



Western Australia

Terrorism (Extraordinary Powers) Amendment Act 2015

As at 27 Nov 2015

No. 39 of 2015

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Terrorism (Extraordinary Powers) Amendment Act 2015

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Western Australia

Terrorism (Extraordinary Powers) Amendment Act 2015

No. 39 of 2015

An Act to amend the *Terrorism (Extraordinary Powers) Act 2005*.

[Assented to 27 November 2015]

The Parliament of Western Australia enacts as follows:

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1. Short title

This is the *Terrorism (Extraordinary Powers) Amendment Act 2015*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

3. Act amended

This Act amends the *Terrorism (Extraordinary Powers) Act 2005*.

4. Section 3 amended

In section 3 insert in alphabetical order:

data includes any record, any computer program, and any part of a computer program, in a digital, electronic or magnetic form;

5. Section 7 amended

In section 7(2) delete “believe —” and insert:

suspect —

6. Section 14 amended

- (1) In section 14(1)(b) delete “is” and insert:

is, or contains,

- (2) In section 14(2):

- (a) in paragraph (b) delete “search.” and insert:

search;

- (b) after paragraph (b) insert:

- (c) access and operate any device or equipment in the vehicle that holds or processes data.

7. Section 15 amended

After section 15(1) insert:

- (2A) For the purposes of searching a place under subsection (1), a police officer may access and operate any device or equipment in the place that holds or processes data.

8. Section 16 amended

After section 16(2) insert:

- (3) If a thing is seized under this section, a police officer may access and operate any device or equipment in the thing that holds or processes data.

9. Section 17 amended

In section 17(1):

- (a) in paragraph (b) delete “Territory.” and insert:

Territory; or

- (b) after paragraph (b) insert:

(c) a sworn employee of the New Zealand Police;
or

(d) a law enforcement officer of a foreign
jurisdiction prescribed for the purposes of this
subsection.

10. Section 20 amended

After section 20(2) insert:

- (3) Subsection (1) does not limit judicial review for
jurisdictional error.

11. Section 22 amended

- (1) In section 22 insert in alphabetical order:

Commonwealth terrorist offence means an offence set
out in section 23(2)(b) or (c);

target vehicle, in relation to a covert search warrant,
means a vehicle that is specified to be searched under
the warrant.

- (2) In section 22 in the definition of *target place* delete “warrant.”
insert:

warrant;

12. Section 23 amended

Delete section 23(2) and insert:

- (2) The Commissioner must not authorise a police officer to apply for a covert search warrant unless the Commissioner is satisfied there are reasonable grounds to suspect —
- (a) that a terrorist act has been, is being, or is about to be, committed, whether in or outside this State; or
 - (b) that a person has committed an offence under *The Criminal Code* section 102.3 set out in the Schedule to the *Criminal Code Act 1995* (Commonwealth); or
 - (c) that a person has committed, or is committing, an offence under *The Criminal Code* section 80.2C set out in the Schedule to the *Criminal Code Act 1995* (Commonwealth).
- (3A) On being satisfied under subsection (2), the Commissioner may authorise a police officer to apply for a covert search warrant if the Commissioner is satisfied there are reasonable grounds to believe —
- (a) that entry to and search of a place or vehicle in this State will substantially assist in preventing an act, or investigating an act or offence; and
 - (b) that the entry and search needs to be carried out without the knowledge of the occupier of the place or the person in charge of the vehicle.

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13. Section 24 amended

(1) In section 24(3):

(a) in paragraph (b) delete “place;” and insert:

place or target vehicle; and

(b) in paragraph (c) delete “occupier of the target place,” and insert:

occupier of the target place, or person in charge of the target vehicle,

(c) delete paragraph (d) and insert:

(d) state the grounds on which the applicant suspects that a terrorist act or Commonwealth terrorist offence has been, is being, or is about to be, committed, whether in or outside this State; and

(ea) state the grounds on which the applicant believes —

(i) that entry to and search of the target place or target vehicle will substantially assist in preventing or investigating the act or offence; and

