

# Terrorism (Police Powers) Act 2002 No 115

[2002-115]



New South Wales

## Status Information

### Currency of version

Historical version for 30 January 2012 to 22 October 2014 (accessed 26 June 2024 at 22:06)

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**  
*Law Enforcement (Powers and Responsibilities) Amendment Act 2014 No 31* (not commenced)
- **See also**  
*Crimes Legislation Amendment Bill 2014*

### Authorisation

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File last modified 11 September 2014

# 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.

**impaired intellectual functioning**, in relation to a person, means:

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

**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.
- (3) In giving an authorisation, the Commissioner of Police, Deputy Commissioner of Police or other police officer is to be satisfied that the nature and extent of the powers to be conferred by the authorisation are appropriate to the threatened or suspected terrorist act.

## **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 a copy of the authorisation or notified of all 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 must not detain a person for any longer than is reasonably necessary for the purpose of conducting a search under this section.

**18 Power to search vehicles**

(1) A police officer may, without a warrant, stop, enter 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 must not detain a vehicle for any longer than is reasonably necessary for the purpose of conducting 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, to stop, enter and search a 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 if that is not reasonably practicable, as soon as is reasonably practicable after exercising the power), provide the person subject to the exercise of the power with the following:
  - (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. The written statement is to be provided within 30 days of the request being made.

- (3) If a police officer exercises a power that involves the making of a request that a person is required to comply with by law, the police officer must, as soon as is reasonably practicable after making the request, provide the person the subject of the request with:
  - (a) a warning that the person is required by law to comply with the request (unless the person has already complied or is in the process of complying), and
  - (b) if the person does not comply with the request after being given that warning, and the police officer believes that the failure to comply by the person is an offence, a warning that the failure to comply with the request is an offence.
- (4) If a police officer is exercising more than one power to which this section applies on a single occasion, and in relation to the same person, the police officer is required to comply with subsection (1) (a) and (b) in relation to that person only once on that occasion.
- (5) If 2 or more police officers are exercising a power to which this section applies, only one officer present is required to comply with this section.

## **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 2A Preventative detention orders

### Division 1 Preliminary

#### 26A Object

The object of this Part is to allow a person to be taken into custody and detained for a short period of time in order to:

- (a) prevent an imminent terrorist act, or
- (b) preserve evidence of, or relating to, a recent terrorist act.

#### **Note—**

Section 26ZK provides that, while a person is being detained under a preventative detention order, the person may only be questioned for very limited purposes.

#### 26B Definitions: Part 2A

In this Part:

**corresponding law** means:

- (a) Division 105 of the *Criminal Code* of the Commonwealth and the regulations and other instruments made under that Division, as in force from time to time, or
- (b) a law of another State or a Territory that provides for preventative detention of persons in relation to terrorist acts (including any law of another State or a Territory that is declared by the regulations to be a corresponding law).

**interim preventative detention order** or **interim order** means an interim preventative detention order made by the Supreme Court under section 26H pending the

hearing and final determination of an application for a preventative detention order.

**lawyer** means an Australian lawyer.

**preventative detention order** means a preventative detention order made by the Supreme Court under section 26I, and (unless expressly otherwise provided) includes an interim preventative detention order.

**prohibited contact order** means an order made by the Supreme Court under section 26N.

## **26C Senior police officer with functions under preventative detention orders**

If:

- (a) a number of police officers are detaining, or involved in the detention of, a person under a preventative detention order at a particular time, and
- (b) a function (other than a power) is expressed in this Part to be imposed on a police officer detaining the person,

the function is imposed at that time on the most senior of those police officers.

## **Division 2 Preventative detention orders**

### **26D When preventative detention orders may be made**

(1) **Preventing terrorist acts occurring** A preventative detention order may be made against a person if:

- (a) there are reasonable grounds to suspect that the person:
  - (i) will engage in a terrorist act, or
  - (ii) possesses a thing that is connected with the preparation for, or the engagement of a person in, a terrorist act, or
  - (iii) has done an act in preparation for, or planning, a terrorist act, and
- (b) making the order would substantially assist in preventing a terrorist act occurring, and
- (c) detaining the person for the period for which the person is to be detained under the order is reasonably necessary for the purpose of substantially assisting in preventing a terrorist act occurring.

Any such terrorist act must be imminent and, in any event, be expected to occur at some time in the next 14 days.

(2) **Preserving evidence of terrorist acts that have occurred** A preventative detention order

may also be made against a person if:

- (a) a terrorist act has occurred within the last 28 days, and
- (b) it is necessary to detain the person to preserve evidence in New South Wales or elsewhere of, or relating to, the terrorist act, and
- (c) detaining the person for the period for which the person is to be detained under the order is reasonably necessary for the purpose of preserving any such evidence.

**Note—**

As a consequence of the operation of section 4A, it does not matter whether the location of the terrorist act is in New South Wales or elsewhere.

**26E No preventative detention order in relation to person under 16 years of age**

- (1) A preventative detention order cannot be applied for, or made, in relation to a person who is under 16 years of age.
- (2) If:
  - (a) a person is being detained under a preventative detention order (or a purported such order), and
  - (b) the police officer who is detaining the person is satisfied on reasonable grounds that the person is under 16 years of age,the police officer must release the person, as soon as practicable, from detention under the order.
- (3) The person is to be released into the care of a parent or other appropriate person.

**26F Who may apply for preventative detention orders**

- (1) A police officer may apply for a preventative detention order in relation to a person, but only if:
  - (a) the police officer is satisfied of the requirements under section 26D for making the order, and
  - (b) the police officer has obtained approval to make the application from:
    - (i) the Commissioner of Police, or
    - (ii) a Deputy Commissioner of Police, or
    - (iii) an Assistant Commissioner of Police responsible for counter-terrorism operations.

- (2) The function of giving approval to the making of an application for an order cannot be delegated, but may be exercised by a police officer acting in a position referred to in subsection (1) (b).

### **26G Applications for preventative detention orders**

- (1) An application for a preventative detention order must:
- (a) subject to subsection (2), be in writing and sworn, and
  - (b) set out the facts and other grounds on which the police officer considers the order should be made, and
  - (c) specify the period for which the person is to be detained under the order and set out the facts and other grounds on which the police officer considers that the person should be detained for that period, and
  - (d) set out the information (if any) that the applicant has about the person's age, and
  - (e) set out the following:
    - (i) the outcomes and particulars of all previous applications for preventative detention orders made in relation to the person,
    - (ii) the information (if any) that the applicant has about any periods for which the person has been detained under an order made under a corresponding law,
    - (iii) the information (if any) that the applicant has about any control order (including any interim control order) made in relation to the person under Division 104 of the *Criminal Code* of the Commonwealth.

The application must also fully disclose all relevant matters of which the applicant is aware, both favourable and adverse to the making of the order.

