



Western Australia

Terrorism (Extraordinary Powers) Amendment Act 2018

As at 13 Jul 2018

No. 11 of 2018
Published on www.legislation.wa.gov.au

Terrorism (Extraordinary Powers) Amendment Act 2018

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Western Australia

Terrorism (Extraordinary Powers) Amendment Act 2018

No. 11 of 2018

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

[Assented to 13 July 2018]

The Parliament of Western Australia enacts as follows:

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1. Short title

This is the *Terrorism (Extraordinary Powers) Amendment Act 2018*.

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. Part 2 Division 4 deleted

Delete Part 2 Division 4.

5. Part 2A inserted

After section 21 insert:

**Part 2A — Police use of force: ongoing
terrorist acts**

21A. Interpretation

In this Part —

declaration means a declaration made under section 21C(1);

declared incident means an incident in respect of which a declaration is made;

detain has the meaning given in *The Criminal Code* section 332(1).

21B. Non-application of Part to certain officers

- (1) In this section —
support officer means any of the following —
 - (a) a special constable appointed under the *Police Act 1892* section 35(1);
 - (b) an Aboriginal police liaison officer appointed under the *Police Act 1892* section 38B(1);
 - (c) a police auxiliary officer appointed under the *Police Act 1892* section 38G(1).
- (2) For the purposes of the *Police Act 1892* sections 36, 38C and 38H —
 - (a) a support officer does not have any of the powers, duties or obligations that a police officer has under this Part; and
 - (b) any authorisation, exemption or exception in this Part that applies to a police officer does not apply to a support officer; and
 - (c) a reference in this Part to a police officer does not include a reference to a support officer.
- (3) Despite the *Corruption, Crime and Misconduct Act 2003* section 184(3c), an authorised officer as defined in the *Corruption, Crime and Misconduct Act 2003* section 184(1) who is not a police officer does not have, and may not perform, the functions that a police officer has and may perform under this Part.

21C. Commissioner may declare this Part applies to terrorist act

- (1) The Commissioner may declare that this Part applies to an incident to which police officers are responding if

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the Commissioner is satisfied there are reasonable grounds to suspect —

- (a) that the incident is or is likely to be a terrorist act; and
 - (b) that planned and coordinated police action is required —
 - (i) to defend a person threatened by the incident; or
 - (ii) to prevent a person from being detained or end the detention of a person.
- (2) The declaration applies to each location at which police officers are responding to the incident.
 - (3) The Commissioner must notify the police officer in charge of the police officers responding to the declared incident that the declaration has been made.
 - (4) The Commissioner must notify the Minister of the declaration before, or as soon as practicable after, the declaration is made.

21D. Declaration must be in writing

- (1) Except as provided in subsection (2), a declaration must be in writing.
- (2) If, due to the urgency of the situation, it is not practicable to make the declaration in writing —
 - (a) the declaration may be made orally with details recorded contemporaneously; and
 - (b) if it is made orally, it must be put in writing as soon as practicable after it is made and in any event within 6 hours.

21E. Declaration may be revoked

- (1) The Commissioner may at any time revoke a declaration.
- (2) Without limiting the power in subsection (1), if no further police response is required in response to a declared incident, the Commissioner must revoke the declaration.
- (3) The Commissioner must notify the police officer in charge of the police officers responding to the declared incident that the declaration has been revoked.
- (4) If the police officer in charge of the police officers responding to the declared incident becomes aware that the declaration has been revoked, the police officer in charge must notify the other police officers of the revocation.

21EA. Revocation must be in writing

- (1) Except as provided in subsection (2), a revocation under section 21E must be made in writing.
- (2) If, due to the urgency of the situation, it is not practicable to make the revocation in writing —
 - (a) the revocation may be made orally with details recorded contemporaneously; and
 - (b) if it is made orally, the revocation must be put in writing as soon as practicable after it is made and in any event within 6 hours.

21F. Police action authorised under declaration

- (1) The police action authorised under a declaration, when police officers respond to a declared incident, is the authorisation, direction or use of force (including lethal

force) that a police officer believes, on reasonable grounds, is necessary to —

- (a) defend a person threatened by the incident; or
 - (b) prevent a person from being detained or end the detention of a person.
- (2) A police officer who does something that, apart from this section, would be an offence is not criminally responsible for the offence if the thing constitutes police action authorised under a declaration.
- (3) Nothing in this section limits the availability of any justification, excuse or defence under Chapter V or Chapter XXVI of *The Criminal Code*.
- (4) If a declaration is revoked, this section continues to apply to any action taken by a police officer before the police officer became aware of the revocation.
- (5) If a court finds that a purported declaration was not validly made, this section continues to apply to any action taken by a police officer before the police officer became aware of the finding as if it were a valid declaration.

