



New South Wales

Terrorism Legislation Amendment (Warrants) Bill 2005

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Terrorism (Police Powers) Act 2002* to enable the covert entry and search of premises, under the authority of a special covert search warrant, by specially authorised police officers or staff of the New South Wales Crime Commission for the purposes of responding to or preventing terrorist acts (including getting evidence of the proposed State offence of membership of a terrorist organisation),
- (b) to amend the *Listening Devices Act 1984* to extend from 21 days to 90 days the maximum period during which a warrant issued under that Act for the use of a listening device remains in force if the warrant is issued in connection with certain Commonwealth terrorism offences, and the proposed State offence,
- (c) to amend the *Crimes Act 1900* to create a State offence that is equivalent to the Commonwealth offence of membership of a terrorist organisation.

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 most of the proposed Act on a day or days to be appointed by proclamation. It provides for the commencement of clause 6 on the second anniversary of the commencement of clause 5. (See explanation of effect of clauses 5 and 6 below.)

Clause 3 is a formal provision that gives effect to the amendments to the *Terrorism (Police Powers) Act 2002* set out in Schedules 1 and 2.

Clause 4 is a formal provision that gives effect to the amendments to the *Listening Devices Act 1984* set out in Schedule 3.

Clause 5 is a formal provision that gives effect to the amendments to the *Crimes Act 1900* set out in Schedule 4. These amendments create a State offence that is equivalent to the Commonwealth offence of membership of a terrorist organisation. These amendments are to be repealed on the second anniversary of their commencement.

Clause 6 provides for the repeal of those amendments and of the amendments to proposed section 27A (2) of the *Terrorism (Police Powers) Act 2002*, which defines **terrorist act** to include the proposed State offence.

Schedule 1 Principal amendments to Terrorism (Police Powers) Act 2002

Schedule 1 [1] inserts a new Part 3 (sections 27A–27ZC) into the Principal Act, which establishes the scheme for covert search warrants.

Proposed section 27A contains definitions for the purposes of the proposed Part. In particular, **terrorist act** is defined to include the proposed State offence of membership of a terrorist organisation (see Schedule 4) and references to the commission of a terrorist act and to preventing or responding to a terrorist act are, in that case, to be construed as referring to the actual commission of the offence and as obtaining or providing evidence of the commission of that offence.

Under proposed section 27D, certain police officers (**eligible police officers**), and certain staff members of the New South Wales Crime Commission (**eligible staff members of the Crime Commission**), may be authorised to apply for a covert search warrant by the Commissioner of Police and the Commissioner for the New South Wales Crime Commission respectively.

Proposed sections 27E and 27F restrict the persons to whom the Commissioner of Police and the Commissioner for the New South Wales Crime Commission, respectively, may delegate their function of authorising persons to apply for covert search warrants.

Proposed section 27G enables eligible police officers or eligible staff members of the New South Wales Crime Commission to apply to eligible Judges of the Supreme Court for a covert search warrant. In order to deal with issues raised by *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51, applications may be made only to Judges who consent, under proposed section 27B, to being involved in issuing covert search warrants.

An authorisation to apply for a covert search warrant may be given under proposed section 27C, or an application for such a warrant may be made under proposed section 27G, if the person giving the authorisation or making the application (as the case may be) suspects or believes on reasonable grounds:

- (a) that a terrorist act has been, is being, or is likely to be, committed, and
- (b) that the entry to and search of premises will substantially assist in responding to or preventing the terrorist act, and
- (c) that it is necessary for the entry and search of those premises to be conducted without the knowledge of any occupier of the premises.

Proposed sections 27H and 27I provide for the making of applications for covert search warrants in person and by telephone.

Proposed section 27J sets out the matters that must be included in an application for a covert search warrant.

Proposed section 27K provides that an eligible Judge may issue a covert search warrant if satisfied that there are reasonable grounds for doing so. When determining whether there are reasonable grounds to issue a covert search warrant, the Judge is to consider (amongst other things):

- (a) the reliability of the information on which the application is based, and
- (b) whether there is a connection between the terrorist act concerned and the kinds of things that are proposed to be searched for, seized, placed in substitution for a seized thing, copied, photographed, recorded, operated, printed or tested, and
- (c) the nature and gravity of the terrorist act, and
- (d) the extent to which the exercise of powers under the warrant would assist in the prevention of, or response to, the terrorist act, and
- (e) alternative means of obtaining the information sought, and
- (f) the extent to which the privacy of a person who is not believed to be knowingly concerned in the commission of the terrorist act is likely to be affected if the warrant is issued.