- (2) An application for a preventative detention order that is required urgently may be made by telephone, fax, email or other electronic communication. In that case:
- (a) the Supreme Court may make an interim preventative detention order if satisfied it is not practicable for the applicant to appear before the Court to make the application, and
  - (b) the terms of the interim order and related directions and other matters may be transmitted to the applicant by telephone, fax, email or other electronic communication, and
  - (c) a written record relating to the application and interim order is to be made as soon as practicable by or at the direction of the Court.
- (3) The Supreme Court may refuse to make a preventative detention order unless the

police officer applying for the order gives the Court any further information that the Court requests concerning the facts and other grounds on which the police officer considers the order should be made.

## **26H Supreme Court may make interim preventative detention order**

- (1) The Supreme Court may, pending the hearing and final determination of an application for a preventative detention order, make an interim preventative detention order.
- (2) The Supreme Court is to make an interim order if:
  - (a) the application and any further information supplied by the applicant satisfy the requirements under section 26D for making the order, and
  - (b) the Court cannot proceed immediately to the hearing and determination of the application.
- (3) The interim order may be made in the absence of, and without notice to, the person in relation to whom the order is to be made (or his or her representative).
- (4) If the Supreme Court makes an interim order it must:
  - (a) fix the date on which, and the time at which, the hearing of the application is to be resumed, and
  - (b) give directions for notice to be given to the person subject to detention under the interim order (or his or her representative) of the date and time fixed for the resumed hearing.
- (5) The Supreme Court may further adjourn the resumed hearing and continue the interim order in force until the adjourned hearing.

### **Note—**

Section 26L prevents an interim order remaining in force for more than 48 hours after the person was first taken into custody under the interim order.

## **26I Supreme Court may make preventative detention order after hearing**

- (1) After hearing an application for a preventative detention order, the Supreme Court is to:
  - (a) grant the application and make a preventative detention order, or
  - (b) refuse the application.
- (2) The Supreme Court may make a preventative detention order only if satisfied of the requirements under section 26D for making the order.

- (3) The following persons may adduce evidence (including by calling witnesses or producing material), or make submissions, to the Supreme Court in connection with the hearing of an application for a preventative detention order (other than an interim order):
  - (a) the applicant for the order or any other police officer,
  - (b) the person in relation to whom the order is to be made,
  - (c) one or more representatives of the applicant or person.
- (4) Subsection (3) does not otherwise limit the power of the Supreme Court to control proceedings in relation to the application for the order.
- (5) The Supreme Court may determine the application in the absence of the person in relation to whom the order is to be made (or his or her representative) if satisfied that the person was properly notified of the proceedings.

#### **26J Terms of preventative detention orders**

- (1) A preventative detention order must set out:
  - (a) the name of the person authorised to be detained under the order, and
  - (b) the period for which the person is authorised to be detained (not exceeding the period provided by this Part), and
  - (c) the date on which, and the time at which, the order is made, and
  - (d) the date and time after which the person may not be taken into custody under the order (not exceeding 48 hours after the order is made), and
  - (e) a summary of the grounds on which the order is made.
- (2) To avoid doubt, subsection (1) (e) does not require information to be included in a summary if the disclosure of the information is likely to prejudice national security (within the meaning of the [National Security Information \(Criminal and Civil Proceedings\) Act 2004](#) of the Commonwealth).

#### **26K Maximum period of detention and multiple preventative detention orders**

- (1) In this section:

**related order**, in relation to a person, means an interim preventative detention order, another preventative detention order or an order under a corresponding law that is made against the person.
- (2) The maximum period for which a person may be detained under a preventative detention order (other than an interim order) is 14 days. That maximum period is



reduced by any period of actual detention under a related order against the person in relation to the same terrorist act.

**Note—**

Under section 26L an interim order expires 48 hours after the person is first taken into custody under the order if the application for the order has not been heard and finally determined by that time.

- (3) Despite subsection (2), the maximum period for which a person may be detained under a preventative detention order made on the basis of preserving evidence of, or relating to, a terrorist act that has occurred is not to be reduced by any period for which the person is detained under a preventative detention order or related order made on the basis of preventing a terrorist act.
- (4) Subject to subsection (5), more than one preventative detention order may be made in relation to the same terrorist act (whether or not against the same person).
- (5) Not more than one interim preventative detention order may be made against the same person in relation to the same terrorist act. This subsection does not prevent:
  - (a) an extension of an interim order under section 26H (5), or
  - (b) the making of another interim order following a further application for an order.
- (6) A preventative detention order can be made against a person to take effect on the expiration of detention under a related order against the person.

**Note—**

This Division does not authorise the extension of the period of an order. However, if the initial order does not authorise detention for the maximum period of detention in respect of the same terrorist act that is authorised by this section, further orders may be applied for and made (so long as that maximum period is not exceeded in respect of the total period of those orders).

- (7) For the purposes of this section:
  - (a) a terrorist act ceases to be the same terrorist act if there is a change in the date on which the terrorist act is expected to occur, and
  - (b) a terrorist act that is expected to occur at a particular time does not cease to be the same terrorist act merely because of:
    - (i) a change in the persons expected to carry out the act at that time, or
    - (ii) a change in how or where the act is expected to be carried out at that time.

**26L Duration of preventative detention order**

- (1) An interim preventative detention order ceases to have effect if the Supreme Court has not heard and determined the application in respect of which the interim order was made within 48 hours after the person was first taken into custody under the interim order.

- (2) A preventative detention order (other than an interim order) ceases to have effect on the expiration of the period for which the person may be detained under the order in accordance with this Part.
- (3) A preventative detention order ceases to have effect if the person has not been taken into custody under the order within the time that the order authorises the person to be taken into custody.
- (4) Despite anything to the contrary in this section, a preventative detention order ceases to have effect if it is revoked under section 26M.

#### **26M Revocation of preventative detention orders**

- (1) A preventative detention order may be revoked by the Supreme Court on application made by the person in relation to whom the order was made or on application by a police officer.
- (2) An application for the revocation of a preventative detention order must be made by a police officer detaining the person if the police officer is satisfied that the grounds on which the order was made have ceased to exist.
- (3) An application made by a person in relation to whom a preventative detention order (other than an interim order) was made is to set out information on which the person relies in making the application, being information that was not provided to the Supreme Court when the order was made.
- (4) If the Supreme Court rejects an application for revocation, it may give such directions as it considers appropriate with respect to any further application for revocation of the order. Any such further application is to set out new information on which the person relies in making the further application.

#### **26N Prohibited contact orders**

- (1) A police officer who applies to the Supreme Court for a preventative detention order in relation to a person (the **subject**) may also apply for a prohibited contact order under this section in relation to the subject's detention under the preventative detention order.
- (2) If a preventative detention order is in force in relation to the subject, a police officer may apply to the Supreme Court for a prohibited contact order under this section in relation to the subject's detention under the preventative detention order.
- (3) The application must be in writing and sworn, and set out:
  - (a) the terms of the order sought, and
  - (b) the facts and other grounds on which the police officer considers that the order should be made.

