



Western Australia

Terrorism (Extraordinary Powers) Act 2005

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Terrorism (Extraordinary Powers) Act 2005

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Defined terms

Western Australia

Terrorism (Extraordinary Powers) Act 2005

An Act to provide powers to prevent and respond to terrorist acts.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

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

2. Commencement

- (1) Subject to subsection (2), this Act comes into operation on the 28th day after the day on which it receives the Royal Assent.
- (2) Part 3 comes into operation on a day to be fixed by proclamation.

3. Interpretation

In this Act —

Commissioner means the Commissioner of Police appointed under the *Police Act 1892* or a person acting in that office;

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

judge means a judge of the Supreme Court;

place means any land, building or structure, or a part of any land, building or structure;

reasonably suspects has the meaning given by section 4;

record means any record of information, irrespective of how the information is recorded or stored or able to be recovered and includes —

- (a) any thing from which images, sounds or writings can be reproduced, with or without the aid of anything else; and
- (b) any thing on which information is recorded or stored, whether electronically, magnetically, mechanically or by some other means;

serious indictable offence means an indictable offence the penalty specified by a written law for which is or includes imprisonment for 5 years or more or for life;

terrorist act has the meaning given to that term by section 5;

thing connected with a terrorist act means a thing that was or may have been used, is or may be being used, or is about to be or may be used —

- (a) to do a terrorist act; or
- (b) in preparing to do a terrorist act;

vehicle means any thing capable of transporting people or things by air, road, rail or water, and it does not matter how the thing is moved or propelled.

[Section 3 amended by No. 39 of 2015 s. 4.]

4. “Reasonably suspects”, meaning of

For the purposes of this Act, a person reasonably suspects something at a relevant time if he or she, acting in good faith, personally has grounds at the time for suspecting the thing and those grounds (even if they are subsequently found to be false or non-existent), when judged objectively, are reasonable.

5. “Terrorist act”, meaning of

- (1) In this section —

jurisdiction means this State, another State, a Territory, the Commonwealth, or a foreign country;

person means a person in any jurisdiction;

property means property in any jurisdiction.

- (2) In this Act **terrorist act** means an act that —

- (a) is an act that falls within subsection (3) but not within subsection (4);
- (b) is done with the intention of advancing a political, religious or ideological cause; and

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- (c) is done with the intention of —
 - (i) coercing, or influencing by intimidation, the government of, or of a part of, any jurisdiction;
or
 - (ii) intimidating the public, or a section of the public, of any jurisdiction.

- (3) An act falls within this subsection if it —
 - (a) causes a person's death;
 - (b) causes serious physical harm to a person;
 - (c) endangers a person's life, other than the life of the person doing the act;
 - (d) creates a serious risk to the health or safety of the public;
 - (e) causes serious damage to property; or
 - (f) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to —
 - (i) an information system;
 - (ii) a telecommunications system;
 - (iii) a financial system;
 - (iv) a system used for the delivery of essential government services;
 - (v) a system used for, or by, an essential public utility;
 - (vi) a system used for, or by, a transport system.

- (4) An act falls within this subsection if it —
 - (a) is advocacy, protest, dissent or industrial action; and
 - (b) is not intended —
 - (i) to cause a person's death;
 - (ii) to cause serious physical harm to a person;
 - (iii) to endanger a person's life, other than the life of the person doing the act;

- (iv) to create a serious risk to the health or safety of the public.

Part 2 — Special police powers

Division 1 — Preliminary

6. Interpretation

In this Part —

Commissioner's warrant means a warrant issued under Division 2;

target area means an area specified as such in a Commissioner's warrant;

target person means a person specified as such in a Commissioner's warrant;

target vehicle means a vehicle specified as such in a Commissioner's warrant.

Division 2 — Commissioner's warrants

7. Warrant, issue of

- (1) The Commissioner may issue a warrant that authorises police officers to exercise the powers in Division 3.
- (2) The Commissioner must not issue such a warrant unless he or she 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; and
 - (b) that the exercise of the powers in Division 3 will substantially assist in achieving one or more of these purposes —
 - (i) to prevent the terrorist act;
 - (ii) to minimise the risk to the safety or health of the public, or any section of the public, in this State arising from the act;
 - (iii) to find a person in this State who is or may be connected with the terrorist act;

- (iv) to find a vehicle in this State that is or may be connected with the terrorist act;
 - (v) to carry out investigations in this State into the terrorist act, and obtain evidence in this State relevant to the terrorist act.
- (3) The Commissioner must not issue such a warrant without the prior approval of a judge but, if there is an urgent need to issue it and a judge cannot be contacted to request approval, may issue it without such approval.
- (4) If the Commissioner issues such a warrant without the prior approval of a judge, the warrant ceases to have effect if —
 - (a) a judge subsequently refuses to approve its issue; or
 - (b) a judge does not approve its issue within 24 hours after its issue,whichever happens first.
- (5) As soon as practicable after the Commissioner issues such a warrant, he or she must give a written report to the Minister that —
 - (a) states the terms of the warrant;
 - (b) describes generally the grounds for, and the information relied on when, issuing the warrant; and
 - (c) states for how long the warrant has effect.
- (6) A judge who refuses to approve the issue of a warrant must give the Commissioner written reasons for the refusal.

[Section 7 amended by No. 39 of 2015 s. 5.]