Proposed section 27L requires an eligible Judge who determines an application for a covert search warrant to record all relevant particulars of the grounds that the Judge has relied on to justify the issue of the warrant or the refusal to issue the warrant (as the case may be). It also provides that any matter that might disclose the name or residential address of a person must not be recorded if the Judge is satisfied that to do so might jeopardise the safety of any person.

Proposed section 27M provides that if an application for a covert search warrant has been refused, a further application may not be made for the same warrant unless the further application provides additional information that justifies the making of the further application.

Proposed section 27N sets out the matters that must be specified in a covert search warrant.

Proposed section 27O sets out the powers conferred by a covert search warrant, which are as follows:

- (a) to enter, without any occupier's knowledge, the premises the subject of the warrant,
- (b) to impersonate another person for the purposes of executing the warrant,
- (c) to use such force as is reasonably necessary for the purpose of entering the subject premises,
- (d) if the warrant authorises entry to premises adjoining the premises the subject of the warrant—to enter the adjoining premises, using such force as is reasonably necessary, for the purpose of entering the subject premises,
- (e) to search the subject premises for any kind of thing described in the warrant,
- (f) to break open any receptacle in or on the subject premises for the purposes of that search if it is reasonably necessary to do so,
- (g) if the warrant authorises the seizure of a kind of thing—to seize and detain a thing of that kind and any relevant thing that the person finds in the course of executing the warrant,
- (h) to seize and detain any other thing that the person finds in the course of executing the warrant and that is connected with a serious indictable offence,
- (i) if the warrant authorises the placing of a kind of thing in substitution for a seized thing—to place a thing of that kind on the subject premises in substitution for a thing seized under paragraph (g),
- (j) if the warrant authorises the copying, photographing or recording of a kind of thing—to copy, photograph or otherwise record a thing of that kind and any relevant thing that the person finds in the course of executing the warrant,
- (k) if the warrant authorises the operation of a kind of electronic equipment—to operate any electronic equipment of that kind, and any relevant electronic equipment that the person finds in the course of executing the warrant, and print, copy or otherwise record information from that equipment,
- (l) if the warrant authorises the testing of a kind of thing—to test a thing of that kind and any relevant thing that the person finds in the course of executing the warrant.

Proposed section 27P allows a person to execute a search warrant with the aid of assistants.

Proposed section 27Q provides for the expiration of a covert search warrant.

Proposed section 27R enables a covert search warrant to authorise the return of a seized thing or the retrieval of a thing that has been placed in substitution for something that has been seized. Generally, the thing concerned must be returned or retrieved within 7 days of the execution of the warrant.

Proposed section 27S requires a person to whom a covert search warrant has been issued to report back to the eligible Judge who issued the warrant about the execution of the warrant.

Proposed section 27T provides that a covert search warrant is not invalidated by any defect other than a defect that affects the substance of the warrant in a material particular.

Proposed section 27U requires an occupier's notice to be provided for the approval of an eligible Judge, within 6 months of the execution of a covert search warrant. Following approval by the Judge, the notice is to be given to:

- (a) any person suspected of being knowingly concerned in the commission of the terrorist act concerned, and
- (b) if no such person was an occupier when the warrant was executed, an occupier of the premises concerned.

The proposed section enables an eligible Judge to postpone, for a period of up to 6 months at a time, the giving of the occupier's notice if satisfied that there are reasonable grounds for doing so. The giving of an occupier's notice must not be postponed for a total period of more than 18 months unless the eligible Judge is satisfied that there are exceptional circumstances justifying the postponement.

Proposed section 27V provides for similar notices to be prepared and given to occupiers of premises adjoining premises that are the subject of a covert search warrant if the execution of the warrant involved entry to those adjoining premises.