- (4) If the Supreme Court is satisfied that making a prohibited contact order is reasonably necessary to achieve the purposes of the preventative detention order, the Court may make a prohibited contact order under this section that the subject is not, while being detained under the preventative detention order, to contact a person specified in the prohibited contact order.
- (5) An application for a prohibited contact order that is required urgently may be made by telephone, fax, email or other electronic communication. In that case:
  - (a) the Supreme Court may make the order if satisfied it is not practicable for the applicant to appear before the Court to make the application, and
  - (b) the terms of the order may be transmitted to the applicant by telephone, fax, email or other electronic communication, and
  - (c) a written record relating to the application and order is to be made as soon as practicable by or at the direction of the Court.
- (6) A prohibited contact order may be revoked by the Supreme Court, on application made by the person in relation to whom the relevant preventative detention order relates or on application by a police officer.
- (7) An application for the revocation of a prohibited contact order must be made by a police officer detaining the person under the relevant preventative detention order if the police officer is satisfied that the grounds on which the prohibited contact order was made have ceased to exist.
- (8) The Supreme Court may refuse to make a prohibited contact order unless the police officer applying for the order gives the Court any further information that the Court requires concerning the facts and other grounds on which the police officer considers the order should be made.

## **260 Rules of evidence**

- (1) This section applies to proceedings before the Supreme Court in connection with an application for the making or revocation of a preventative detention order or prohibited contact order.
- (2) For the purposes of any such proceedings, the Supreme Court may take into account any evidence or information that the Court considers credible or trustworthy in the circumstances and, in that regard, is not bound by principles or rules governing the admission of evidence.

## **26P Closure of Court and restriction on publication of proceedings**

- (1) This section applies to proceedings before the Supreme Court in connection with an application for the making or revocation of a preventative detention order or prohibited contact order.

- (2) Any such proceedings must be heard in the absence of the public.
- (3) The Supreme Court may, in connection with any such proceedings, make such orders relating to the suppression of publication of the whole or any part of the proceedings or of the evidence given in the proceedings as, in its opinion, are necessary to secure the object of this Part.
- (4) A person must not disclose information knowing that the disclosure contravenes an order under subsection (3).

Maximum penalty: Imprisonment for 5 years.

#### **26PA Supreme Court may order provision of legal aid**

- (1) This section applies to proceedings before the Supreme Court in connection with an application for the making or revocation of a preventative detention order or prohibited contact order.
- (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:
  - (a) a person in relation to whom a preventative detention order is being sought, or
  - (b) a person who is subject to such an order.
- (3) If the Supreme Court makes an order under subsection (2), the police officer who is detaining the person must give the person reasonable assistance to enable the person to contact the Legal Aid Commission to obtain the legal aid.

### **Division 3 Carrying out preventative detention orders**

#### **26Q Power to detain person under preventative detention order**

- (1) While a preventative detention order is in force in relation to a person:
  - (a) any police officer may take the person into custody, and
  - (b) any police officer may detain the person.
- (2) A police officer has, for the purpose of taking a person into custody under a preventative detention order or preventing the person escaping from that custody, the same functions as the police officer would have if the police officer were taking the person into custody in connection with the commission of an offence or preventing the person escaping from that custody.
- (3) Subsection (2) does not apply to the extent to which particular functions are provided for in this Part.

### **26R Nominated senior police officer to oversee order**

- (1) If a preventative detention order is made in relation to a person, the Commissioner or a Deputy Commissioner of Police, or an Assistant Commissioner of Police responsible for counter-terrorism operations, must nominate a police officer of or above the rank of superintendent (***the nominated senior police officer***) to oversee the exercise of functions under or in relation to the order.
- (2) The nominated senior police officer must be someone who was not involved in the making of the application for the preventative detention order.
- (3) The nominated senior police officer must:
  - (a) oversee the exercise of functions under the preventative detention order, and
  - (b) without limiting paragraph (a), ensure compliance with the obligation under Division 2 of the police officer detaining the person under the preventative detention order to apply for the revocation of the order, or for the revocation of a related prohibited contact order, if the grounds on which the order was made have ceased to exist, and
  - (c) consider any representations that are made under subsection (4) in relation to the above matters or to the treatment under the detention order of the detained person.
- (4) Any such representations may be made to the nominated senior police officer by any of the following persons:
  - (a) the person being detained under the preventative detention order,
  - (b) a lawyer acting for that person in relation to the order,
  - (c) a person with whom that person has contact under section 26ZH.

### **26S Endorsement of order with date and time person taken into custody**

As soon as practicable after a person is first taken into custody under a preventative detention order, the police officer who is detaining the person under the order must endorse on the order the date on which, and time at which, the person is first taken into custody under the order.

### **26T Power to require 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 the officer believes on reasonable grounds that the person may be able to assist the officer in executing a preventative detention order.
- (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: 20 penalty units.

(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: 20 penalty units.

**Note—**

Section 201 of the *Law Enforcement (Powers and Responsibilities) Act 2002* requires the police officer to identify themselves and give a warning before requiring a person to disclose their identity under this section.

**26U Power to enter premises**

(1) If:

- (a) a preventative detention order is in force in relation to a person, and
- (b) a police officer believes on reasonable grounds that the person is on any premises,

the police officer may enter the premises, using such force as is necessary and reasonable in the circumstances and with such assistance from other police officers as is necessary, at any time of the day or night for the purpose of searching the premises for the person or taking the person into custody.

(2) A police officer must not enter a dwelling house under this section at any time during the period commencing at 9 pm on a day and ending at 6 am on the following day unless the police officer believes on reasonable grounds that:

- (a) it would not be practicable to take the person into custody, either at the dwelling house or elsewhere, at another time, or
- (b) it is necessary to do so in order to prevent a terrorist act or the concealment, loss or destruction of evidence of, or relating to, a terrorist act.

(3) In this section:

**dwelling house** includes a conveyance, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.

**premises** includes vehicle.

**26V Power to conduct frisk and ordinary personal searches**

(1) In this section:

**seizable item** means anything that:

- (a) would present a danger to a person, or
  - (b) could be used to assist a person to escape from lawful custody, or
  - (c) could be used to contact another person or to operate a device remotely, or
  - (d) is evidence of, or relates to, a terrorist act.
- (2) A police officer may, at or soon after the time when a person is taken into custody under a preventative detention order, search the person and anything in the possession of the person in order to ascertain whether the person is carrying any seizable items.
- (3) A police officer is not authorised to search for evidence of, or relating to, a terrorist act, unless the police officer has reasonable cause to suspect the person is carrying such evidence.
- (4) The police officer may seize any seizable item found as a result of a search conducted under this section.
- (5) Schedule 1 applies to a search conducted under this section.