8. Warrant, content of

- (1) A Commissioner's warrant must be in writing but, if it is not practicable to issue it in writing because of an urgent need to issue it —

- (a) it may be issued orally with details recorded contemporaneously; and
 - (b) if it is issued orally, it must be put in writing as soon as practicable after it is issued and in any event within 6 hours.
- (2) A Commissioner's warrant —
- (a) must be directed to all police officers;
 - (b) must state that it is issued under this Act;
 - (c) must describe the general nature of the terrorist act in respect of which it is issued;
 - (d) must name or describe (if necessary by using a picture or other visual depiction) one or more of the following —
 - (i) an area of the State in which the powers in Division 3 may be exercised (the **target area**);
 - (ii) a person sought (the **target person**) in connection with the terrorist act;
 - (iii) a vehicle sought (the **target vehicle**) in connection with the terrorist act;
 - (e) must state the date and time it is issued;
 - (f) must state whether it has been approved by a judge;
 - (g) must state the date and time when it will, unless before then it ceases to have effect under section 7(4) or is cancelled under section 9, cease to have effect; and
 - (h) subject to subsection (1), must be signed by the Commissioner.
- (3) An area of the State stated under subsection (2)(d)(i) must not be larger than is reasonably necessary to allow the purposes for which the Commissioner's warrant is issued to be achieved effectively.
- (4) The date and time stated under subsection (2)(g) must not be more than 7 days after the date on which the warrant is issued.

9. Warrant, duration of

- (1) A Commissioner's warrant has effect until the date and time stated in it or until it ceases to have effect under section 7(4), or until it is cancelled under this section, whichever happens first.
- (2) The Commissioner may cancel a Commissioner's warrant at any time.
- (3) The life of a Commissioner's warrant cannot be extended but, subject to this Division, the Commissioner may issue a further warrant that has effect immediately a previously issued warrant ceases to have effect.

Division 3 — Powers under a Commissioner's warrant

10. Exercising powers, general matters

- (1) While a Commissioner's warrant has effect, the powers in this Division may be exercised by any police officer in respect of the matters set out in the Commissioner's warrant.
- (2) A police officer may exercise those powers —
 - (a) without any other warrant; and
 - (b) even if he or she is not in possession of the Commissioner's warrant or a copy of it.
- (3) Schedule 1 applies in relation to exercising any power in this Division.
- (4) Before or when or as soon as practicable after exercising a power in this Division in relation to a person, a police officer must tell the person the reason for exercising the power.
- (5) A person in relation to whom a police officer is about to exercise or is exercising a power in this Division may request the officer to identify himself or herself.

- (6) A police officer requested by a person to identify himself or herself must —
 - (a) give the person the officer's surname and rank; and
 - (b) if the officer is not in uniform, show the person evidence that the officer is a police officer.
- (7) Subsections (5) and (6) do not affect the operation of the *Criminal Investigation (Identifying People) Act 2002* section 16.

11. Target areas, powers in respect of

- (1) A police officer may order a person who the officer reasonably suspects is about to enter a target area not to enter the target area.
- (2) A police officer may order the person in charge of a vehicle that the officer reasonably suspects is about to enter a target area not to take the vehicle into the target area.
- (3) A police officer may order a person who the officer reasonably suspects is in a target area either —
 - (a) to leave the target area; or
 - (b) to remain in the target area.
- (4) If a police officer reasonably suspects that a vehicle is in a target area, the officer may —
 - (a) order the person in charge of the vehicle either —
 - (i) to remove it from the target area; or
 - (ii) not to remove it from the target area;or
 - (b) move the vehicle from the target area.

12. Personal details of certain people may be obtained

- (1) This section must be read as one with the *Criminal Investigation (Identifying People) Act 2002*.

- (2) In this section, a term that is not defined in this Act has the meaning given to it by the *Criminal Investigation (Identifying People) Act 2002*.
- (3) If a police officer reasonably suspects that a person whose personal details are unknown to the officer —
- (a) is about to enter, is in, or has recently left, a target area;
 - (b) is a target person;
 - (c) is in the company of a target person in suspicious circumstances; or
 - (d) is in a target vehicle,

the officer may exercise the powers in the *Criminal Investigation (Identifying People) Act 2002* section 16 as if the person were reasonably suspected by the officer to be able to assist in the investigation of a suspected offence.

- (4) The *Criminal Investigation (Identifying People) Act 2002* section 16, with any necessary changes, applies to and in respect of the exercise of the powers in subsection (3) as if the power were conferred by that Act.

13. Certain people may be searched

- (1) In this section, a term not defined in section 3 has the meaning given to it by Schedule 2 clause 1.
- (2) If a police officer reasonably suspects that a person —
- (a) is about to enter, is in, or has recently left, a target area;
 - (b) is a target person;
 - (c) is in the company of a target person in suspicious circumstances; or
 - (d) is in a target vehicle,

the officer may do a basic search or a strip search on the person for the purposes of looking for a thing connected with a terrorist act.

- (3) A police officer must not do a strip search on a person under subsection (2) unless the officer reasonably suspects —
 - (a) that the person is a target person;
 - (b) that a strip search is necessary; and
 - (c) that the seriousness and urgency of the situation require a strip search to be done.
- (4) Schedule 2 applies to and in relation to a search of a person under subsection (2).

14. Certain vehicles may be searched

- (1) If a police officer reasonably suspects that a vehicle —
 - (a) is about to enter, is in, or has recently left, a target area;
 - (b) is, or contains, a target vehicle; or
 - (c) contains a target person,

the officer may enter and search the vehicle and any thing in or attached to it for a thing connected with a terrorist act or for the target person or both.

- (2) For the purposes of searching a vehicle under subsection (1), a police officer may do any or all of the following —
 - (a) stop and detain the vehicle for a reasonable period;
 - (b) move the vehicle to a place suitable to do the search;
 - (c) access and operate any device or equipment in the vehicle that holds or processes data.