21G. Part does not limit police powers relating to terrorism

This Part does not limit the powers of police officers under any other Part of this Act, any other written law or the common law to deal with an incident that is or is likely to be a terrorist act (whether or not that incident is a declared incident).

21H. Commissioner's functions under this Part may be performed by authorised Deputy Commissioner

- (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 under this Part, other than the power in subsection (3), may be performed by an authorised Deputy Commissioner if —
 - (a) the office of Commissioner is vacant; or
 - (b) the Commissioner is on leave or out of the State; or
 - (c) the Commissioner is otherwise unavailable to exercise the functions.
- (3) For the purposes of this section, the Commissioner may authorise in writing one or more Deputy Commissioners to perform the Commissioner's functions under this Part.
- (4) If any of the Commissioner's functions under this Part is performed by a person other than the Commissioner, the person must notify the Commissioner of the fact as soon as practicable.

6. Section 31 amended

In section 31(2) after “other than” insert:

a function under Part 2A or

7. Sections 31A, 31B and 31C inserted

After section 31 insert:

31A. Power to appoint special officers

- (1) The Commissioner may appoint as a special officer any person who is —
 - (a) a member of the Australian Federal Police; or
 - (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 may appoint a person as a special officer for the purposes of Part 2 or 2A.
- (3) The Commissioner must not make an appointment under subsection (1) unless the Commissioner is of the opinion that the appointment is necessary —
 - (a) in the case of an appointment for the purposes of Part 2, for the more effective exercise of the powers that may be exercised under a Commissioner's warrant as defined in section 6; or
 - (b) in the case of an appointment for the purposes of Part 2A, to more effectively respond to a declared incident as defined in section 21A.

31B. Provisions relating to special officer appointments

- (1) The appointment of a special officer under section 31A —
 - (a) must be in writing; and
 - (b) must state the date and time it is made; and

- (c) must state the date and time it ceases to have effect; and
 - (d) must state whether the appointment is for the purposes of Part 2 or 2A; and
 - (e) may be made subject to any condition the Commissioner thinks fit; and
 - (f) must be signed by the Commissioner.
- (2) The date and time stated under subsection (1)(c) must not be more than 14 days after the date on which the appointment is made.
 - (3) The appointment of 2 or more special officers may be in 1 instrument of appointment.
 - (4) The Commissioner may cancel the appointment of a special officer at any time.
 - (5) 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.
 - (6) The life of a special officer's appointment (the **current appointment**) cannot be extended, but nothing prevents the Commissioner from making a further appointment under section 31A that has effect from the time the current appointment ceases to have effect.

31C. Functions of special officers

- (1) In this section —
Part 2 special officer means a person appointed under section 31A for the purposes of Part 2;
Part 2A special officer means a person appointed under section 31A for the purposes of Part 2A;
special officer means a Part 2 special officer or a Part 2A special officer.

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- (2) Unless a special officer's appointment provides to the contrary, a Part 2 special officer —
 - (a) has and may perform any function that a police officer has and may perform under Part 2; and
 - (b) in connection with exercising any such function, has and may perform any function that a police officer has under this Act other than Part 2A, any other written law or the common law.
- (3) Unless a special officer's appointment provides to the contrary —
 - (a) a Part 2A special officer —
 - (i) has and may perform any function that a police officer has and may perform under Part 2A; and
 - (ii) in connection with exercising any such function, has and may perform any function that a police officer has under this Act other than Part 2, any other written law or the common law;
 - and
 - (b) Part 2A applies to a Part 2A special officer as if any reference in Part 2A to a police officer includes a reference to the Part 2A special officer.
- (4) A special officer is taken to be a public officer for the purposes of *The Criminal Code*.

- (5) For the purposes of the *Police Act 1892* section 137, a special officer is taken to be a member of the Police Force performing or purporting to perform the functions of a member of the Police Force if —
 - (a) the special officer is a Part 2 special officer exercising a function under subsection (2)(a) or (b); or
 - (b) the special officer is a Part 2A special officer exercising a function under subsection (3)(a).
- (6) Subsection (7) applies to a person whose purported appointment as a special officer was not validly made.
- (7) In relation to any action taken by the person before they became aware of the invalidity —
 - (a) the person is not criminally responsible for the action to the extent that, if the appointment had been valid, the person would not have been criminally responsible for the action by virtue of subsection (3)(b); and
 - (b) for the purposes of the *Police Act 1892* section 137, the person is taken to be a member of the Police Force performing or purporting to perform the functions of a member of the Police Force, to the extent that they would have been so taken under subsection (5) if the appointment had been valid.

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