**Note—**

Schedule 1 provides for the carrying out of ordinary searches and frisk searches for the purposes of this section (but not strip searches).

**26W Release of person from preventative detention**

- (1) The police officer who is detaining a person under a preventative detention order may release the person from detention under the order.

**Note—**

A person may be released, for example, so that the person may be arrested and charged with an offence and otherwise dealt with in connection with the charge.

- (1A) The police officer who is detaining a person under a preventative detention order must release the person from detention under the order as soon as is practicable after the police officer is satisfied that the grounds on which the order was made have ceased to exist.

**Note—**

A person detained under a preventative detention order may be detained under the order at a correctional centre under an arrangement with the Commissioner of Corrective Services under section 26X.

- (2) The police officer who releases the person from detention under the preventative detention order must give the person a written statement that the person is being released from that detention. The statement must be signed by the police officer.
- (3) To avoid doubt, a person may be taken to have been released from detention under a preventative detention order even if:

- (a) the person is informed that he or she is being released from detention under the order, and
  - (b) the person is taken into custody on some other basis immediately after the person is informed that he or she is being released from detention under the order.
- (4) To avoid doubt, a person is taken not to be detained under a preventative detention order during a period during which the person is released from detention under the order.

**Note—**

During this period, the provisions of this Part that apply to a person who is being detained under a preventative detention order (for example, those dealing with the people the person may contact) do not apply to the person.

- (5) To avoid doubt:
- (a) the release of the person under subsection (1) from detention under the preventative detention order does not extend the period for which the preventative detention order remains in force, and
  - (b) a person released under subsection (1) from detention under a preventative detention order may again be taken into custody and detained under the order at any time while the order remains in force in relation to the person.

**Note—**

Paragraph (a)—this means that the time for which the person may be detained under the order continues to run while the person is released.

## **26X Arrangement for detainee to be held in prison**

- (1) A police officer who is detaining a person (the **subject**) under a preventative detention order may arrange, with the Commissioner of Corrective Services, for the subject to be detained under the order at a correctional centre.
- (2) If an arrangement is made under subsection (1):
- (a) the police officer making the arrangement is to provide the person in charge of the correctional centre with written notice of the arrangement, a copy of the preventative detention order and any prohibited contact order that is in force in relation to the subject's detention, and
  - (b) the preventative detention order is taken to authorise the person in charge of the correctional centre to detain the subject at the correctional centre while the order is in force in relation to the subject, and
  - (c) section 26ZC (Humane treatment of person being detained) applies in relation to the subject's detention under the order at the correctional centre as if:



- (i) the person in charge of that correctional centre, or
  - (ii) any other person involved in the subject's detention at that correctional centre,
- were a person exercising authority under the order or implementing or enforcing the order, and
- (d) the police officer who made the arrangement (or another police officer designated by the Commissioner or a Deputy Commissioner of Police or by an Assistant Commissioner of Police responsible for counter-terrorism operations) is taken, while the subject is detained at the correctional centre, to be the police officer detaining the subject for the purposes of this Part, and
  - (e) a police officer may, for the purposes of exercising functions under the order, enter at any time the correctional centre and visit the subject in the correctional centre.
- (2A) The provisions of or made under the *Crimes (Administration of Sentences) Act 1999* or the *Children (Detention Centres) Act 1987* (as the case requires) apply to the subject when detained under an arrangement in force under this section in the same way as they apply to an inmate (within the meaning of the *Crimes (Administration of Sentences) Act 1999*) or a detainee (within the meaning of the *Children (Detention Centres) Act 1987*), except to the extent that any such provision:
- (a) is inconsistent with a requirement of this Part or the arrangement, or
  - (b) entitles a person to visit the subject or entitles the subject to communicate with another person (unless this Part also confers the entitlement), or
  - (c) is excluded under subsection (3).
- (3) The regulations may exclude the subject from the application of any of the provisions of or made under the *Crimes (Administration of Sentences) Act 1999* or the *Children (Detention Centres) Act 1987*.
  - (4) An arrangement under subsection (1) does not prevent the subject being returned to the custody of a police officer.
  - (5) A reference in this section to a correctional centre is to be construed, in relation to a detainee under 18 years of age, as a reference to a juvenile detention centre or juvenile correctional centre (and in the case of a juvenile detention centre the reference to the Commissioner of Corrective Services is to be construed as a reference to the Director-General of the Department of Juvenile Justice).
  - (6) During any period that a subject under 18 years of age is not detained under an arrangement in force under this section, a police officer must not detain the subject

together with persons who are 18 years or older unless the nominated senior police officer under section 26R considers that there are exceptional circumstances and approves of that detention.

## **Division 4 Informing person detained about preventative detention orders**

### **26Y Effect of interim preventative detention order to be explained to person detained**

- (1) As soon as practicable after a person is first taken into custody under an interim preventative detention order, the police officer who is detaining the person under the order must inform the person of the matters covered by subsection (2).

Maximum penalty: Imprisonment for 2 years.

- (2) The matters covered by this subsection are:

- (a) the fact that an interim preventative detention order has been made authorising the person's detention pending the hearing and determination of the application for the person's continued preventative detention, and
- (b) the date and time fixed by the Supreme Court for the hearing and determination of that application, and
- (c) the people that the person is entitled to contact under sections 26ZE, 26ZF and 26ZH and the restrictions that apply to any such contact, and
- (d) any right the person has to complain to the Ombudsman and the Police Integrity Commission in relation to:
  - (i) the application for, or the making of, the order, or
  - (ii) the treatment of the person by a police officer in connection with the person's detention under the order, and
- (e) the fact that the person may ask the Supreme Court to revoke the order or seek from a court any other remedy relating to:
  - (i) the order, or
  - (ii) the treatment of the person in connection with the person's detention under the order, and
- (f) the person's entitlement under section 26ZG to contact a lawyer, and
- (g) the name and work telephone number of the senior police officer who has been nominated under section 26R to oversee the exercise of functions under the order.

- (3) Subsection (2) (c) does not require the police officer to inform the person being

detained of:

- (a) the fact that a prohibited contact order has been made in relation to the person's detention, or
- (b) the name of a person specified in a prohibited contact order that has been made in relation to the person's detention.

**26Z Effect of preventative detention order (other than interim order) to be explained to person detained**

- (1) As soon as practicable after a preventative detention order (other than an interim order) is made in relation to a person, the police officer who is detaining the person must inform the person of the matters covered by subsection (2).

Maximum penalty: Imprisonment for 2 years.