Proposed section 27W provides for the destruction of any records obtained in the execution of a covert search warrant if the Commissioner of Police (in the case of records obtained by NSW Police) or the Crime Commissioner (in the case of records obtained by the New South Wales Crime Commission) is satisfied that their retention is no longer required.

Proposed section 27X provides that, if an eligible Judge who has issued a covert search warrant has died, has ceased to be an eligible Judge or is absent, the report required to be provided to the Judge under proposed section 27S on the execution of the warrant, and the power to postpone the giving of an occupier's notice under section 27U, may be provided to, or exercised by, any other eligible Judge.

Proposed section 27Y provides that matters required to be dealt with by an eligible Judge under the proposed Part are to be dealt with in the absence of the public.

Proposed section 27Z makes it an offence for a person to give false or misleading information to an eligible Judge in an application for a covert search warrant. The proposed offence is punishable by a maximum penalty of \$11,000 or 2 years imprisonment, or both.

Proposed section 27ZA makes it an offence, with certain exceptions, for a person to intentionally or recklessly publish an application for a covert search warrant, a report prepared under proposed section 27S, an occupier's notice or any information derived from such an application, report or notice:

- (a) before the related occupier's notice is served, or
- (b) if the identity or whereabouts of any person believed to be knowingly concerned in the commission of the terrorist act concerned, or the identity or whereabouts of the relevant occupier, is unknown—before directions are sought from an eligible Judge in relation to the giving of the occupier's notice in these circumstances.

The proposed offence is punishable by a maximum penalty of \$5,500 or 12 months imprisonment, or both.

Proposed section 27ZB requires the Commissioner of Police and the Commissioner for the New South Wales Crime Commission to each report to the Attorney General and the Minister for Police on an annual basis in relation to the exercise of powers relating to covert search warrants.

Proposed section 27ZC requires the Ombudsman to monitor the exercise of powers relating to covert search warrants by members of NSW Police, the Crime Commissioner and staff of the New South Wales Crime Commission for 2 years from the commencement of the new Part 3.

Schedule 1 [2] inserts proposed section 29A into the Principal Act, which enables the Attorney General to enter into arrangements with a Minister of the Commonwealth in relation to the transmission to or from the Commonwealth of things seized under the Principal Act or Commonwealth law, where the things seized are relevant to the investigation of an offence.

Schedule 1 [3] amends section 36 of the Principal Act to enable the Attorney General to require the Commissioner of Police or the Commissioner for the New South Wales Crime Commission to provide information, for the purposes of the annual review of that Act, about the exercise of functions by members of NSW Police, members of the Crime Commission or members of staff of the Crime Commission.

Schedule 2 Consequential amendments to Terrorism (Police Powers) Act 2002

Schedule 2 contains amendments that are consequential on the amendments made by **Schedule 1 [1]**, including renumbering.

Schedule 2 [17] and [18] enable regulations of a savings and transitional nature to be made as a consequence of the proposed Act.

Schedule 2 [18] also makes it clear that the scheme for covert search warrants contained in proposed Part 3 of the Principal Act applies in relation to terrorist acts committed before, as well as those committed after, the commencement of that Part.

Schedule 3 Amendment of Listening Devices Act 1984

Schedule 3 [1] amends section 16 of the *Listening Devices Act 1984* (the *Act*) to extend from 21 days to 90 days the maximum period during which a warrant authorising the use of a listening device is in force if the offence to which the warrant relates is a terrorism offence.

Schedule 3 [2] inserts into section 16 of the Act a definition of *terrorism offence* for the purposes of the proposed amendment made by **Schedule 3 [1]**. *Terrorism offence* is defined to mean the proposed State offence of membership of a terrorist organisation (see Schedule 4) or an offence under any of the following provisions of the Commonwealth Criminal Code:

- (a) section 101.1 (Terrorist acts),
- (b) section 101.2 (Providing or receiving training connected with terrorist acts),
- (c) section 101.4 (Possessing things connected with terrorist acts),
- (d) section 101.5 (Collecting or making documents likely to facilitate terrorist acts),
- (e) section 101.6 (Other acts done in preparation for, or planning, terrorist acts),
- (f) section 102.2 (Directing the activities of a terrorist organisation),
- (g) section 102.3 (Membership of a terrorist organisation),
- (h) section 102.4 (Recruiting for a terrorist organisation),
- (i) section 102.5 (Training a terrorist organisation or receiving training from a terrorist organisation),
- (j) section 102.6 (Getting funds to or from a terrorist organisation),
- (k) section 102.7 (Providing support to a terrorist organisation),
- (l) section 103.1 (Financing terrorism).