[Section 14 amended by No. 39 of 2015 s. 6.]

15. Certain places may be entered and searched

- (1) If a police officer reasonably suspects that a place is in a target area, the officer may enter and search the place for a thing connected with a terrorist act.

(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.

(2) If a police officer reasonably suspects that —

(a) a target person is in a place; or

(b) a target vehicle is in a place,

the officer may enter and search the place for the target person, or for the target vehicle or both.

[Section 15 amended by No. 39 of 2015 s. 7.]

16. Seizing things found

(1) If a police officer in a target area finds, or a police officer doing a search under this Division finds, a thing that the officer reasonably suspects is a thing connected with a terrorist act, the officer may seize it.

(2) If a police officer in a target area finds, or a police officer doing a search under this Division finds, a thing that is not a thing connected with a terrorist act but that the officer reasonably suspects is a thing that is or may be evidence in relation to a serious indictable offence, the officer may seize it.

(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.

[Section 16 amended by No. 39 of 2015 s. 8.]

Division 4 — Special officers

17. Appointing police officers of other jurisdictions to be special officers

(1) The Commissioner may appoint as a special officer for the purposes of this Act any person who is —

(a) a member of the Australian Federal Police; or

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- (b) a member of the police force of another State or of a Territory; or
 - (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.
- (2) The Commissioner must not make an appointment under subsection (1) unless he or she is of the opinion that the appointment is necessary for the more effective exercise of the powers that may be exercised under a Commissioner's warrant.
- (3) The appointment of a special officer —
- (a) must be in writing;
 - (b) must state the date and time it is made;
 - (c) must state the date and time it ceases to have effect;
 - (d) may be made subject to any condition the Commissioner thinks fit; and
 - (e) must be signed by the Commissioner.
- (4) The date and time stated under subsection (3)(c) must not be more than 14 days after the date on which the appointment is made.
- (5) The appointment of 2 or more special officers may be in one instrument of appointment.
- (6) The Commissioner may cancel the appointment of a special officer at any time.
- (7) A special officer's appointment has effect until the date and time stated in it or until it is cancelled under this section, whichever happens first.
- (8) The life of a special officer's appointment cannot be extended but, subject to this section, the Commissioner may make a further appointment that has effect immediately a prior appointment ceases to have effect.

[Section 17 amended by No. 39 of 2015 s. 9.]

18. Functions of special officers

- (1) Unless his or her appointment provides to the contrary, a special officer appointed under section 17 —
 - (a) has and may perform any function that a police officer has and may perform under this Part; and
 - (b) in connection with the exercise of any such function, has and may perform any function that a police officer has under any other written law or the common law.
- (2) A special officer appointed under section 17 is to be taken to be a public officer for the purposes of *The Criminal Code*.
- (3) A special officer appointed under section 17 and exercising a function under subsection (1) is to be taken to be a police officer for the purposes of the *Police Act 1892* section 137.

Division 5 — Miscellaneous

19. Government agency, directions to

- (1) In this section —

government agency means any body (whether corporate or unincorporate) or the holder of any office, post or position, being a body, office, post or position established under a written law for a public purpose.
- (2) While a Commissioner's warrant has effect, the Commissioner may direct a government agency to perform or refrain from performing, or as to the manner of performing, any function that the agency has under a written law.
- (3) The Commissioner must not give such a direction unless he or she reasonably suspects the direction is necessary to facilitate the exercise of any of the powers in Division 3.
- (4) A government agency given such a direction is authorised and required to comply with it, despite the written law that confers the function concerned.

20. Warrant not open to challenge while in effect

- (1) While a Commissioner's warrant has effect, neither the warrant nor a judge's approval of it can be appealed against, reviewed, quashed, challenged, or called in question, before or by any person acting judicially or a court or tribunal on any account or by any means.
- (2) Subsection (1) does not affect the operation of the *Corruption, Crime and Misconduct Act 2003*.
- (3) Subsection (1) does not limit judicial review for jurisdictional error.

[Section 20 amended by No. 35 of 2014 s. 39; No. 39 of 2015 s. 10.]

21. Report to Minister and Attorney General about warrant

- (1) As soon as practicable or no later than 30 days after a Commissioner's warrant ceases to have effect the Commissioner must give a written report to the Minister and the Attorney General that —
 - (a) states the terms of the warrant;
 - (b) describes generally the grounds for, and the information relied on when, issuing the warrant;
 - (c) states for how long the warrant had effect;
 - (d) if it ceased to have effect under section 7(4)(a), includes a copy of the judge's reasons for refusing to approve its issue;
 - (e) describes generally the powers that were exercised under the warrant and how they were exercised; and
 - (f) states the result of the exercise of those powers.
- (2) If a Commissioner's warrant is issued so as to have effect immediately a previously issued warrant ceases to have effect, subsection (1) must be obeyed as soon as practicable after the

last warrant ceases to have effect and the report must relate to all of the warrants.

- (3) If a Commissioner's warrant is not issued because a judge refused to approve its issue, the Commissioner must give a written report to the Minister and the Attorney General that —
 - (a) states what the terms of the proposed warrant were;
 - (b) describes generally the grounds on which, and the information relied on when, it was proposed to issue the warrant; and
 - (c) includes a copy of the judge's reasons for the refusal.
- (4) The Minister must cause a report given under this section to be tabled before each House of Parliament within 60 days after the date on which the Minister receives it.

Part 3 — Covert search warrants

22. Interpretation

In this Part —

authorised applicant means a police officer who is authorised under section 23 to apply for a covert search warrant;

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

covert search warrant means a covert search warrant issued under this Part;

target place, in relation to a covert search warrant, means the place to be searched under warrant;

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

[Section 22 amended by No. 39 of 2015 s. 11.]