- (2) The matters covered by this subsection are:
- (a) the fact that the order has been made in relation to the person, and
  - (b) the period during which the person may be detained under the order, and
  - (c) the people that the person is entitled to contact under sections 26ZE, 26ZF and 26ZH and the restrictions that apply to any such contact, and
  - (d) any right the person has to complain to the Ombudsman and the Police Integrity Commission in relation to:
    - (i) the application for the order, or
    - (ii) the treatment of the person by a police officer in connection with the person's detention under the order, and
  - (e) the fact that the person may ask the Supreme Court to revoke the order or seek from a court any other remedy relating to:
    - (i) the order, or
    - (ii) the treatment of the person in connection with the person's detention under the order, and
  - (f) the person's entitlement under section 26ZG to contact a lawyer, and
  - (g) the name and work telephone number of the senior police officer who has been nominated under section 26R to oversee the exercise of functions under the order.
- (3) Subsection (2) (c) does not require the police officer to inform the person being detained of:
- (a) the fact that a prohibited contact order has been made in relation to the person's

detention, or

- (b) the name of a person specified in a prohibited contact order that has been made in relation to the person's detention.

**26ZA Compliance with obligation to inform**

- (1) Sections 26Y (1) and 26Z (1) do not apply if the actions of the person being detained under the preventative detention order make it impracticable for the police officer to comply with those sections.
- (2) The police officer detaining the person under the preventative detention order complies with section 26Y (1) or 26Z (1) if the police officer informs the person in substance of the matters covered by section 26Y (2) or 26Z (2) (even if this is not done in language of a precise or technical nature).
- (3) The police officer who is detaining the person under the preventative detention order must arrange for the assistance of an interpreter in complying with section 26Y (1) or 26Z (1) if the police officer has reasonable grounds to believe that the person is unable, because of inadequate knowledge of the English language or a disability, to communicate with reasonable fluency in that language.
- (3A) A police officer need not arrange for an interpreter to be present in compliance with the requirement under subsection (3) if the officer believes on reasonable grounds that the difficulty of obtaining an interpreter makes compliance with the requirement not reasonably practicable.
- (4) Without limiting subsection (3), the assistance of the interpreter may be provided by telephone.
- (5) The lawfulness of a person's detention under a preventative detention order is not affected by a failure to comply with section 26Y (1) or 26Z (1) or subsection (3) of this section.

**26ZB Copy of preventative detention order and summary of grounds**

- (1) As soon as practicable after a person is first taken into custody under an interim preventative detention order, the police officer who is detaining the person under the order must give the person a copy of the order.
- (2) Despite section 26Q (2), a police officer does not need to have a copy of the order with him or her, or to produce a copy of the order to the person being taken into custody, when the police officer takes the person into custody.
- (3) As soon as practicable after a preventative detention order (other than an interim order) is made in relation to a person, the police officer who is detaining the person under the order, must give the person a copy of the order.

- (4) A person who is being detained under a preventative detention order may request a police officer who is detaining the person under the order to give a copy of the order to a lawyer acting for the person in relation to the order.
- (5) The police officer must make arrangements for a copy of the order to be given to the lawyer as soon as practicable after the request is made.
- (6) Without limiting subsection (5), the copy of the order may be faxed or emailed to the lawyer.
- (7) To avoid doubt, subsection (5) does not entitle the lawyer to be given a copy of, or see, a document other than the order.
- (8) Nothing in this section requires a copy of a prohibited contact order to be given to a person.
- (9) The police officer who gives:
  - (a) the person being detained under an interim preventative detention order, or
  - (b) a lawyer acting for the person,a copy of the interim order under this section must endorse on the copy the date on which, and time at which, the person was first taken into custody under the order and the date and time fixed by the Supreme Court for the hearing and determination of the application for the continued detention of the person.
- (10) The lawfulness of a person's detention under a preventative detention order is not affected by a failure to comply with this section.

## **Division 5 Treatment of person detained**

### **26ZC Humane treatment of person being detained**

- (1) A person being taken into custody, or being detained, under a preventative detention order:
  - (a) must be treated with humanity and with respect for human dignity, and
  - (b) must not be subjected to cruel, inhuman or degrading treatment,by anyone exercising authority under the order or implementing or enforcing the order.
- (2) A person who contravenes subsection (1) is guilty of an offence.  
Maximum penalty: Imprisonment for 2 years.

## **26ZD Restriction on contact with other people**

Except as provided by this Division, while a person is being detained under a preventative detention order, the person:

- (a) is not entitled to contact another person, and
- (b) may be prevented from contacting another person.

### **Note 1—**

This section will not apply to the person if the person is released from detention under the order (even though the order may still be in force in relation to the person).

### **Note 2—**

A person's entitlement to contact other people under this Division is subject to a prohibited contact order (see section 26ZJ).

## **26ZE Contacting family members etc**

(1) The person being detained is entitled to contact:

- (a) one of his or her family members, and
- (b) if he or she:
  - (i) lives with another person and that other person is not a family member of the person being detained, or
  - (ii) lives with other people and those other people are not family members of the person being detained,that other person or one of those other people, and
- (c) if he or she is employed—his or her employer, and
- (d) if he or she employs people in a business—one of the people he or she employs in that business, and
- (e) if he or she engages in a business together with another person or other people—that other person or one of those other people, and
- (f) if the police officer detaining the person being detained agrees to the person contacting another person—that person,

by telephone, fax or email but solely for the purposes of letting the person contacted know that he or she is safe and is being detained.

(2) To avoid doubt, the person being detained is entitled, under subsection (1), to disclose:

- (a) the fact that a preventative detention order has been made in relation to the person, and
- (b) the fact that the person is being detained, and
- (c) the period for which the person is being detained.

(3) In this section:

**family member** of a person means:

- (a) the person's spouse or de facto partner, or
- (b) a parent, step-parent or grandparent of the person, or
- (c) a child, step-child or grandchild of the person, or
- (d) a brother, sister, step-brother or step-sister of the person, or
- (e) a guardian or carer of the person.

**Note—**

“De facto partner” is defined in section 21C of the [Interpretation Act 1987](#).

#### **26ZF Contacting Ombudsman and PIC**

The person being detained is entitled to contact the Ombudsman and the Police Integrity Commission.

