target of the authorisation), or

(b) the person is in or on a vehicle that the officer suspects on reasonable grounds is the target of an authorisation, or

(c) the person is in an area that is the target of an authorisation.

(2) A person who is so requested to disclose his or her identity must not, without reasonable excuse, fail or refuse to comply with the request.

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

(3) A person must not, without reasonable excuse, in response to any such request:

(a) give a name that is false in a material particular, or

(b) give an address other than the person's full and correct address.

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

(4) A police officer may request a person who is requested under this section to disclose his or her identity to provide proof of his or her identity.

17 Power to search persons

(1) A police officer may, without a warrant, stop and search a person, and anything in the possession of or under the control of the person, if:

(a) the officer suspects on reasonable grounds that the person is the target of an authorisation (or the person is found in suspicious circumstances in the company of the target of the authorisation), or

(b) the person is in or on a vehicle that the officer suspects on reasonable grounds is the target of an authorisation, or

(c) the person is in an area that is the target of an authorisation.

(2) Schedule 1 applies to the search of a person conducted under this section.

Note—

Schedule 1 provides for the carrying out of ordinary searches, frisk searches and strip searches. A strip search may not be carried out unless the person is suspected of being the target of an authorisation.

(3) A police officer may detain a person for so long as is reasonably necessary to conduct a search under this section.

18 Power to search vehicles

(1) A police officer may, without a warrant, stop and search a vehicle, and anything in or on the vehicle, if:

- (a) the officer suspects on reasonable grounds that the vehicle is the target of an authorisation, or
 - (b) the officer suspects on reasonable grounds that a person in or on the vehicle is the target of an authorisation, or
 - (c) the vehicle is in an area that is the target of an authorisation.
- (2) A police officer may detain a vehicle for so long as is reasonably necessary to conduct a search under this section.

19 Power to enter and search premises

- (1) A police officer may, without a warrant, enter and search any premises, if:
- (a) the officer suspects on reasonable grounds that a person who is the target of an authorisation may be in the premises, or
 - (b) the officer suspects on reasonable grounds that a vehicle that is the target of an authorisation may be in the premises, or
 - (c) the premises are in an area that is the target of an authorisation.
- (2) The police officer must do as little damage as possible.

19A Cordon around target area

- (1) A police officer may, for the purposes of stopping and searching under this Division persons, vehicles or premises in a target area, place a cordon around the target area or any part of it.
- (2) A cordon may include any form of physical barrier, including a roadblock on any road in or in the vicinity of the target area.

20 Power to seize and detain things

- (1) A police officer may, in connection with a search under this Division, seize and detain:
- (a) all or part of a thing (including a vehicle) that the officer suspects on reasonable grounds may be used, or may have been used, to commit a terrorist act, or
 - (b) all or part of a thing (including a vehicle) that the officer suspects on reasonable grounds may provide evidence of the commission of a serious indictable offence (whether or not related to a terrorist act).
- (2) A power conferred by this section to seize and detain a thing includes:
- (a) a power to remove a thing from the place where it is found, and
 - (b) a power to guard the thing in or on the place where it is found.

21 Use of force generally by police officers

It is lawful for a police officer exercising a power under this Division in relation to a person or a thing, and anyone helping the police officer, to use such force as is reasonably necessary to exercise the power.

22 Offence to obstruct or hinder search or other powers

A person must not, without reasonable excuse, obstruct or hinder a police officer in the exercise of a power under this Division to stop and search a person or vehicle, to enter and search premises or to seize and detain a thing.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

23 Supplying police officer's details and other information

- (1) A police officer must, before or at the time of exercising a power under this Division, or as soon as is reasonably practicable after exercising the power, provide the person subject to the exercise of the power with the following if requested to do so:
 - (a) evidence that the police officer is a police officer (unless the police officer is in uniform),
 - (b) the name of the police officer and his or her place of duty,
 - (c) the reason for the exercise of the power.
- (2) 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.

Division 4 Recognised law enforcement officers

24 Recognition of other law enforcement officers

- (1) The Commissioner of Police or a Deputy Commissioner of Police may, by instrument in writing, appoint any of the following as recognised law enforcement officers for the purposes of this Part if of the opinion it is necessary for the more effective exercise of powers under this Part with respect to terrorist acts:
 - (a) members of the Australian Federal Police,
 - (b) members of the police force of another State or a Territory.
- (2) An appointment as a recognised law enforcement officer may be made subject to conditions.
- (3) If an individual is appointed as a recognised law enforcement officer, the instrument

of appointment must specify the term of the appointment (not exceeding 14 days).