These offences carry penalties ranging from 10 years to life imprisonment.

Schedule 4 Amendment of Crimes Act 1900

Schedule 4 inserts proposed Part 6B into the *Crimes Act 1900* to create a State offence that is equivalent to the Commonwealth offence of membership of a terrorist organisation. This Part is to be repealed on the second anniversary of its commencement.



New South Wales

Terrorism Legislation Amendment (Warrants) Bill 2005

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Terrorism (Police Powers) Act 2002 No 115	2
4 Amendment of Listening Devices Act 1984 No 69	2
5 Amendment of Crimes Act 1900 No 40	2
6 Repeal of amendment of Crimes Act 1900 No 40 and related amendments	2
Schedule 1 Principal amendments to Terrorism (Police Powers) Act 2002	3
Schedule 2 Consequential amendments to Terrorism (Police Powers) Act 2002	24
Schedule 3 Amendment of Listening Devices Act 1984	28
Schedule 4 Amendment of Crimes Act 1900	29



New South Wales

Terrorism Legislation Amendment (Warrants) Bill 2005

No. , 2005

A Bill for

An Act to amend the *Terrorism (Police Powers) Act 2002* to make provision with respect to covert warrants in connection with terrorist acts; to amend the *Listening Devices Act 1984* with respect to the duration of warrants for terrorism offences; to amend the *Crimes Act 1900* to create the offence of being a member of a terrorist organisation; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Terrorism Legislation Amendment (Warrants) Act 2005</i> .	3
2 Commencement	4
(1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).	5 6
(2) Section 6 commences on the second anniversary of the commencement of section 5.	7 8
3 Amendment of Terrorism (Police Powers) Act 2002 No 115	9
The <i>Terrorism (Police Powers) Act 2002</i> is amended as set out in Schedules 1 and 2.	10 11
4 Amendment of Listening Devices Act 1984 No 69	12
The <i>Listening Devices Act 1984</i> is amended as set out in Schedule 3.	13
5 Amendment of Crimes Act 1900 No 40	14
The <i>Crimes Act 1900</i> is amended as set out in Schedule 4.	15
6 Repeal of amendment of Crimes Act 1900 No 40 and related amendments	16
(1) The <i>Terrorism (Police Powers) Act 2002</i> is amended by omitting section 27A (2) of that Act, as inserted by section 3 and Schedule 1 to this Act.	17 18 19
(2) The <i>Crimes Act 1900</i> is amended by omitting Part 6B of that Act, as inserted by section 5 and Schedule 4 to this Act.	20 21

Schedule 1	Principal amendments to Terrorism (Police Powers) Act 2002	1 2
	(Section 3)	3
[1] Part 3		4
	Insert after Part 2 (as inserted by Schedule 2 [5]):	5
Part 3	Covert search warrants	6
Division 1	Preliminary	7
27A	Definitions	8
(1)	In this Part:	9
	<i>Crime Commissioner</i> means the Commissioner for the New South Wales Crime Commission. (<i>Warrants</i>)	10 11
	<i>eligible Judge</i> —see section 27B.	12
	<i>eligible police officer</i> means a police officer who is employed within a group of staff of NSW Police who are designated by the Commissioner of Police as the terrorism investigation group for NSW Police.	13 14 15 16
	<i>eligible staff member of the Crime Commission</i> means a person who is employed within a group of staff of the New South Wales Crime Commission that is designated by the Crime Commissioner as the terrorism investigation group for the Crime Commission.	17 18 19 20 21
	<i>occupier's notice</i> means an occupier's notice referred to in section 27U or 27V.	22 23
	<i>subject premises</i> , in relation to a warrant or an application for a warrant, means premises the subject of the warrant or the application (as the case may be).	24 25 26
	<i>telephone warrant</i> means a warrant referred to in section 27I.	27
(2)	In this Part, <i>terrorist act</i> includes an offence against section 310J of the <i>Crimes Act 1900</i> (Membership of terrorist organisation). In that case, a reference in this Part:	28 29 30
(a)	to a terrorist act that has been, is being, or is likely to be, committed is a reference to an offence against that section that is being committed, and	31 32 33
(b)	to responding to or preventing a terrorist act is a reference to obtaining or providing evidence of the commission of an offence against that section.	34 35 36