#### **26ZG Contacting lawyer**

- (1) The person being detained is entitled to contact a lawyer but solely for the purpose of:
  - (a) obtaining advice from the lawyer about the person's legal rights in relation to:
    - (i) the preventative detention order, or
    - (ii) the treatment of the person in connection with the person's detention under the order, or
  - (b) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, proceedings in the Supreme Court relating to:
    - (i) the making of a preventative detention order against the person, or
    - (ii) the revocation of a preventative detention order made against the person, or
  - (c) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, any other proceedings in a court for a remedy relating to:
    - (i) the preventative detention order, or

- (ii) the treatment of the person in connection with the person's detention under the order, or
  - (d) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, a complaint to the Ombudsman or the Police Integrity Commission in relation to:
    - (i) the application for, or the making of, the preventative detention order, or
    - (ii) the treatment of the person by a police officer in connection with the person's detention under the order, or
  - (e) arranging for the lawyer to act for the person in relation to an appearance, or hearing, before a court that is to take place while the person is being detained under the order.
- (2) The form of contact that the person being detained 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, fax or email.
- (3) If:
- (a) the person being detained asks to be allowed to contact a particular lawyer under subsection (1), and
  - (b) either:
    - (i) the person is not entitled to contact that lawyer because of a prohibited contact order, or
    - (ii) the person is not able to contact that lawyer,
- the police officer who is detaining the person must give the person reasonable assistance to choose another lawyer for the person to contact under subsection (1).
- (3A) Without limiting the assistance that may be given to a person under subsection (3), the police officer may refer the person to the Legal Aid Commission.
- (4) If the police officer who is detaining a person under a preventative detention order has reasonable grounds to believe that:
- (a) the person is unable, because of inadequate knowledge of the English language or a disability, to communicate with reasonable fluency in that language, and
  - (b) the person may have difficulties in choosing or contacting a lawyer because of that inability,



the police officer must give the person reasonable assistance (including, if appropriate, by arranging for the assistance of an interpreter) to choose and contact a lawyer under subsection (1).

- (5) In recommending lawyers to the person being detained as part of giving the person assistance under subsection (3), the police officer who is detaining the person may give priority to lawyers who have been given a security clearance at an appropriate level by the Attorney-General's Department of the Commonwealth.
- (6) Despite subsection (5) but subject to any prohibited contact order, the person being detained is entitled under this section to contact a lawyer who does not have a security clearance of the kind referred to in subsection (5).

### **26ZGA Contacting chaplain**

- (1) The person being detained is entitled to contact an authorised chaplain.
- (2) The form of contact that the person being detained is entitled to have with an authorised chaplain under subsection (1) is limited to visits by the authorised chaplain to the person being detained.
- (3) In this section, **authorised chaplain** means:
  - (a) a person who is authorised under the *Crimes (Administration of Sentences) Act 1999* to perform the functions of a chaplain in a correctional centre, and

**Note—**

Clause 59 of the *Crimes (Administration of Sentences) Regulation 2008* provides for the accreditation of chaplains by the Commissioner of Corrective Services.

- (b) in relation to a person being detained under a preventative detention order who is under 18 years of age and who is detained in a detention centre within the meaning of the *Children (Detention Centres) Act 1987*—a minister of religion authorised by the Chief Executive of Juvenile Justice, Department of Human Services to minister to detainees at that detention centre.

### **26ZH Special contact rules for person under 18 or with impaired intellectual functioning**

- (1) This section applies if the person being detained under a preventative detention order:
  - (a) is under 18 years of age, or
  - (b) has impaired intellectual functioning.
- (2) The person is entitled, while being detained under the order, to have contact with:
  - (a) a parent or guardian of the person, or
  - (b) another person who:

- (i) is able to represent the person's interests, and
  - (ii) is, as far as practicable in the circumstances, acceptable to the person and to the police officer who is detaining the person, and
  - (iii) is not a police officer, and
  - (iv) is not an AFP member or AFP employee (within the meaning of the *Australian Federal Police Act 1979* of the Commonwealth), and
  - (v) is not a member (however described) of a police force of any other State or Territory, and
  - (vi) is not an officer or employee of the Australian Security Intelligence Organisation.
- (3) To avoid doubt:
- (a) if the person being detained (the **detainee**) has 2 parents or 2 or more guardians, the detainee is entitled, subject to any prohibited contact order, to have contact under subsection (2) with each of those parents or guardians, and
  - (b) the detainee is entitled to disclose the following to a person with whom the detainee has contact under subsection (2):
    - (i) the fact that a preventative detention order has been made in relation to the detainee,
    - (ii) the fact that the detainee is being detained,
    - (iii) the period for which the detainee is being detained.
- (4) The form of contact that the detainee is entitled to have with another person under subsection (2) includes:
- (a) being visited by that other person, and
  - (b) communicating with that other person by telephone, fax or email.
- (5) The period for which the detainee is entitled to have contact with another person each day under subsection (2) is:
- (a) 2 hours, or
  - (b) such longer period as the Supreme Court determines and specifies in the preventative detention order.
- (6) Despite subsection (5), the police officer who is detaining the person may permit the detainee to have contact with a person under subsection (2) for a period that is longer than the period provided for in subsection (5).

- (7) The police officer who is detaining a person under a preventative detention order is, as far as is reasonably practicable, to assist the person in exercising the person's entitlement to contact under this Division.

**26ZI Monitoring contact with family members, lawyers etc under sections 26ZE, 26ZG, 26ZGA and 26ZH**

- (1) The contact the person being detained has with another person under section 26ZE, 26ZG, 26ZGA or 26ZH may take place only if it is conducted in such a way that the contact, and the content and meaning of the communication that takes place during the contact, can be effectively monitored by a police officer exercising authority under the preventative detention order.
- (2) The contact may take place in a language other than English only if the content and meaning of the communication that takes place during the contact can be effectively monitored with the assistance of an interpreter.
- (3) Without limiting subsection (2), the interpreter referred to in that subsection may be a police officer.
- (4) If the person being detained indicates that he or she wishes the contact to take place in a language other than English, the police officer who is detaining the person must:
- (a) arrange for the services of an appropriate interpreter to be provided if it is reasonably practicable to do so during the period during which the person is being detained, and
  - (b) if it is reasonably practicable to do so—arrange for those services to be provided as soon as practicable.
- (5) Any communication between:
- (a) a person who is being detained under a preventative detention order, and
  - (b) a lawyer,
- for a purpose referred to in section 26ZG is not admissible in evidence against the person in any proceedings in a court.
- (6) A person (the **monitor**) commits an offence if:
- (a) the monitor is:
    - (i) a police officer who monitors, or
    - (ii) an interpreter who assists in monitoring,
- contact that a person being detained under a preventative detention order has with a lawyer under section 26ZG while the detainee is being detained under the

order, and

- (b) information is communicated in the course of that contact, and
- (c) the information is communicated for one of the purposes referred to in section 26ZG, and
- (d) the monitor discloses that information to another person.

Maximum penalty: Imprisonment for 5 years.

- (7) However, a monitor does not commit an offence under subsection (6) in relation to the disclosure of information to a lawyer for the purpose of obtaining advice as to:
  - (a) whether the information is information communicated between the detainee and the detainee's lawyer for one of the purposes referred to in section 26ZG, and
  - (b) the monitor's obligations under this Act in relation to that information.

#### **26ZJ Entitlement to contact subject to prohibited contact order**

Sections 26ZE, 26ZG, 26ZGA and 26ZH have effect subject to any prohibited contact order made in relation to the person's detention.

#### **26ZK Questioning of person prohibited while person is detained**

A police officer must not question a person while the person is being detained under a preventative detention order except for the purposes of:

- (a) determining whether the person is the person specified in the order, or
- (b) ensuring the safety and well-being of the person being detained, or
- (c) allowing the police officer to comply with a requirement of this Part in relation to the person's detention under the order.