- (4) The Commissioner of Police or a Deputy Commissioner of Police may, at any time, revoke the appointment of a person or persons as recognised law enforcement officers.
- (5) Recognised law enforcement officers remain under the command and control of the police force to which they belong during the term of their appointment under this Division.

25 Recognised law enforcement officers to have police powers

- (1) A recognised law enforcement officer has and may exercise all the functions (including powers, immunities, liabilities and responsibilities) that a police officer of the rank of constable duly appointed under the *Police Act 1990* has and may exercise under this Part or, in any matter arising under this Part, under any law of the State (including the common law).
- (2) Those functions extend to functions conferred after the commencement of this section.
- (3) The conferral of functions by this section on a recognised law enforcement officer is subject to any applicable conditions of the officer's appointment as a recognised law enforcement officer.

26 (Renumbered as section 14B)

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

270 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
 - (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
 - (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
 - (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.
- (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,
 - (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.

Part 4 Miscellaneous

27 Return of seized things

- (1) A police officer who, in exercising a power conferred by or under this Act, seizes a thing, must return the thing to the owner or person who had lawful possession of the thing before it was seized or came into custody if the officer is satisfied that:
 - (a) its retention is not required, and
 - (b) it is lawful for the person to have possession of the thing.
- (2) This section is subject to any order made under section 28.

28 Disposal of property on application to court

- (1) A court may, on application by any person, make an order that property seized by a police officer exercising a power conferred by or under this Act:
 - (a) be delivered to the person who appears to be lawfully entitled to the property, or
 - (b) if that person cannot be ascertained, be dealt with as the court thinks fit.
- (2) In determining an application the court may do any one or more of the following things:
 - (a) adjust rights to property as between people who appear to be lawfully entitled to the same property or the same or different parts of property,
 - (b) make a finding or order as to the ownership and delivery of property,
 - (c) make a finding or order as to the liability for and payment of expenses incurred in keeping property in police custody,
 - (d) order, if the person who is lawfully entitled to the property cannot be ascertained, that the property be forfeited to the State,
 - (e) make any necessary incidental or ancillary orders.
- (3) Property ordered to be forfeited to the State:

- (a) in the case of money, is to be paid to the Treasurer for payment into the Consolidated Fund, or
 - (b) in any other case, may be sold by or on behalf of the Commissioner of Police at public auction and the proceeds of sale are to be paid to the Treasurer for payment into the Consolidated Fund.
- (4) If the property is not money or is not fit or suitable for sale, or fails to sell at public auction, it is to be disposed of in accordance with the directions of the Commissioner of Police.

29 Protection of police acting in execution of Part 2 authorisation

If any proceedings (whether criminal or not) are brought against any police officer for anything done or purportedly done by the police officer in pursuance of an authorisation under Part 2, the police officer is not to be convicted or held liable merely because:

- (a) there was an irregularity or defect in the giving of the authorisation, or
- (b) the person who gave the authorisation lacked the jurisdiction to do so.

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.

30 Relationship with other Acts

- (1) Nothing in any other Act limits any powers, or prevents a police officer from exercising any powers, that the police officer has under this Act.
- (2) Nothing in this Act limits any powers, or prevents a police officer from exercising any powers, that the police officer has under any other Act.

31 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

32 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may create offences punishable by a penalty not exceeding 100 penalty units.

33 Onus of proof of reasonable excuse

The onus of proof of reasonable excuse in proceedings for an offence against this Act or the regulations lies on the person accused of the offence.

34 Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be dealt with summarily by a Local Court.

35 Savings and transitional provisions

Schedule 2 has effect.

36 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
 - (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.
- (2) The review is to be undertaken as soon as possible after the period of 12 months from the date of assent to this Act and every 12 months thereafter.

- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of each period referred to in subsection (2).

Schedule 1 Conduct of personal searches

(Section 17)

1 Application of Schedule

This Schedule applies to any search of a person carried out, or authorised to be carried out, by a police officer under this Act, except as otherwise provided by this Act or the regulations.