(3)	For the purpose of this Part, a reference to the search of premises includes a reference to the search for information that may be derived from, or anything on, premises.	1 2 3
27B	Eligible Judges	4
(1)	In this Part: <i>eligible Judge</i> means a Judge in relation to whom a consent under subsection (2) and a declaration under subsection (3) are in force.	5 6 7
(2)	A Judge of the Supreme Court may, by instrument in writing, consent to be nominated by the Attorney General under subsection (3).	8 9 10
(3)	The Attorney General may, by instrument in writing, declare Judges in relation to whom consents are in force under subsection (2) to be eligible Judges for the purposes of this Part.	11 12 13
(4)	An eligible Judge has, in relation to the exercise of a function conferred on an eligible Judge by this Part, the same protection and immunity as a Judge of the Supreme Court has in relation to proceedings in the Supreme Court.	14 15 16 17
(5)	A Judge who has given consent under this section may, by instrument in writing, revoke the consent.	18 19
(6)	The Attorney General may, by instrument in writing, amend or revoke a declaration under this section.	20 21
Division 2	Authorisation to apply for covert search warrant	22 23
27C	Authorisation to apply for covert search warrant	24
	An authorisation to apply for a covert search warrant issued under this Part may be given in accordance with this Division if the person giving the authorisation suspects or believes on reasonable grounds:	25 26 27 28
(a)	that a terrorist act has been, is being, or is likely to be, committed, and	29 30
(b)	that the entry to and search of premises will substantially assist in responding to or preventing the terrorist act, and	31 32
(c)	that it is necessary for the entry and search of those premises to be conducted without the knowledge of any occupier of the premises.	33 34 35

27D	Who may be authorised to apply for a covert search warrant	1
(1)	The Commissioner of Police may authorise an eligible police officer to apply for a covert search warrant issued under this Part.	2 3
(2)	The Crime Commissioner may authorise an eligible staff member of the Crime Commission to apply for a covert search warrant under this Part.	4 5 6
27E	Delegation of Commissioner of Police's power to give authorisation	7 8
(1)	Except as provided by this section, the power of the Commissioner of Police to give an authorisation under this Part may not be delegated to any person.	9 10 11
(2)	The Commissioner of Police may delegate to any of the following persons who are eligible police officers his or her power to give an authorisation:	12 13 14
(a)	an Assistant Commissioner holding a position that is prescribed by the regulations,	15 16
(b)	a person holding a position of or above the rank of superintendent that is prescribed by the regulations.	17 18
(3)	No more than 2 persons may hold delegations under this section at any one time.	19 20
(4)	This section has effect despite any other Act or law to the contrary.	21 22
27F	Delegation of Crime Commissioner's power to give authorisation	23
(1)	Except as provided by this section, the power of the Crime Commissioner to give an authorisation under this Part may not be delegated to any person.	24 25 26
(2)	The Crime Commissioner may delegate to an eligible staff member of the Crime Commission who holds a position prescribed by the regulations his or her power to give an authorisation.	27 28 29 30
(3)	No more than 1 person may hold a delegation under this section at any one time.	31 32
(4)	This section has effect despite any other Act or law to the contrary.	33 34