Maximum penalty: Imprisonment for 2 years.

#### **Note—**

This section will not apply to the person if the person is released from detention under the order (even though the order may still be in force in relation to the person).

#### **26ZL Taking fingerprints, recordings, samples of handwriting or photographs**

(1) In this section:

***identification material***, in relation to a person, means prints of the person's hands, fingers, feet or toes, recordings of the person's voice, samples of the person's handwriting or photographs (including video recordings) of the person.

- (2) A police officer must not take identification material from a person who is being detained under a preventative detention order except in accordance with this section.
- Maximum penalty: Imprisonment for 2 years.
- (3) A police officer who is of the rank of sergeant or higher may take identification material from the person, or cause identification material from the person to be taken, if:
- (a) the person consents in writing, or
  - (b) the police officer believes on reasonable grounds that it is necessary to do so for the purpose of confirming the person's identity as the person specified in the order.
- (4) A police officer may use such force as is necessary and reasonable in the circumstances to take identification material from a person under this section.
- (5) Subject to this section, a police officer may only take identification material (other than hand prints, fingerprints, foot prints or toe prints) from a person who:
- (a) is under 18 years of age, or
  - (b) has impaired intellectual functioning,
- if the Supreme Court orders that the material be taken.
- (6) The taking of identification material from a person who:
- (a) is under 18 years of age, or
  - (b) has impaired intellectual functioning,
- must be done in the presence of:
- (c) a parent or guardian of the person, or
  - (d) if a parent or guardian of the person is not acceptable to the person—another appropriate person.
- (7) Despite this section, identification material may be taken from a person who is under 18 years of age and is capable of managing his or her affairs if:
- (a) subsections (8) and (9) are satisfied, or
  - (b) subsection (8) or (9) is satisfied (but not both) and the Supreme Court orders that the material be taken.
- (8) This subsection applies if the person agrees in writing to the taking of the material.
- (9) This subsection applies if either:

- (a) a parent or guardian of the person, or
  - (b) if a parent or guardian is not acceptable to the person—another appropriate person,
- agrees in writing to the taking of the material.

(10) Despite this section, identification material may be taken from a person who:

- (a) is at least 18 years of age, and
  - (b) is capable of managing his or her affairs,
- if the person consents in writing.

(11) A reference in this section to an **appropriate person** in relation to a person (the **subject**) who is under 18 years of age, or has impaired intellectual functioning, is a reference to a person who:

- (a) is capable of representing the subject's interests, and
- (b) as far as is practicable in the circumstances, is acceptable to the subject and the police officer who is detaining the subject, and
- (c) is none of the following:
  - (i) a police officer,
  - (ii) an AFP member or AFP employee (within the meaning of the [Australian Federal Police Act 1979](#) of the Commonwealth),
  - (iii) a member (however described) of a police force of another State or Territory,
  - (iv) an officer or employee of the Australian Security Intelligence Organisation.

#### **26ZM Use of identification material**

- (1) This section applies if identification material is taken under section 26ZL from a person being detained under a preventative detention order.
- (2) The material may be used only for the purpose of determining whether the person is the person specified in the order.
- (3) A person who uses identification material in contravention of subsection (2) is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

(4) If:

- (a) a period of 12 months elapses after the identification material is taken, and

(b) proceedings in respect of:

(i) the preventative detention order, or

(ii) the treatment of the person in connection with the person's detention under the order,

have not been brought, or have been brought and discontinued or completed, within that period,

the Commissioner of Police is to ensure that the material is destroyed as soon as practicable after the end of that period.

## **Division 6 Miscellaneous**

### **26ZN Annual reports to be given to Attorney General and Minister for Police**

- (1) The Commissioner of Police must report annually to the Attorney General and Minister for Police on the exercise of powers under this Part by police officers. The report is to be provided within 4 months after each 30 June.
- (2) Without limiting subsection (1), a report relating to a year ended on that 30 June must include the following matters:
  - (a) the number of applications for preventative detention orders (including interim orders) and the number of any such orders made, and the number of occasions on which such an order (other than an interim order) was not made following a hearing,
  - (b) the number of any such applications and orders in relation to adults and the number in relation to juveniles,
  - (c) the duration of each such order made,
  - (d) a statement as to whether each such order was made to prevent a terrorist act or to preserve evidence,
  - (e) a statement as to whether a person was taken into custody under each such order and, if so, the period for which the person was detained,
  - (f) a statement as to whether the person detained under such an order was principally detained in a correctional centre, juvenile correctional centre, juvenile detention centre, police facility or other place,
  - (g) the number of applications for prohibited contact orders and the number of any such orders made, the duration of each such order and the number of any such orders made in relation to adults and in relation to juveniles,
  - (h) the number of applications for revocation of an order and the number of

revocations granted,

- (i) particulars of any complaints in relation to the detention of a person under a preventative detention order made or referred during the year to the Ombudsman or Police Integrity Commission and the outcome of any complaint so made,
- (j) a statement confirming the destruction of identification material required to be destroyed under section 26ZM (4).

(3) The reports are to be tabled by the Attorney General in each House of Parliament as soon as practicable after they are received by the Attorney General.

**Note—**

Section 36 of the Act requires the Minister to carry out an annual review of the Act (to be tabled in Parliament).

**26ZO Monitoring by Ombudsman**

- (1) The Ombudsman is to keep under scrutiny the exercise of powers conferred on police officers or correctional officers under this Part.
- (2) For that purpose, the Ombudsman may require the Commissioner of Police or any public authority to provide information about the exercise of those powers.
- (3) The Commissioner of Police is to ensure that the Ombudsman:
  - (a) is duly notified of the making of a preventative detention order or prohibited contact order, and given a copy of any such order, and
  - (b) if a person is taken into custody under a preventative detention order—is duly notified that the person has been taken into custody, and
  - (c) if an order is revoked—is duly notified of the revocation.
- (4) The Ombudsman must, as soon as practicable after the expiration of:
  - (a) 2 years after the commencement of this Part, and
  - (b) 5 years after that commencement, and
  - (c) every 3 years after that,prepare reports on the exercise of those powers and furnish a copy of the reports to the Attorney General and the Minister for Police.
- (5) The reports are to be tabled by the Attorney General in each House of Parliament as soon as practicable after they are received by the Attorney General.
- (6) If a House of Parliament is not sitting when the Attorney General seeks to table a report, copies of the report are to be presented to the Clerk of the House concerned



by the Attorney General.

(7) 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.

(8) The report is to be included with the report prepared by the Ombudsman under section 27ZC so long as the requirements of this section are complied with in relation to the report prepared under this section.

#### **26ZP Ombudsman and PIC functions not affected**

This Part does not affect any function of the Ombudsman or the Police Integrity Commission under any other Act.