23. Authorising police officers to apply for a covert search warrant

- (1) The Commissioner may authorise a police officer to apply for a covert search warrant.
- (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.
- (3) An authorisation by the Commissioner must be in writing but, if it is not practicable to issue it in writing because of an urgent need to issue it —
- (a) it may be issued orally; and
 - (b) if it is issued orally, it must be put in writing as soon as practicable after it is issued.

[Section 23 amended by No. 39 of 2015 s. 12.]

24. Covert search warrant, application for

- (1) Only an authorised applicant may apply for a covert search warrant.
- (2) An application for a covert search warrant must be made to a judge in accordance with section 25.
- (3) An application for a covert search warrant must —
 - (a) state the authorised applicant's full name, rank and registered number; and
 - (b) describe the target place or target vehicle; and
 - (c) state the name of the occupier of the target place, or person in charge of the target vehicle, if it is known; and
 - (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

- (e) describe the thing connected to a terrorist act or Commonwealth terrorist offence, or the class of such things, to be searched for in the target place or target vehicle; and
- (f) state the grounds on which the applicant suspects that the thing or class of thing sought is a thing connected with the terrorist act or Commonwealth terrorist offence and that it is in the target place or target vehicle; and
- (g) if power is sought to enter a place adjoining or near the target place or target vehicle —
 - (i) describe the place to be entered; and
 - (ii) state why the power is sought;

and

- (h) if power is sought to remove any thing from the target place or target vehicle and replace it with a substitute —
 - (i) describe the thing; and
 - (ii) state why the power is sought;

and

- (i) if power is sought to re-enter the target place or target vehicle 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) describe the thing; and
 - (ii) state why the power is sought;
- and
- (j) state whether an application for a covert search warrant for the target place or target vehicle has been made in the previous 3 months and whether it was refused or granted; and
 - (k) include any other information required by the regulations.
- (4) If a covert search warrant for the target place or target vehicle has been issued in the 3 months prior to the application, a copy of it must be attached to the application.

[Section 24 amended by No. 39 of 2015 s. 13.]

25. Covert search warrant, procedure for applying for

- (1) In this section —
remote communication means any way of communicating at a distance including by telephone, fax, email and radio.
- (2) A reference in this section to making an application includes a reference to giving information in support of the application.
- (3) This section applies to and in respect of an application for a covert search warrant.
- (4) The application must be made in person before a judge unless —
 - (a) the warrant is needed urgently; and
 - (b) the applicant reasonably suspects that a judge is not available within a reasonable distance of the applicant,in which case —

- (c) it may be made to a judge by remote communication; and
 - (d) the judge must not grant it unless satisfied about the matters in paragraphs (a) and (b).
- (5) The application must be made in writing unless —
 - (a) the application is made by remote communication; and
 - (b) it is not practicable to send the judge written material,in which case —
 - (c) it may be made orally; and
 - (d) the judge must make a written record of the application and any information given in support of it.
- (6) The application must be made on oath unless —
 - (a) the application is made by remote communication; and
 - (b) it is not practicable for the judge to administer an oath to the applicant,in which case —
 - (c) it may be made in an unsworn form; and
 - (d) if the judge issues a warrant, the applicant must as soon as practicable send the judge an affidavit verifying the application and any information given in support of it.
- (7) If on an application made by remote communication a judge issues a warrant, the judge must, if practicable, send a copy of the original warrant to the applicant by remote communication, but otherwise —
 - (a) the judge must give the applicant by remote communication any information that must be set out in the warrant;
 - (b) the applicant must complete a form of a warrant with the information received and give the judge a copy of the form as soon as practicable after doing so; and

- (c) the judge must attach the copy of the form to the original warrant and any affidavit received from the applicant and make them available for collection by the applicant.
- (8) The copy of the original warrant sent, or the form of the warrant completed, as the case may be, under subsection (7) has the same force and effect as the original warrant.
- (9) If an applicant contravenes subsection (6)(d) or (7)(b) any evidence obtained under the warrant or order is not admissible in proceedings in a court unless the court decides otherwise.

26. Covert search warrant, issue of

- (1) On an application made under section 24, a judge may issue a covert search warrant in respect of a place or vehicle if the judge is satisfied —
 - (a) that, in respect of each of the matters in section 24(3) that the applicant suspects or believes, there are reasonable grounds for the applicant to have those suspicions and beliefs; and
 - (b) having considered the matters in subsection (3), that the issue of the warrant is justified; and
 - (c) if an application for a covert search warrant for the target place or target vehicle has been made in the previous 3 months and refused — that the new application contains additional information that, together with that in the previous application, justifies issuing the warrant.
- (2) A judge must not issue a covert search warrant that confers a power to enter a place adjoining or near the target place or target vehicle unless satisfied that the power is reasonably necessary —
 - (a) to facilitate entry to or the search of the target place or target vehicle; or
 - (b) to prevent the search being frustrated or jeopardised; or

- (c) for any other good reason.
- (3) In deciding whether the issue of a covert search warrant is justified, a judge must consider (but is not limited to considering) these matters —
 - (a) the nature and seriousness of the terrorist act or Commonwealth terrorist offence described in the application;
 - (b) whether there are alternative means of finding the thing or class of thing sought.
- (4) A judge issuing a covert search warrant may do so on any terms and conditions the judge thinks just.
- (5) A covert search warrant must contain this information —
 - (a) the authorised applicant's full name, rank and registered number;
 - (b) a description of the target place or target vehicle;
 - (c) a description of the thing or the class of thing that may be searched for and seized;
 - (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;
 - (e) if the warrant authorises the removal of a thing from the target place or target vehicle and its replacement with a substitute — a description of the thing;
 - (f) if the warrant authorises the re-entry of the target place or target vehicle 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 — a description of the thing;
 - (g) any other terms or conditions to which it is subject;
 - (h) the date on which it expires, which must not be more than 30 days after the date on which it is issued;
 - (i) the date and time when it was issued.

