



Western Australia

Terrorism (Preventative Detention) Amendment Act 2019

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Western Australia

Terrorism (Preventative Detention) Amendment Act 2019

No. 23 of 2019

An Act to amend the *Terrorism (Preventative Detention) Act 2006*.

[Assented to 8 October 2019]

The Parliament of Western Australia enacts as follows:

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1. Short title

This is the *Terrorism (Preventative Detention) Amendment Act 2019*.

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 (Preventative Detention) Act 2006*.

4. Section 4 amended

In section 4(1) insert in alphabetical order:

approved religious or spiritual adviser means a person approved under section 43A(1);

photograph includes a digital image and a video recording;

5. Section 9 amended

Delete section 9(2) and insert:

- (2) A terrorist act referred to in subsection (1) must be one that —
 - (a) is capable of being carried out; and
 - (b) could occur at some time in the next 14 days.

6. Section 13 amended

- (1) In section 13(2) after “person specified” insert:

or identified

- (2) In section 13(4):

- (a) delete paragraph (a) and insert:

- (a) the name of the person in relation to whom it is made or, if the name of the person is not known, identifying information referred to in subsection (4A); and

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

period; and

- (3) After section 13(4) insert:

- (4A) The identifying information must comprise a description sufficient to identify the person and may include any of the following —

- (a) part of the person’s name;
- (b) an alias or a nickname of the person;
- (c) a physical description of the person;
- (d) a photograph of the person attached to the order.

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7. Section 33 amended

In section 33(4):

- (a) in paragraph (b) delete “section 53” and insert:

section 95E(b)

- (b) in paragraph (c) delete “43 and” and insert:

43, 43A and

8. Section 35 amended

In section 35(2):

- (a) after paragraph (h) insert:

- (ha) the person’s entitlement under section 43A to have contact with an approved religious or spiritual adviser; and

- (b) after each of paragraphs (a) to (k) insert:

and

9. Section 40 amended

- (1) In section 40(1) delete “sections 41, 42, 43 or” and insert:

section 41, 42, 43, 43A or

- (2) In section 40(3) delete “43 and” and insert:

43, 43A and

10. Section 43A inserted

After section 43 insert:

43A. Contact with approved religious or spiritual adviser

- (1) A person may be approved as a religious or spiritual adviser for the purposes of subsection (2) by —
 - (a) the Commissioner; or
 - (b) a senior police officer authorised by the Commissioner to give the approval.
- (2) A detainee is entitled to have contact with a person who is a religious or spiritual adviser approved under subsection (1) for the purpose of religious or spiritual guidance.
- (3) To avoid doubt, the detainee is entitled to disclose the following to an approved religious or spiritual adviser —
 - (a) the fact that the PDO has been made in relation to the detainee;
 - (b) the period for which the detainee is to be kept in detention.
- (4) The form of contact that the detainee is entitled to have with an approved religious or spiritual adviser under subsection (2) is limited to being visited by the adviser.
- (5) The police officer who is detaining the detainee must, as far as reasonably practicable, assist the detainee in exercising the detainee’s entitlement to have contact

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with an approved religious or spiritual adviser under subsection (2).

- (6) Before approving under subsection (1) a person who is not a religious or spiritual adviser approved under the *Prisons Act 1981* section 95E(b), the Commissioner or the senior police officer must consult with the chief executive officer of the department principally assisting the Minister administering the *Prisons Act 1981* to administer that Act.

11. Section 44 amended

- (1) After section 44(2) insert:

- (2A) The contact the detainee has with an approved religious or spiritual adviser under section 43A 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 PDO.

- (2) In section 44(3) delete “subsection (1) or (2)” and insert:

subsection (1), (2) or (2A)

Note: The heading to amended section 44 is to read:

Monitoring contact with family members, home or work associates, lawyer or approved religious or spiritual adviser

12. Section 45 amended

- (1) In section 45(11) delete “sections 41 and 43.” and insert:

sections 41, 43 and 43A.

- (2) After section 45(11) insert:

- (12) The police officer who is detaining the detainee must, as far as reasonably practicable, assist the detainee in exercising the detainee’s entitlement to have contact with persons under this Part.
- (13) Without limiting subsection (12), the requirement under that subsection includes giving the detainee reasonable assistance in locating any person with whom the detainee is entitled to have contact under this Part.
- (14) If the detainee is not entitled to have contact with another person because the other person is not acceptable to the police officer who is detaining the detainee, the police officer must —
- (a) give the detainee reasons why the person is not acceptable, unless doing so would result in the disclosure of criminal intelligence information; and
 - (b) give the detainee an opportunity to nominate another person with whom the detainee is entitled to have contact; and
 - (c) offer the detainee contact with another person who is acceptable to the police officer and who has relevant experience in working with 1 or more of the following, as appropriate in the circumstances —
 - (i) young people;

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- (ii) persons incapable of managing their own affairs;
 - (iii) persons in a class of persons prescribed for the purposes of this subsection.
- (15) In subsection (14) —
criminal intelligence information means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected —
 - (a) to prejudice national security; or
 - (b) to endanger a person's life or physical safety; or
 - (c) to threaten significant damage to infrastructure or property; or
 - (d) to prejudice a criminal investigation; or
 - (e) to reveal intelligence-gathering methodologies, investigative techniques or technologies or covert practices; or
 - (f) to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement.

13. Section 46 amended

- (1) In section 46(1) delete “43 or 45.” and insert:

43, 43A or 45.

- (2) After section 46(7) insert:

- (7A) If the detainee has contact with an approved religious or spiritual adviser (the ***adviser***) under section 43A, the

adviser commits a crime if, while the detainee is in detention under the PDO, the adviser discloses to another person —

- (a) the fact that a PDO has been made in relation to the detainee; or
- (b) the fact that the detainee is in detention; or
- (c) the period for which the detainee is to be kept in detention; or
- (d) any information that the detainee gives the adviser in the course of the contact.

Penalty for this subsection: imprisonment for 5 years.

14. Section 47 amended

In section 47(a) delete “specified in the PDO;” and insert:

specified or identified in the PDO; or

15. Section 48 amended

In section 48(3)(b) and (4)(b) after “specified” insert:

or identified

16. Section 49 amended

In section 49(2) after “specified” insert:

or identified

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