#### **26ZQ Law relating to legal professional privilege not affected**

To avoid doubt, this Part does not affect the law relating to legal professional privilege.

#### **26ZR Legal proceedings in relation to preventative detention orders**

This Part does not limit proceedings that may be brought in a court for a remedy in relation to:

(a) a preventative detention order, or

(b) the treatment of a person in connection with the person's detention under a preventative detention order.

#### **26ZS Sunset provision**

(1) A preventative detention order, or a prohibited contact order, that is in force at the end of 10 years after the day on which this Part commences ceases to be in force at that time.

- (2) A preventative detention order, and a prohibited contact order, cannot be applied for, or made, after the end of 10 years after the day on which this Part commences.

## 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 the NSW Police Force who are designated by the Commissioner of Police as the terrorism investigation group for the NSW Police Force.

**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.

**premises** includes vehicle.

**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) A declaration of an eligible Judge under subsection (3) cannot be revoked by the Attorney General. However, the declaration of a Judge as an eligible Judge is revoked if:
  - (a) the eligible Judge revokes his or her consent in accordance with subsection (5) or ceases to be a Judge, or
  - (b) the Chief Justice notifies the Attorney General that the Judge should not continue to be an eligible Judge.
- (7) To avoid doubt, the selection of the eligible Judge to exercise any particular function conferred on eligible Judges is not to be made by the Attorney General or other Minister of the Crown, and the exercise of that particular function is not subject to the control and direction of the Attorney General or other Minister of the Crown.

## **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, and
- (m) to do anything else that is reasonable for the purpose of concealing anything done in the execution of the warrant from the occupier of the premises.

(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.

**270A Operation of electronic and other equipment at premises and removal of things from premises for examination**

(1) An eligible person (within the meaning of section 270) executing or assisting in the

execution of a warrant may:

- (a) bring to the premises the subject of the warrant any electronic and other equipment reasonably necessary for the examination of a thing found at the premises, and
  - (b) operate any such equipment (or equipment already at those premises) to examine a thing found at the premises in order to determine whether it is or contains a thing that may be seized under the warrant, and
  - (c) move a thing found at the premises to another place (for up to 7 working days) for examination in order to determine whether it is or contains a thing that may be seized under the warrant if the occupier of the premises consents or if:
    - (i) it is significantly more practicable to do so having regard to the timeliness and cost of examining the thing at another place and the availability of expert assistance, and
    - (ii) there are reasonable grounds to suspect it contains or constitutes a thing that may be seized under the warrant.
- (2) If a thing is moved to another place for examination under this section, an authorised officer may authorise the removal of the thing for an additional period (not exceeding 7 working days at any one time) if satisfied that the additional period is required to determine whether it is or contains a thing that may be seized under the warrant.
  - (3) The authorised officer may only authorise the removal of a thing for a period exceeding a total of 28 days if satisfied that it is justified on the basis that there are exceptional circumstances in the case.
  - (4) The limitation imposed by this section on the period that a thing may be removed to another place ceases when it is determined that it is or contains a thing that may be seized under the warrant.
  - (5) This section does not authorise the operation of equipment already at the premises the subject of the warrant to examine a thing unless the person operating the equipment has reasonable grounds to believe that the examination can be carried out without damaging the equipment or the thing.

**270B Access to and downloading of data from computers (including access to computers outside premises the subject of a warrant)**

- (1) An eligible person (within the meaning of section 270) executing or assisting in the execution of a warrant may operate equipment at the premises the subject of the warrant to access data (including data not held at the premises the subject of the warrant) if the person believes on reasonable grounds that the data might be data that could be seized under the warrant.

- (2) The person executing or assisting in the execution of the warrant may:
- (a) copy any accessed data to a disk, tape or other data storage device brought to the premises, and
  - (b) with the approval of the occupier of the premises, copy any accessed data to a disk, tape or other data storage device already at the premises, and
  - (c) take the disk, tape or other data storage device from the premises to examine the accessed data to determine whether it (or any part of it) is data that could be seized under the warrant.
- (3) The person executing or assisting in the execution of the warrant may operate the equipment to put any such data in documentary form and seize the document so produced.
- (4) The person executing or assisting in the execution of the warrant may seize the equipment and any disk, tape or other data storage device:
- (a) if it is not practicable to exercise the powers referred to in subsection (2) or (3) in relation to the data, or
  - (b) if possession by the occupier of the equipment or device could constitute an offence.
- (5) This section does not authorise the operation of equipment already at the premises the subject of the warrant to access data unless the person operating the equipment has reasonable grounds to believe that the equipment can be operated without damaging the equipment or the data.

**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) the NSW Police Force, 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, occupied the subject premises and 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 (Repealed)**

**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 the NSW Police Force, 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 the NSW Police Force 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) The Ombudsman is to keep under scrutiny the exercise of powers conferred on members of the NSW Police Force, 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, every three years, prepare a report on the exercise of those powers and furnish a copy of the report to the Attorney General and the Minister for Police.
- (4) The Attorney General is to lay (or cause to be laid) a copy of the report before both Houses of Parliament as soon as practicable after the Attorney General receives the report.
- (5) If a House of Parliament is not sitting when the Attorney General seeks to lay a report before it, the Attorney General 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.
- (7) The report is to be included with the report prepared by the Ombudsman under section 26ZO so long as the requirements of this section are complied with in relation to the report prepared under this section.
- (8) The first report under this section after the commencement of the *Terrorism (Police Powers) Amendment Act 2010* is to be prepared at the same time as the next report under section 26ZO is to be prepared.

## **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 (including adjusting rights by extinguishing, whether in whole or in part, any interests in the property of such persons),
  - (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.
- (5) An order under subsection (2) (a) that provides for the extinguishment, whether in whole or in part, of any interest in property operates to extinguish the interest according to its tenor.

## **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.

### **30A ICAC and PIC assistance on terrorism investigation**

- (1) The Independent Commission Against Corruption and the Police Integrity Commission may enter into arrangements with the Commissioner of Police under which any of their staff or facilities are used by the Commissioner of Police in connection with the investigation of suspected terrorist acts or possible terrorist acts.
- (2) Subsection (1) does not limit any other arrangement that may be entered into with the Commissioner of Police with respect to the investigation of criminal offences.

### **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, other than an offence against section 26P or 26ZI (6), are to be dealt with summarily by the 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 the NSW Police Force, members of the Crime Commission or members of staff of the Crime Commission.
  - (1B) For the purposes of the review, the Minister may require the Commissioner of Police to provide information about the exercise of functions under Part 2A by police officers.
- (2) The review is to be undertaken, every 3 years, as soon as possible after the reports of the Ombudsman under sections 26ZO and 27ZC have been tabled in each House of Parliament.
- (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) (Repealed)

#### **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*
  - Terrorism (Police Powers) Amendment Act 2010*
- (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.