[Section 26 amended by No. 39 of 2015 s. 14.]

27. Covert search warrant, effect of

- (1) In this section, a term not defined in section 3 has the meaning given to it by Schedule 2 clause 1.
- (2) A covert search warrant has effect according to its contents and this section.
- (3) Schedule 1 applies in relation to exercising any power under a covert search warrant.
- (4) A covert search warrant comes into force when it is issued by a judge.
- (5) A covert search warrant may be executed by any police officer.
- (6) A covert search warrant authorises entry to the place or vehicle to which it applies for a reasonable period for the purpose of executing the warrant.
- (7) A covert search warrant authorises the officer executing it to exercise any or all of these primary powers —
 - (a) to enter the target place or target vehicle;
 - (b) to do so without the knowledge of, and without at the time advising, the occupier of the target place or person in charge of the target vehicle;
 - (c) to impersonate another person for the purposes of executing the warrant;
 - (d) to search the target place or target vehicle for, and to seize, the thing or class of thing described in the warrant;
 - (e) to seize any thing found that is not connected with a terrorist act or Commonwealth terrorist offence but which the officer reasonably suspects may be evidence relevant to a serious indictable offence;
 - (f) to do a basic search or a strip search of any person who is in the target place or target vehicle when the warrant

is being executed for any thing or class of thing described in the warrant;

- (g) if the warrant expressly so authorises —
 - (i) to enter, but not to search, a place that adjoins or is near the target place or target vehicle and that is specified in the warrant;
 - (ii) to remove a thing described in the warrant from the target place or target vehicle and replace it with a substitute;
 - (iii) subject to subsection (11), to re-enter the target place or target vehicle 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.
- (8) A covert search warrant also authorises the officer executing it to exercise any or all of these ancillary powers —
 - (a) to take into and use in the target place or target vehicle any equipment or facilities that are reasonably necessary in order to exercise any power under the warrant;
 - (b) to photograph or otherwise make a record of any thing in the target place or target vehicle;
 - (c) to conduct a forensic test in the target place or target vehicle or on any thing in it;
 - (d) to make reasonable use of any equipment, facilities or services in the target place or target vehicle in order to exercise any power under the warrant and for that purpose —
 - (i) to order any occupier of the place, or person in charge of the vehicle, to do anything reasonable to facilitate that use; and
 - (ii) to operate the equipment or facilities;
 - (e) in order to search for any record or other data —

- (i) to operate any device or equipment in the target place or target vehicle that is needed to gain access to, recover, or make a reproduction of, the record or data; and
 - (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;
- (f) if the officer reasonably suspects it is necessary to do so to protect the safety of any person, including the officer, who is in or near the target place or target vehicle when the warrant is being executed —
 - (i) to detain a person who is in the place or vehicle;
 - (ii) to do a basic search or a strip search of a person who is in the place or vehicle;
 - (iii) to order a person to leave the place or vehicle or its vicinity;
 - (iv) to order a person not to enter the place or vehicle or its vicinity;
 - (v) to seize and retain any weapon or other thing in the place or vehicle that could endanger a person, while the warrant is being executed.
- (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*.
- (9) Schedule 2 applies to and in respect of a search of a person under this section.
- (10) A covert search warrant ceases to be in force —
 - (a) on the expiry date specified in the warrant; or
 - (b) when it is executed,

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whichever happens first.

- (11) If a covert search warrant authorises the re-entry of the target place or target vehicle for the purpose of returning any thing removed from, or retrieving any thing substituted in, the place or vehicle when it was first entered under the warrant, then —
- (a) the place or vehicle may be re-entered but only for that purpose;
 - (b) the re-entry must occur within 7 days after the date on which the place or vehicle was first entered or within a longer period authorised, before the end of the 7 days, by a judge;
 - (c) for the purposes of re-entering the place or vehicle and returning or retrieving the thing, a police officer may exercise such of the powers in subsections (7) and (8) as may be reasonably necessary; and
 - (d) despite subsection (10), the warrant continues in effect subject to this subsection.
- (12) A police officer must not do a strip search on a person under subsection 7(f) or subsection 8(f)(ii) unless the officer reasonably suspects —
- (a) that a strip search is necessary; and
 - (b) that the seriousness and urgency of the situation require a strip search to be done.

[Section 27 amended by No. 39 of 2015 s. 15.]

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.

- (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.

[Section 28A inserted by No. 39 of 2015 s. 16.]

28. Execution of covert search warrant, report to judge about

- (1) The authorised applicant named in a covert search warrant 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: a fine of \$12 000 and imprisonment for 12 months.

- (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.

