



New South Wales

Terrorism (Police Powers) Amendment (Investigative Detention) Bill 2016

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* to authorise the arrest, detention and questioning of a person who is suspected of being involved in a recent or imminent terrorist act for the purposes of assisting in responding to or preventing the terrorist act.

The Bill also extends by 3 years the sunset date until which membership of a terrorist organisation is also a State offence under the *Crimes Act 1900*.

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 the date of assent to the proposed Act.

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

Schedule 1 [5] inserts Part 2AA into the Act for the purposes of the proposed investigative detention police powers. The Part contains the following proposed sections:

Proposed section 25A sets out the object of the Part.

Proposed section 25B provides that a person is a *terrorism suspect* liable to investigative detention if there are reasonable grounds to suspect that the person has committed or will commit a terrorist act, that the person is or has been involved in preparing or planning for a terrorist act or

that the person possesses a thing that is connected with the commission of, or the preparation or planning for, a terrorist act. It does not matter that the identity of the person who will commit the terrorist act, the kind of terrorist act, or the place or time when the terrorist act will be committed, is not known.

Proposed section 25C defines *investigative detention* as the detention of a terrorism suspect for investigation into a past or future terrorist act for the purposes of assisting in responding to or preventing the terrorist act. There is no obligation, in the case of investigative detention, for the terrorism suspect to be charged with an offence and taken before a court or authorised officer as soon as practicable to be dealt with according to law.

Proposed section 25D contains general definitions for the purposes of the Part. In particular, *senior police officer* is defined as the Commissioner of Police, a Deputy Commissioner of Police or any other police officer of or above the rank of Superintendent.

Proposed section 25E authorises a police officer, without a warrant, to arrest a terrorism suspect for the purpose of investigative detention if:

- (a) the terrorist act concerned occurred in the last 28 days, or
- (b) the police officer has reasonable grounds to suspect that the terrorist act concerned could occur at some time in the next 14 days,

and the police officer is satisfied that the investigative detention will substantially assist in responding to or preventing the terrorist act.

The proposed section also provides for investigative detention to be discontinued on the expiry of the maximum period of detention authorised by the Part or if the police officer in charge of the investigation (or a senior police officer reviewing the detention) is not satisfied that the person is a terrorism suspect or is not satisfied that continuing the investigative detention will substantially assist in responding to or preventing a terrorist act. A senior police officer who is not involved in the investigation is to carry out a review on, and every 12 hours after, the arrest of the terrorism suspect.

Proposed section 25F provides that a person under 14 years of age cannot be arrested for the purpose of investigative detention or kept in detention.

Proposed section 25G provides for the questioning of a terrorism suspect during investigative detention in relation to any recent or imminent terrorist act or to certain other offences. The terrorism suspect is to be given the opportunity to rest for a continuous period of at least 8 hours in any period of 24 hours of detention and to have reasonable breaks during any period of questioning (unless there are exceptional circumstances).

Proposed section 25H sets out the maximum period that a terrorism suspect can be subject to investigative detention. The terrorism suspect can be detained without a detention warrant for a maximum period of 4 days, but the maximum period may be extended by a detention warrant issued by a Judge of the Supreme Court so long as the maximum period does not exceed 14 days after the terrorism suspect was arrested.

Proposed section 25I deals with the issue of a detention warrant by a Judge of the Supreme Court on the application of a police officer who is authorised by a senior police officer to make the application. The terrorism suspect, or his or her legal representative, may make representations to the Judge about the application. The Judge may issue the detention warrant (extending the maximum period of detention by a period not exceeding 7 days at any one time) if the Judge is satisfied that:

- (a) the investigation is being conducted diligently and without unnecessary delay, and
- (b) there are reasonable grounds for suspecting that the person continues to be a terrorism suspect, and
- (c) there are reasonable grounds for suspecting that any future terrorist act concerned could occur at some time in the next 14 days (or so occur if the terrorism suspect is released from detention), and

- (d) the extension will substantially assist in responding to or preventing the terrorist act concerned.

Proposed section 25J makes provision with respect to the issue of detention warrants, including for applications for warrants in person or by telephone and for the verification of information provided to the Judge on oath or affirmation or by affidavit.

Proposed section 25K enables the Judge to whom an application for a detention warrant is made to determine that particular information provided to the Judge by a police officer is criminal intelligence. Any such criminal intelligence may be relied on by the Judge to determine the application for the detention warrant but is not to be disclosed to the terrorism suspect, his or her legal representative or to any other person.

Proposed section 25L enables police officers to monitor contact with a detained terrorism suspect by family members and others (other than the legal representative of the suspect). The provisions are similar to those that apply to preventative detention under the Act.

Proposed section 25M authorises a Judge of the Supreme Court to make a prohibited contact direction under which the terrorism suspect may be prevented, while under investigative detention, from contacting any particular person (including a particular legal representative of the suspect). The direction is similar to a prohibited contact order that may be made in relation to preventative detention under the Act.

Proposed section 25N authorises regulations to provide additional safeguards for terrorism suspects under investigative detention. Those safeguards would be additional to the standard safeguards applied under proposed section 25O, including the standard special safeguards that apply to children and other vulnerable persons.

Proposed section 25O deals with the application to investigative detention of other police powers legislation relating to arrest and detention of persons suspected of committing offences and to the forensic testing of those suspects. In particular, the proposed section applies general statutory police safeguards that relate to arrest and related detention powers.

Proposed section 25P provides for the annual reports and information that are to be provided by the Commissioner of Police to the Police Minister and the Attorney General about the exercise by police officers of powers relating to investigative detention.

Proposed section 25Q requires the Minister to review provisions of the Part relating to investigative detention after 3 years and report to Parliament on the outcome of the review.

Schedule 1 [2] makes a consequential change to the provisions of Part 2 of the Act that authorise special police powers to search persons, vehicles or areas that are the target of the authorisation to respond to or prevent an imminent terrorist act. Consistently with the test for the proposed investigative detention police powers, the amendment provides that a terrorist act is imminent if it could occur at some time in the next 14 days instead of in the near future.

Schedule 1 [6] makes a similar consequential change to the provisions of Part 2A of the Act that authorise the Supreme Court to make preventative detention orders to prevent imminent terrorist acts occurring. Consistently with the test for the proposed investigative detention police powers, the amendment provides that a terrorist act is imminent if it could occur at some time in the next 14 days instead of being required to be imminent and, in any event, expected to occur at some time in the next 14 days.

Schedule 1 [4] omits provisions in Part 2 of the Act relating to the appointment of Commonwealth and inter-State police officers as recognised law enforcement officers authorised to exercise police powers under Part 2 that are now redundant following the enactment of general provisions relating to recognised law enforcement officers in Part 10B of the *Police Act 1990*. **Schedule [1]** and **[3]** make consequential amendments.

Schedule 2 Amendment of Crimes Act 1900 No 40

The Schedule amends section 310L of the Act to extend the sunset date until which membership of a terrorist organisation is also a State offence under the Act from 13 September 2016 to 13 September 2019. The similar Commonwealth offence is contained in section 102.3 of the Criminal Code of the Commonwealth.