(ii) that the entry and search needs to be carried out without the knowledge of the occupier of the target place or person in charge of the target vehicle;

and

- (d) in paragraph (e) delete “act, or the class of such things, to be searched for in the target place;” and insert:

act or Commonwealth terrorist offence, or the class of such things, to be searched for in the target place or target vehicle; and

- (e) in paragraph (f) delete “and that it is in the target place;” and insert:

or Commonwealth terrorist offence and that it is in the target place or target vehicle; and

- (f) in paragraph (g) delete “place —” and insert:

place or target vehicle —

- (g) in paragraph (h) after “place” insert:

or target vehicle

- (h) in paragraph (i) after “target place” insert:

or target vehicle

- (i) in paragraph (i) after “place” insert:

or vehicle

- (j) in paragraph (j) after “target place” insert:

or target vehicle

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- (2) In section 24(4) after “place” insert:

or target vehicle

- (3) In section 24(3) after each of paragraphs (a), (c) and (g) to (i) insert:

and

14. Section 26 amended

- (1) In section 26(1):

- (a) after “a place” insert:

or vehicle

- (b) in paragraph (a) delete “suspects, there are reasonable grounds for the applicant to have that suspicion;” and insert:

suspects or believes, there are reasonable grounds for the applicant to have those suspicions and beliefs; and

- (c) in paragraph (c) after “target place” insert:

or target vehicle

- (2) In section 26(2):

- (a) after “target place” insert:

or target vehicle

- (b) in paragraph (a) delete “place;” and insert:

place or target vehicle; or

- (3) In section 26(3)(a) after “terrorist act” insert:

or Commonwealth terrorist offence

- (4) In section 26(5):
 - (a) in paragraph (b) delete “place;” and insert:

place or target vehicle;

 - (b) delete paragraph (d) and insert:

(d) if the warrant authorises the entry of a place that adjoins or is near the target place or target vehicle — a description of the place;

 - (c) in paragraph (e) after “place” insert:

or target vehicle

 - (d) in paragraph (f) after “target place” insert:

or target vehicle

 - (e) in paragraph (f) after “place” insert:

or vehicle

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15. Section 27 amended

(1) In section 27(6) after “place” insert:

or vehicle

(2) In section 27(7):

(a) in paragraph (a) delete “place;” and insert:

place or target vehicle;

(b) in paragraph (b) delete “place;” and insert:

place or person in charge of the target vehicle;

(c) in paragraph (d) after “place” insert:

or target vehicle

(d) in paragraph (e) after “terrorist act” insert:

or Commonwealth terrorist offence

(e) in paragraph (f) after “place” insert:

or target vehicle

(f) in paragraph (g)(i), (ii) and (iii) after “target place” insert:

or target vehicle

- (g) in paragraph (g)(iii) after “the place” insert:
or vehicle

- (3) In section 27(8):
 - (a) in paragraph (a) after “target place” insert:
or target vehicle

 - (b) in paragraph (b) delete “place;” and insert:
place or target vehicle;

 - (c) in paragraph (c) after “target place” insert:
or target vehicle

 - (d) in paragraph (d) after “target place” insert:
or target vehicle

 - (e) in paragraph (d)(i) delete “place” and insert:
place, or person in charge of the vehicle,

 - (f) in paragraph (e) delete “record —” and insert:
record or other data —

 - (g) in paragraph (e)(i) after “target place” insert:
or target vehicle

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- (h) in paragraph (e)(i) delete “record; and” and insert:

record or data; and
- (i) delete paragraph (e)(ii) and insert:
 - (ii) to access and operate any device or equipment that holds, records or processes data and to exercise the powers to copy and seize the records or data set out in the *Criminal Investigation Act 2006* section 148;
- (j) in paragraph (f) after “target place” insert:

or target vehicle
- (k) in paragraph (f)(i) and (ii) delete “place;” and insert:

place or vehicle;
- (l) in paragraph (f)(iii), (iv) and (v) after “place” insert:

or vehicle
- (4) After section 27(8) insert:
 - (9A) Access to data under a covert search warrant is subject to any limitations imposed by the *Telecommunications (Interception and Access) Act 1979* (Commonwealth) and the *Telecommunications (Interception and Access) Western Australia Act 1996*.