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- (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) If the warrant was executed, the report must —
- (a) state the date and time it was executed;
 - (b) describe each place or vehicle that was entered under the warrant;
 - (c) if known, state the name of each occupier of each place, and person in charge of each vehicle, that was entered under the warrant;
 - (d) name each person who executed or assisted in executing the warrant;
 - (e) state what powers were exercised under the warrant;
 - (f) describe briefly —
 - (i) any thing that was seized under the warrant, including any copy of a record; and
 - (ii) any thing in the place or vehicle that was removed and replaced with a substitute,and state the grounds for suspecting —
 - (iii) it is a thing connected with a terrorist act or Commonwealth terrorist offence; or
 - (iv) it may be evidence relevant to a serious indictable offence;

- (g) describe briefly any photograph or other evidentiary material that was obtained under the warrant;
 - (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;
 - (i) state whether or not the execution of the warrant assisted in the prevention or investigation of the terrorist act or Commonwealth terrorist offence in relation to which the warrant was issued and, if so, how it assisted;
 - (j) state whether or not the execution of the warrant assisted in the prevention or investigation of any other terrorist act or any indictable offence and, if so, how it assisted; and
 - (k) contain any other information required by the regulations.
- (4) If the warrant was not executed, the report must —
- (a) explain briefly why it was not executed; and
 - (b) contain any other information required by the regulations.

[Section 28 amended by No. 39 of 2015 s. 17.]

s. 29

29. No publication of information about covert search warrant

(1) In this section —

confidential information, in relation to a covert search warrant, means any information about or derived from —

- (a) an application for the warrant or proceedings on the application; or
- (b) a report or interim report given under section 28.

(2) A person must not publish any confidential information in relation to a covert search warrant except in accordance with the approval of the Supreme Court.

Penalty: a fine of \$24 000 and imprisonment for 2 years.

[Section 29 amended by No. 39 of 2015 s. 18.]

30. Annual report about covert search warrants

(1) The Commissioner must, by 31 August in each year, give the Minister a report containing this information for the previous financial year —

- (a) how many applications for covert search warrants were made, refused and granted;
- (b) how many of those applications were made, refused or granted by remote communication under section 25;
- (c) how many covert search warrants were executed;
- (d) how many places and vehicles were entered under covert search warrants;
- (e) on how many occasions things connected with terrorist acts or Commonwealth terrorist offences were seized;
- (f) on how many occasions any thing was replaced with a substitute for it;
- (g) on how many occasions a place or vehicle was re-entered to return or retrieve any thing;
- (h) on how many occasions electronic equipment was operated under covert search warrants;

- (i) any other information that the Minister requests the Commissioner to include in relation to covert search warrants.
- (2) The report may form part of the annual report submitted to the Minister under the *Financial Management Act 2006*.
- (3) If the report does not form part of that annual report, the Minister must, within 30 days after receiving it, cause it to be tabled before each House of Parliament.

[Section 30 amended by No. 46 of 2009 s. 17; No. 39 of 2015 s. 19.]

Part 4 — Miscellaneous

31. Commissioner's functions may be performed by others

- (1) In this section —
authorised means authorised under subsection (3);
Deputy Commissioner means a police officer who holds or is acting in the office of Deputy Commissioner.
- (2) The Commissioner's functions in this Act, other than the power in subsection (3), may be performed —
 - (a) if the office of Commissioner is vacant, or if the Commissioner is on leave or out of the State or otherwise unavailable to exercise the functions — by an authorised Deputy Commissioner; or
 - (b) if paragraph (a) applies but every Deputy Commissioner is on leave or out of the State or otherwise unavailable to exercise the functions — by an authorised police officer who holds or is acting in a rank more senior than Superintendent.
- (3) The Commissioner, in writing, may authorise one or more Deputy Commissioners or other police officers who hold or are acting in a rank more senior than Superintendent for the purposes of this section.
- (4) If any of the Commissioner's functions in this Act is performed by a person other than the Commissioner, the person must notify the Commissioner of the fact as soon as practicable.

32. Orders by police officers, offence to not obey

A person who, without reasonable excuse (the onus of proving which is on the person), does not comply with an order given by a police officer under this Act commits an offence.

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

33. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

34. Review of Act

- (1) The Minister must carry out a review of this Act as soon as is practicable after —
 - (a) the first anniversary of the commencement of this section; and
 - (b) thereafter after every third year after the first anniversary.
- (2) The review must review the operation and effectiveness of this Act, whether its provisions are appropriate to prevent and respond to terrorist acts, and whether it should continue in operation.
- (3) The Minister must prepare a report based on the review and, as soon as practicable or no later than 90 days after it is prepared, cause it to be tabled before each House of Parliament.

35. Expiry of Act

- (1) This Act expires on 19 December 2025.
- (2) Any warrant issued, or any authorisation or appointment made, under the Act and which is in force on 19 December 2025, will cease to be in force.

[Section 35 amended by No. 39 of 2015 s. 20.]

Schedule 1 — Ancillary provisions about exercising powers

[s. 10(3), 27(3)]

1. When powers may be exercised

A power in this Act may be exercised at any time of the day or night, unless it is expressly provided otherwise.

2. Assistance to exercise powers

- (1) A police officer who may exercise a power in this Act may authorise as many other persons to assist in exercising the power as are reasonably necessary in the circumstances.
- (2) A person so authorised may exercise the power or assist the other to exercise the power, as the case requires.
- (3) Whether requested to do so or not, a person may assist a police officer to exercise a power in this Act if the person reasonably suspects that the officer —
 - (a) is lawfully entitled to exercise the power; and
 - (b) needs assistance for the purpose of doing so.
- (4) A person who under this clause is authorised by a police officer to exercise a power, or is assisting a police officer to exercise a power, must obey any lawful and reasonable directions of the officer when exercising or assisting to exercise the power.

3. Force, use of when exercising powers

- (1) When exercising a power in this Act, a police officer may use any force against any person or thing that it is reasonably necessary to use in the circumstances —
 - (a) to exercise the power; and
 - (b) to overcome any resistance to exercising the power that is offered, or that the police officer reasonably suspects will be offered, by any person.
- (2) If under subclause (1) a person uses force, the force may be such as causes damage to the property of another person.