2 Definitions

In this Schedule:

electronic metal detection device means an electronic device that is capable of detecting the presence of metallic objects.

frisk search means:

- (a) a search of a person conducted by quickly running the hands over the person's outer clothing or by passing an electronic metal detection device over or in close proximity to the person's outer clothing, and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person, including an examination conducted by passing an electronic metal detection device over or in close proximity to that thing.

ordinary search means a search of a person or of things in the possession of a person that may include:

- (a) requiring the person to remove only his or her overcoat, coat or jacket or similar article of clothing and any gloves, shoes and hat, and
- (b) an examination of those items.

strip search means a search of a person or of things in the possession of a person that may include:

- (a) requiring the person to remove all of his or her clothes, and
- (b) an examination of the person's body (but not of the person's body cavities) and of those clothes.

3 Frisk searches and ordinary searches

- (1) A police officer who is authorised to search a person may carry out a frisk search or an ordinary search of the person for any purpose for which the search may be conducted.

- (2) In conducting a frisk search, a police officer may, if the police officer has asked the person to remove a coat or jacket, treat the person's outer clothing as being the person's outer clothing after the coat or jacket has been removed.

4 Strip searches

A police officer who is authorised to search a person may conduct a strip search of the person:

- (a) if the person is suspected of being the target of an authorisation, and
- (b) if the police officer suspects on reasonable grounds that it is necessary to conduct a strip search of the person for the purposes of the search and that the seriousness and urgency of the circumstances require the strip search to be carried out.

5 Preservation of privacy and dignity during search

- (1) A police officer who searches a person must, as far as is reasonably practicable in the circumstances, comply with this clause.
- (2) The police officer must inform the person to be searched of the following matters:
 - (a) whether the person will be required to remove clothing during the search,
 - (b) why it is necessary to remove the clothing.
- (3) The police officer must ask for the person's co-operation.
- (4) The police officer must conduct the search:
 - (a) in a way that provides reasonable privacy for the person searched, and
 - (b) as quickly as is reasonably practicable.
- (5) The police officer must conduct the least invasive kind of search practicable in the circumstances.
- (6) The police officer must not search the genital area of the person searched, or in the case of female or a transgender person who identifies as a female, the person's breasts unless the police officer suspects on reasonable grounds that it is necessary to do so for the purposes of the search.
- (7) A search must be conducted by a police officer of the same sex as the person searched or by a person of the same sex under the direction of the police officer.
- (8) A search of a person must not be carried out while the person is being questioned. If questioning has not been completed before a search is carried out, it must be suspended while the search is carried out.
- (9) A person must be allowed to dress as soon as a search is finished.

(10) If clothing is seized because of the search, the police officer must ensure the person searched is left with or given reasonably appropriate clothing.

(11) In this clause:

questioning of a person means questioning the person, or carrying out an investigation (in which the person participates).

transgender person means a person, whether or not the person is a recognised transgender person:

- (a) who identifies as a member of the opposite sex, by living, or seeking to live, as a member of the opposite sex, or
- (b) who has identified as a member of the opposite sex by living as a member of the opposite sex, or
- (c) who, being of indeterminate sex, identifies as a member of a particular sex by living as a member of that sex,

and includes a reference to the person being thought of as a transgender person, whether or not the person is, or was, in fact a transgender person.

6 Rules for conduct of strip searches

- (1) A police officer who strip searches a person must, as far as is reasonably practicable in the circumstances, comply with the following:
 - (a) the strip search must be conducted in a private area,
 - (b) the strip search must not be conducted in the presence or view of a person who is of the opposite sex to the person being searched,
 - (c) except as provided by this clause, the strip search must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search.
- (2) A parent, guardian or personal representative of the person being searched may, if it is reasonably practicable in the circumstances, be present during a search if the person being searched has no objection to that person being present.
- (3) A strip search of a child who is at least 10 years of age but under 18 years of age, or of a person who has impaired intellectual functioning, must, unless it is not reasonably practicable in the circumstances, be conducted in the presence of a parent or guardian of the person being searched or, if that is not acceptable to the child or person, in the presence of another person (other than a police officer) who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person.

- (4) A strip search must not involve a search of a person's body cavities or an examination of the body by touch.
- (5) A strip search must not involve the removal of more clothes than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.
- (6) A strip search must not involve more visual inspection than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.
- (7) A strip search may be conducted in the presence of a medical practitioner of the opposite sex to the person searched if the person being searched has no objection to that person being present.
- (8) This clause is in addition to the other requirements of this Act relating to searches.
- (9) In this clause:

impaired intellectual functioning means:

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

Note—

Procedures for searches of a more invasive nature are dealt with under the [Crimes \(Forensic Procedures\) Act 2000](#).

7 No strip searches of children under 10 years

A strip search must not be conducted on a person who is under the age of 10 years.

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.