

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The object of this Bill is to amend the Terrorism (Police Powers) Act 2002 (the Principal Act) to implement the recommendations arising from the statutory review of the Principal Act. In particular, the Bill:

- (a) enables the Supreme Court to order the Legal Aid Commission to provide legal aid to a person in relation to whom a preventative detention order is being sought or who is subject to such an order, and
- (b) provides that a person detained under a preventative detention order must be released as soon as is practicable after the grounds on which the order was made have ceased to exist, and
- (c) provides that a person detained under a preventative detention order is entitled to have contact with an authorised chaplain, and
- (d) makes other amendments relating to contact between persons detained under preventative detention orders and other persons, and

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- (e) provides for the ongoing scrutiny by the Ombudsman of the exercise of powers conferred by Part 2A (Preventative detention orders) and Part 3 (Covert search warrants) of the Principal Act, and
- (f) makes other miscellaneous amendments.

#### Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

#### Schedule 1 Amendment of Terrorism (Police Powers) Act 2002 No 115

Schedule 1 [1], [11], [15], [16] and [26] make amendments to make terminology used in the Principal Act describing vulnerable persons for whom special provision needs to be made consistent with that used in the Law Enforcement (Powers and Responsibilities) Act 2002. Specifically, the amendments replace the term “incapable of managing his or her affairs” with “impaired intellectual functioning” and provide a definition for that term.

Section 23 (2) of the Principal Act requires the Commissioner of Police to arrange for a written statement to be provided, on request, to a person who was searched, or whose vehicle or premises were searched, under Part 2 of that Act stating that the search was conducted in pursuance of that Part. Schedule 1 [2] provides that the written statement is to be provided within 30 days of the request being made.

Schedule 1 [3] inserts proposed section 26PA into the Principal Act to provide that the Supreme Court may, if it is satisfied it is in the interests of justice to do so, order the Legal Aid Commission to provide legal aid to the person in relation to whom a preventative detention order is being sought or is in force for proceedings in connection with an application for the making or revocation of a preventative detention order or prohibited contact order. The proposed section also provides that if the Supreme Court makes such an order, the police officer who is detaining the person must give the person reasonable assistance to enable the person to contact the Legal Aid Commission to obtain the legal aid.

Schedule 1 [4] inserts proposed section 26W (1A) into the Principal Act to provide that the police officer who is detaining a person under a preventative detention order must release the person from detention under the order as soon as is practicable after the police officer is satisfied that the grounds on which the order was made have ceased to exist.

Schedule 1 [5] and [7] make amendments to make it clear that as soon as practicable after a person is first taken into custody under a preventative detention order, the police officer who is detaining the person under the order must inform the person of the person's entitlement to contact the Ombudsman.

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Schedule 1 [6] and [8] make amendments to make it clear that as soon as practicable after a person is first taken into custody under a preventative detention order, the police officer who is detaining the person under the order must inform the person of the person's right to complain to the Police Integrity Commission in relation to the application for, or the making of, the order or the treatment of the person by a police officer in connection with the person's detention under the order.

Section 26ZG of the Principal Act deals with the entitlement of a person detained under a preventative detention order to contact a lawyer. Section 26ZG (3) more specifically states that if the person being detained asks to be allowed to contact a particular lawyer and either the person is not entitled to contact that lawyer because of a prohibited contact order or the person is not able to contact that lawyer, the police officer who is detaining the person must give the person reasonable assistance to choose another lawyer for the person to contact. Schedule 1 [9] inserts proposed section 26ZG (3A) into the Principal Act to provide that, without limiting the assistance that may be given to a person under that subsection, the police officer may refer the person to the Legal Aid Commission.

Schedule 1 [10] inserts proposed section 26ZGA into the Principal Act to provide that a person detained under a preventative detention order is entitled to contact an authorised chaplain, being:

(a) a person who is authorised under the Crimes (Administration of Sentences) Act 1999 to perform the functions of a chaplain in a correctional centre, and

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

Schedule 1 [13] is a consequential amendment to make it clear that contact with an authorised chaplain is subject to monitoring under section 26ZI of the Principal Act.

Schedule 1 [12] inserts proposed section 26ZH (7) into the Principal Act to provide that a police officer who is detaining a person under a preventative detention order who is under 18 years of age or has impaired intellectual functioning is, as far as is reasonably practicable, to assist the person in exercising the person's entitlement to contact under Division 5 of Part 2A of that Act (that is contact with persons under that section, contact with a lawyer and contact with the Ombudsman and the Police Integrity Commission).

Section 26ZG of the Principal Act provides that a person being detained under a preventative detention order is entitled to contact a lawyer for certain permitted purposes (basically to obtain legal advice). Section 26ZI of that Act provides for that contact to be monitored by police (and where necessary interpreters).

Section 26ZI (6) makes it an offence for a person to disclose information so monitored if it is information that is communicated for one of the permitted purposes.

Schedule 1 [14] inserts proposed section 26ZI (7) into the Principal Act to provide

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that a monitor does not commit an offence under subsection (6) in relation to the disclosure of information to a lawyer for the purpose of obtaining advice as to:

(a) whether the information is information communicated between the detainee and the detainee's lawyer for one of the purposes referred to in section 26ZG, and

(b) the monitor's obligations under the Principal Act in relation to that information.

Schedule 1 [17], [18], [19], [21], [22] and [24] make amendments to provide for the ongoing scrutiny by the Ombudsman of the exercise of powers conferred by Part 2A (Preventative detention orders) and Part 3 (Covert search warrants) of the Principal Act. Scrutiny of Part 2A is to expire 5 years after the commencement of that Part (being on 16 December 2010). Scrutiny of Part 3 expired 2 years after the commencement of that Part (being 13 September 2007). Ongoing reports on the exercise of powers under Parts 2A and 3 are to be prepared by the Ombudsman every 3 years and furnished to the Attorney General and the Minister for Police for tabling in Parliament. The first report under the amended provisions is due as soon as practicable after 16 December 2010.

Schedule 1 [20] omits section 27W of the Principal Act which requires the Commissioner of Police or the Commissioner for the New South Wales Crime Commission to ensure that any copy, photocopy or other record made in the execution of a covert search warrant is destroyed as soon as practicable after determining that its retention is no longer reasonably required for the purpose of an investigation or proceedings.

Schedule 1 [23] makes a law revision amendment to make it clear that it is the Attorney General's responsibility to ensure that the Ombudsman's report under section 27ZC of the Principal Act is tabled in Parliament.

Schedule 1 [25] amends section 36 of the Principal Act to require the Attorney General (being the Minister administering that Act) to continue to undertake reviews to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. A review is to be undertaken, every 3 years, as soon as possible after the Ombudsman's reports under sections 26ZO and 27ZC have been tabled in Parliament.

Schedule 1 [27] enables regulations of a savings or transitional nature consequent on the enactment of the proposed Act to be made.