4. Animals, use of when exercising powers

- (1) When exercising a power in this Act, a police officer may use an animal to assist if —
 - (a) the animal has been trained for the purposes for which it is used; and
 - (b) use of the animal is reasonably necessary in the circumstances.
- (2) A police officer who uses an animal to assist with exercising a power in this Act must take all reasonable measures to ensure the animal does not injure a person or damage any property.

5. Areas may be cordoned off

- (1) In this clause —

authorised, in relation to a cordoned off area, means authorised by a police officer in attendance at the area;

disturb includes to damage, destroy, interfere with and remove.
- (2) In order to facilitate or assist exercising any of the powers in this Act in any place, a police officer may cordon off the place or a part of it.
- (3) In order to cordon off an area, the officer must take reasonable steps to notify people of the existence and boundaries of the area.
- (4) The area cordoned off must not be greater than is reasonably necessary for the purposes for which it is established.
- (5) While an area is cordoned off, a police officer must remain near the area and may take reasonable measures, including giving orders —
 - (a) to preserve the evidentiary value of the area or any thing in the area;
 - (b) to secure the area against unauthorised disturbance;
 - (c) to prevent an unauthorised person, animal or vehicle from disturbing the area;
 - (d) to restrict entry to the area to people, animals, and vehicles, that are authorised;
 - (e) to remove an unauthorised person, animal or vehicle from the area;

(f) if the area is established in or around a vehicle, to prevent the vehicle from being moved.

(6) An unauthorised person who, without reasonable excuse (the onus of proving which is on the person), enters a cordoned off area commits an offence.

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

(7) An unauthorised person who, without reasonable excuse (the onus of proving which is on the person), disturbs any thing in a cordoned off area commits an offence.

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

6. Seizing things, ancillary powers for

(1) If it is not practicable or convenient to move a thing that may be seized under this Act, an officer may seize the thing by attaching a notice to the thing stating that the thing has been seized.

(2) If it is not practicable or convenient to move a thing that has been seized under this Act, an officer may do whatever is reasonably necessary to secure the thing in the place where it is.

(3) If a power in subclause (1) or (2) is exercised, the officer must, if practicable, give written notice of the fact that the thing has been seized to the person in possession of the thing and the occupier of the place where the thing is.

(4) If under subclause (2) a thing is secured in a place without the consent of the occupier of the place, it may only be secured in the place for a reasonable period.

7. Seizing records, ancillary powers for

(1) If under this Act a record may be seized, any device or equipment needed to gain access to, recover, or reproduce, the information in the record is to be taken may also be seized.

(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.

- (2) If under this Act a record may be seized by a police officer, the officer may, if practicable, reproduce the record, whether or not in the same form, and instead seize the reproduction.
- (3) If under this Act a record is seized by a police officer, the officer may copy or take extracts from the record.

[Clause 7 amended by No. 39 of 2015 s. 21.]

8. Returning seized things

A police officer who seizes a thing under this Act must return it to the person who owned it, or had lawful possession of it, when it was seized if the officer is satisfied that —

- (a) the thing does not need to be retained as evidence; and
- (b) it would be lawful for the person to possess the thing.

Schedule 2 — Searching people

[s. 13, 27]

Division 1 — Preliminary

1. Interpretation

In this Schedule —

basic search of a person, means a search that complies with clause 2;

frisk search a person, means to quickly and methodically run the hands over the outside of the person's clothing;

private parts of a person, means the person's genital area, anal area, buttocks and, in the case of —

- (a) a female; or
- (b) a male undergoing a reassignment procedure, as that term is defined in the *Gender Reassignment Act 2000* section 3,

breasts;

strip search of a person, means a search that complies with clause 3.

2. “Basic search”, meaning of

A police officer authorised by this Act to do a basic search of a person may do any or all of the following —

- (a) scan the person with an electronic or mechanical device, whether hand held or not, to detect any thing;
- (b) remove the person's headwear, gloves, footwear or outer clothing (such as a coat or jacket), but not his or her inner clothing or underwear, in order to facilitate a frisk search;
- (c) frisk search the person;
- (d) search any article removed under paragraph (b).

3. “Strip search”, meaning of

(1) A police officer authorised by this Act to do a strip search of a person may do any or all of the following —

- (a) remove any article that the person is wearing including any article covering his or her private parts;
- (b) search any article removed under paragraph (a);

- (c) search the person's external parts, including his or her private parts.
- (2) A police officer authorised by this Act to do a strip search of a person is not entitled to search any of the person's bodily cavities.

4. Gender of person, ascertaining

If it is necessary to ascertain the gender of a person before exercising a power in this Act on the person and the gender of the person is uncertain to the officer authorised to exercise the power —

- (a) the officer must ask the person to indicate whether a male or a female should exercise the power on the person and must act in accordance with the answer; and
- (b) in the absence of an answer, the person must be treated as if of the gender that the person outwardly appears to the officer to be.

5. Powers to assist doing searches

A police officer authorised by this Act to do a basic search or a strip search of a person may do any or all of the following —

- (a) stop and detain the person for a reasonable period;
- (b) search any thing being carried by or under the immediate control of the person;
- (c) order the person to remove any thing that might injure the searcher when doing the search from any article that the person is wearing;
- (d) order the person to do anything reasonable to facilitate the search;
- (e) in the case of a strip search, order the person to accompany the searcher to a place where the search can be done in accordance with clause 7(4).

Division 2 — How searches must be done

6. Operation of this Division

A police officer must comply with this Division unless, due to the urgency of the situation or other circumstances, it is not reasonably practicable to do so.

