



New South Wales

Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018

Explanatory note

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

This Bill is cognate with the *Surveillance Devices Amendment (Statutory Review) Bill 2018*.

Overview of Bill

The object of this Bill is to amend the *Terrorism (Police Powers) Act 2002* (the *Act*) to give effect to the recommendations arising from a statutory review of the Act (the *review*) that was tabled in Parliament on 7 June 2018.

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**

Definition of “terrorist act”

The Bill retains the Act’s current definition of *terrorist act*. This gives effect to recommendation 1 of the review.

Alignment of safeguards with LEPRA (Part 2)

Schedule 1 [1] notes that the safeguards in Part 15 of the *Law Enforcement (Powers and Responsibilities) Act 2002* apply to the exercise by police of the special powers under Part 2,

Division 3 (Powers) of the *Terrorism (Police Powers) Act 2002*. This gives effect to recommendation 2 of the review. **Schedule 1 [2] and [4]** make consequential amendments.

Annual reporting on exercise of special powers by police (Part 2)

Schedule 1 [5] requires the Commissioner of Police to report annually to the Attorney General and the Minister for Police on the exercise of powers under Part 2 (Special powers) of the Act. This gives effect to recommendation 3 of the review.

Annual reporting on declarations authorising police use of force (Part 2AAA)

Schedule 1 [6] requires the Commissioner of Police to report annually to the Attorney General and the Minister for Police on the number of declarations made under Part 2AAA (Police use of force—ongoing terrorist acts) of the Act. This gives effect to recommendation 4 of the review.

Legal aid for terrorism suspects under investigative detention (Part 2AA)

Schedule 1 [11] (proposed section 25MB) enables the Supreme Court to order that a terrorism suspect be provided legal aid in connection with proceedings relating to the terrorism suspect's investigative detention. This gives effect to recommendation 5 of the review.

Humane treatment of terrorism suspects under investigative detention (Part 2AA)

Schedule 1 [11] (proposed section 25MC) requires a terrorism suspect who is under investigative detention to be treated with humanity and respect for human dignity and not to be subjected to cruel, inhuman or degrading treatment. This gives effect to recommendation 6 of the review.

Informing terrorism suspects of their rights (Part 2AA)

Schedule 1 [11] (proposed section 25MA) requires the police officer who is detaining a terrorism suspect for the purpose of investigation to inform the terrorism suspect of his or her rights to contact a lawyer (under **proposed section 25MD**) and to contact the Law Enforcement Conduct Commission. This gives effect to recommendation 7 of the review. Terrorism suspects already have the right to be given a copy of a detention warrant under section 25I (7) (a) of the Act. **Schedule 1 [16]** makes a consequential amendment.

Postponed sunset of preventative detention order scheme (Part 2A)

Schedule 1 [23] extends the operation of Part 2A (Preventative detention orders) of the Act so that existing preventative detention orders can continue to have effect, and new orders can continue to be applied for and made, until 16 December 2021 (instead of 16 December 2018). This gives effect to recommendation 8 of the review.

Recording injury and illness of detainees (Parts 2AA and 2A)

Schedule 1 [9] and [21] enable a police officer to take photographs, or make video recordings, of a detainee to document an illness or injury suffered by the detainee while being detained. This gives effect to recommendation 9 of the review. **Schedule 1 [20]** makes a consequential amendment.

Informing detainees that contact will be monitored (Parts 2AA and 2A)

Schedule 1 [10] and [19] require a police officer to inform a detainee that contact between the detainee and others will be monitored. This gives effect to recommendation 10 of the review.

Alignment of search requirements with LEPR (Parts 2 and 2AA)

Schedule 1 [3] and [14] apply the provisions relating to personal searches under the *Law Enforcement (Powers and Responsibilities) Act 2002* to searches under the *Terrorism (Police Powers) Act 2002*. This gives effect to recommendation 11 of the review. **Schedule 1 [26]** makes a consequential amendment.

Contact rights for underage and intellectually impaired detainees (Part 2A)

Schedule 1 [17] increases, from 2 hours to 4 hours, the minimum daily period during which a child, or a person with impaired intellectual functioning, who is subject to a preventative detention order may have contact with a parent or other person. **Schedule 1 [18]** requires police to offer such a detainee further assistance and information in relation to the detainee's contact rights. This gives effect to recommendation 12 of the review.

Providing information to Law Enforcement Conduct Commission (Parts 2A and 3)

Schedule 1 [22] and [25] require the Commissioner of Police to provide information to the Law Enforcement Conduct Commission, but allow the Commissioner to provide it subject to conditions aimed at preventing sensitive information being accessed or made public. The amendments also enable limited redaction or withholding of information. This gives effect to recommendation 13 of the review.

Other amendments

Schedule 1 [7], [8] and [13] insert clarifying headings.

Schedule 1 [12] updates a cross-reference.

Schedule 1 [15] and [24] update the title of a position and the name of a Department.