Division 3	Application for, and issue of, covert search warrant	1
		2
27G	Power to apply for covert search warrant	3
	An eligible police officer, or an eligible staff member of the Crime Commission, who is given an authorisation under Division 2 may apply to an eligible Judge for a covert search warrant in respect of any premises if the officer or staff member suspects or believes on reasonable grounds:	4
		5
		6
		7
		8
	(a) that a terrorist act has been, is being, or is likely to be, committed, and	9
		10
	(b) that the entry to and search of the premises will substantially assist in responding to or preventing the terrorist act, and	11
		12
		13
	(c) that it is necessary for the entry and search of those premises to be conducted without the knowledge of any occupier of the premises.	14
		15
		16
27H	Application for warrant in person	17
	(1) An application for a covert search warrant must be in writing and must be made by the applicant in person.	18
		19
	(2) An eligible Judge must not issue a covert search warrant unless the information given by the applicant in or in connection with the application is verified before the Judge on oath or affirmation or by affidavit.	20
		21
		22
		23
	(3) An eligible Judge may administer an oath or affirmation or take an affidavit for the purposes of an application for a covert search warrant.	24
		25
		26
	(4) This section does not apply to a telephone warrant.	27
27I	Telephone warrant	28
	(1) An eligible police officer, or an eligible staff member of the Crime Commission, who is given an authorisation under Division 2 may apply by telephone for a covert search warrant.	29
		30
		31
	(2) An eligible Judge must not issue a covert search warrant on an application made by telephone unless the Judge is satisfied that the warrant is required urgently and that it is not practicable for the application to be made in person.	32
		33
		34
		35
	(3) An application must be made by facsimile if the facilities to do so are readily available for that purpose.	36
		37

-
- | | | |
|------------|---|----------------------|
| (4) | If it is not practicable for an application for a covert search warrant to be made by telephone directly to an eligible Judge, the application may be transmitted to the Judge by another person on behalf of the applicant. | 1
2
3
4 |
| (5) | An eligible Judge who issues a covert search warrant on an application made by telephone must: | 5
6 |
| (a) | complete and sign the warrant, and | 7 |
| (b) | provide the warrant to the person who made the application or inform that person of the terms of the warrant and of the date when it was signed. | 8
9
10 |
| (6) | If a covert search warrant is issued on an application made by telephone and the applicant was not provided with the warrant, the applicant must: | 11
12
13 |
| (a) | complete a form of warrant in the terms indicated by the eligible Judge under subsection (5), and | 14
15 |
| (b) | write on it the name of that Judge and the date when the warrant was signed, and | 16
17 |
| (c) | provide the warrant to that Judge within 2 business days of the issue of the warrant. | 18
19 |
| (7) | A form of covert search warrant so completed is taken to be a warrant issued in accordance with this Division. | 20
21 |
| (8) | A covert search warrant is to be provided by an eligible Judge by transmitting it by facsimile if the facilities to do so are readily available, and the copy produced by that transmission is taken to be the original warrant. | 22
23
24
25 |
| (9) | In this section: | 26 |
| | <i>facsimile</i> means facsimile transmission, the internet or any other means of electronic transmission of information in a form from which written material is capable of being reproduced with or without the aid of any other device or article. | 27
28
29
30 |
| | <i>telephone</i> includes any communication device. | 31 |
| 27J | Information in application for warrant | 32 |
| (1) | An eligible Judge must not issue a covert search warrant unless the application for the warrant includes the following information: | 33
34
35 |
| (a) | the name of the applicant and details of the authorisation given to the applicant under Division 2, | 36
37 |
| (b) | the address or other description of the subject premises, | 38 |
-

(c)	particulars of the grounds on which the application is based,	1 2
(d)	the name of the following persons:	3
(i)	any person believed to be knowingly concerned in the commission of the terrorist act in respect of which the application is made,	4 5 6
(ii)	if no such person is an occupier of the subject premises—any occupier (if known) of those premises,	7 8 9
(e)	if it is proposed that premises adjoining or providing access to the subject premises be entered for the purposes of entering the subject premises—the address or other description of the premises that adjoin or provide such access and particulars of the grounds on which entry to those premises is required,	10 11 12 13 14 15
(f)	the powers that are proposed to be exercised on entry to the subject premises,	16 17
(g)	a description of the kinds of things that are proposed to be searched for, seized, placed in substitution for a seized thing, copied, photographed, recorded, operated, printed or tested,	18 19 20 21
(h)	if a previous application for the same warrant was refused—details of the refusal and any additional information provided as required by section 27M,	22 23 24
(i)	details of any covert search warrant that has previously been issued in respect of the subject premises,	25 26
(j)	any other information required by the regulations.	27
(2)	The applicant must provide (either orally or in writing) such further information as the eligible Judge requires concerning the grounds on which the warrant is being sought.	28 29 30
27K	Determining application for covert search warrant	31
(1)	An eligible Judge to whom an application for a covert search warrant is made may, if satisfied that there are reasonable grounds for doing so, issue a covert search warrant.	32 33 34
(2)	An eligible Judge, when determining whether there are reasonable grounds to issue a covert search warrant, is to consider (but is not limited to considering) the following matters:	35 36 37
(a)	the reliability of the information on which the application is based, including the nature of the source of the information,	38 39 40