7. General procedure

(1) This clause operates if a police officer (the *searcher*) is authorised by this Act to do a basic search or a strip search on a person.

(2) Before the searcher does a basic search or a strip search on the person the searcher must —

- (a) request the person to consent to the search; and
- (b) if the person does not consent to the search or withdraws his or her consent, inform the person that it is an offence to obstruct the searcher doing the search.

(3) If a basic search or a strip search is done on a person —

- (a) it must be done as quickly as is reasonably practicable;
- (b) it must not be any more intrusive than is reasonably necessary in the circumstances;
- (c) it must be done by a person of the same gender as the person being searched unless the person doing it is a doctor or a nurse;
- (d) the searcher, if he or she proposes to remove any article that the person is wearing, must tell the person why it is considered necessary to do so;
- (e) the person must be allowed to dress as soon as it is finished;
- (f) the person must be provided with a reasonably adequate replacement for any article of clothing or footwear seized if, due to the seizure, the person is left without adequate clothing or footwear in the circumstances; and
- (g) the person must not be questioned while it is being done about any offence that he or she is suspected of having committed.

- (4) If a strip search is done on a person that involves removing any article that the person is wearing or searching the person's private parts —
- (a) any person present while it is done must be of the same gender as the person being searched;
 - (b) it must be done in circumstances affording reasonable privacy to the person;
 - (c) it must not involve the removal of more articles being worn by the person than is reasonably necessary for doing it;
 - (d) the person's private parts must not be searched unless the searcher reasonably suspects it is necessary to do so for the purposes of the search;
 - (e) it must not involve more visual inspection than is reasonably necessary for doing it; and
 - (f) the number of people present while it is done (excluding a person who is present under clause 8) must not be more than is reasonably necessary to ensure it is done effectively and to ensure the safety of all present.

8. Strip searches of protected people

- (1) In this clause —

child means a person who is under 18 years of age and in respect of whom there are no reasonable grounds to suspect that he or she is an incapable person;

incapable person means a person of any age —

- (a) who is unable by reason of a mental disability (which term includes intellectual disability, a psychiatric condition, an acquired brain injury and dementia) to understand the general nature and effect of, and the reason for and the consequences of undergoing, a strip search; or
- (b) who is unconscious or otherwise unable to understand a request made or information given under this Act or to communicate whether or not he or she consents to undergoing a strip search;

protected person means a person who is a child or an incapable person;

responsible person for a child, means —

- (a) a parent of the child;
- (b) a guardian of the child;
- (c) another person who has responsibility for the day to day care of the child; or
- (d) if no person mentioned in another paragraph of this definition is available — a person, or a person in a class of persons, prescribed;

responsible person for an incapable person, means —

- (a) the spouse or de facto partner of the incapable person;
- (b) a parent of the incapable person;
- (c) if the incapable person is under 18 years of age — a guardian of the incapable person;
- (d) if the incapable person has reached 18 years of age — the Public Advocate or a guardian of the incapable person appointed under the *Guardianship and Administration Act 1990*;
- (e) another person who has responsibility for the day to day care of the incapable person; or
- (f) if no person mentioned in another paragraph of this definition is available — a person, or a person in a class of persons, prescribed.

- (2) If a strip search is done on a protected person, it must be done in the presence of a responsible person for the protected person or some other person who can provide the protected person with support and represent his or her interests.

Notes

¹ This is a compilation of the *Terrorism (Extraordinary Powers) Act 2005* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Terrorism (Extraordinary Powers) Act 2005</i>	41 of 2005	19 Dec 2005	Act other than Pt. 3: 16 Jan 2006 (see s. 2(1)); Pt. 3: 1 Jul 2006 (see s. 2(2) and <i>Gazette</i> 27 Jun 2006 p. 2249)
<i>Statutes (Repeals and Minor Amendments) Act 2009 s. 17</i>	46 of 2009	3 Dec 2009	4 Dec 2009 (see s. 2(b))
<i>Corruption and Crime Commission Amendment (Misconduct) Act 2014 s. 39</i>	35 of 2014	9 Dec 2014	1 Jul 2015 (see s. 2(b) and <i>Gazette</i> 26 Jun 2015 p. 2235)
<i>Terrorism (Extraordinary Powers) Amendment Act 2015</i>	39 of 2015	27 Nov 2015	s. 1 and 2: 27 Nov 2015 (see s. 2(a)); Act other than s. 1 and 2: 28 Nov 2015 (see s. 2(b))

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
authorised.....	31(1), Sch. 1 cl. 5(1)
authorised applicant	22
basic search	Sch. 2 cl. 1
child	Sch. 2 cl. 8(1)
Commissioner	3
Commissioner’s warrant	6
Commonwealth terrorist offence	22
confidential information.....	29(1)
covert search warrant	22
data.....	3
Deputy Commissioner	31(1)
disturb	Sch. 1 cl. 5(1)
frisk search.....	Sch. 2 cl. 1
government agency	19(1)
incapable person	Sch. 2 cl. 8(1)
judge	3
jurisdiction	5(1)
person.....	5(1)
place.....	3
private parts	Sch. 2 cl. 1
property.....	5(1)
protected person	Sch. 2 cl. 8(1)
reasonably suspects.....	3
record	3
remote communication	25(1)
responsible person.....	Sch. 2 cl. 8(1), Sch. 2 cl. 8(1)
searcher	Sch. 2 cl. 7(1)
serious indictable offence	3
strip search	Sch. 2 cl. 1
target area.....	6, 8(2)
target person.....	6, 8(2)
target place	22
target vehicle.....	6, 8(2), 22
terrorist act.....	3, 5(2)
thing connected with a terrorist act.....	3
vehicle.....	3