- (5) In section 27(11):
- (a) after “target place” insert:

or target vehicle
 - (b) after “the place” insert:

or vehicle
 - (c) in paragraphs (a), (b) and (c) after “the place” insert:

or vehicle

16. Section 28A inserted

After section 27 insert:

28A. Order to provide access to data

- (1) For the purpose of seizing a record or data, or exercising a power under a covert search warrant, an officer may order a person to provide any information or assistance that is reasonable and necessary to enable the officer to seize the record or data or exercise the power.
- (2) An order under subsection (1) may be given to the person from whom the record or data may be seized; or an employee (whether under a contract of service or a contract for services) of that person, if an officer reasonably suspects that the person knows how to gain access to or operate any such device or equipment.

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- (3) A person who is given an order under subsection (1) and who, without reasonable excuse (the onus of proving which is on the person), does not obey it commits an offence.

Penalty for this subsection: a fine of \$12 000 and imprisonment for 12 months.

- (4) It is not a defence to a charge of an offence under subsection (3) that information that becomes available under the access order would or may incriminate the accused.

17. Section 28 amended

- (1) After section 28(1) insert:

(2A) However, if the authorised applicant named in a covert search warrant has died or is unavailable, the report may be given to the judge by another police officer of the same or higher rank who has been nominated by the Commissioner, in writing, to replace the original authorised applicant.

(2B) A replacement police officer under subsection (2A) must give the judge who issued the warrant (or, in the absence of that judge, the Chief Justice) a written report about the execution of the warrant in accordance with this section.

Penalty for this subsection: a fine of \$12 000 and imprisonment for 12 months.

- (2) Delete section 28(2) and insert:
- (2) If the warrant was not executed, the report must be given to the judge within 7 days after the expiry date specified in the warrant.
 - (3A) If the warrant was executed, then within 7 days after the day on which it was executed —
 - (a) the report must be given to the judge; or
 - (b) an interim report, together with an application for an extension of time to give the report, must be given to the judge.
 - (3B) If the judge grants an extension of time to give the report, the report must be given to the judge on or before the date specified in the extension of time.
- (3) In section 28(3):
- (a) in paragraph (b) after “place” insert:

or vehicle
 - (b) in paragraph (c) delete “place” and insert:

place, and person in charge of each vehicle,
 - (c) in paragraph (f)(ii) after “place” insert:

or vehicle
 - (d) in paragraph (f)(iii) delete “act; or” and insert:

act or Commonwealth terrorist offence; or

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- (e) delete paragraph (h) and insert:
 - (h) if the target place or target vehicle was re-entered to return any thing removed from, or to retrieve any thing substituted in, the place or vehicle when it was first entered under the warrant —
 - (i) state when the re-entry took place; and
 - (ii) describe any other place that was entered in order to effect the re-entry; and
 - (iii) name each person who re-entered the target place, target vehicle or any other place in order to effect the re-entry; and
 - (iv) describe the thing that was returned or retrieved; and
 - (v) if the thing that was not returned or retrieved, explain why it was not;
- (f) in paragraph (i) after “terrorist act” insert:

or Commonwealth terrorist offence

18. Section 29 amended

In section 29(1) in the definition of *confidential information* paragraph (b) after “report” insert:

or interim report

19. Section 30 amended

In section 30(1):

(a) in paragraph (d) after “places” insert:

and vehicles

(b) in paragraph (e) after “terrorist acts” insert:

or Commonwealth terrorist offences

(c) in paragraph (g) after “place” insert:

or vehicle

20. Section 35 amended

(1) In section 35(1) delete “the tenth anniversary of the day on which it receives the Royal Assent.” and insert:

19 December 2025.

(2) In section 35(2) delete “the tenth anniversary of the day on which the Act receives the Royal Assent,” and insert:

19 December 2025,

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21. Schedule 1 clause 7 amended

In Schedule 1 after clause 7(1) insert:

- (2A) If under subclause (1), any device or equipment is seized, a police officer may operate the device or equipment to gain access to, and recover and reproduce, a record or other data held or processed by that device or equipment if the officer reasonably suspects that the record or other data may be seized under the warrant.

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