-
- | | | |
|--|---|----------------------------|
| (b) | whether there is a connection between the terrorist act in respect of which the application has been made and the kinds of things that are proposed to be searched for, seized, placed in substitution for a seized thing, copied, photographed, recorded, operated, printed or tested, | 1
2
3
4
5 |
| (c) | the nature and gravity of the terrorist act, | 6 |
| (d) | the extent to which the exercise of powers under the warrant would assist in the prevention of, or response to, the terrorist act, | 7
8
9 |
| (e) | alternative means of obtaining the information sought to be obtained, | 10
11 |
| (f) | the extent to which the privacy of a person who is not believed to be knowingly concerned in the commission of the terrorist act is likely to be affected if the warrant is issued, | 12
13
14
15 |
| (g) | if it is proposed that premises adjoining or providing access to the subject premises be entered for the purposes of entering the subject premises: | 16
17
18 |
| (i) | whether this is reasonably necessary in order to enable access to the subject premises, or | 19
20 |
| (ii) | whether this is reasonably necessary in order to avoid compromising the investigation of the terrorist act, | 21
22
23 |
| (h) | whether any conditions should be imposed by the Judge in relation to the execution of the warrant. | 24
25 |
| 27L Record of determination by eligible Judge | | 26 |
| (1) | An eligible Judge who determines an application for a covert search warrant must cause a record to be made of all relevant particulars of the grounds the eligible Judge has relied on to justify the issue of the warrant or the refusal to issue the warrant (as the case may be). | 27
28
29
30
31 |
| (2) | The regulations may make provision for or with respect to: | 32 |
| (a) | the keeping of records in connection with the issue and execution of covert search warrants, and | 33
34 |
| (b) | the inspection of any such records, and | 35 |
| (c) | any other matter in connection with any such records. | 36 |
| (3) | Any matter that might disclose the name or residential address of a person must not be recorded pursuant to this section if the eligible Judge is satisfied that to do so might jeopardise the safety of any person. | 37
38
39
40 |
-

27M	Further application for warrant after refusal	1
	If an application by a person for a covert search warrant is refused by an eligible Judge, that person (or any other person who is aware of the application) may not make a further application for the same warrant to that or any other eligible Judge unless the further application provides additional information that justifies the making of the further application.	2 3 4 5 6 7
27N	Contents of covert search warrant	8
	A covert search warrant is to specify the following matters:	9
	(a) the name of the person who applied for the warrant,	10
	(b) the address or other description of the subject premises,	11
	(c) the name of the following persons:	12
	(i) any person believed to be knowingly concerned in the commission of the terrorist act in respect of which the warrant is issued,	13 14 15
	(ii) if no such person is an occupier of the subject premises—any occupier (if known) of those premises,	16 17 18
	(d) a description of the kinds of things that may be searched for, seized, placed in substitution for a seized thing, copied, photographed, recorded, operated, printed or tested,	19 20 21 22
	(e) the date on which the warrant is issued,	23
	(f) the date on which the warrant expires (being a date that is not more than 30 days from the date on which the warrant is issued),	24 25 26
	(g) any conditions imposed in relation to the execution of the warrant,	27 28
	(h) any other matter required by the regulations.	29
Division 4	Execution of covert search warrant and provisions applying after warrant executed	30 31
27O	Powers conferred by covert search warrant	32
	(1) A covert search warrant authorises an eligible person:	33
	(a) to enter, without any occupier’s knowledge, the subject premises, and	34 35
	(b) to impersonate another person for the purposes of executing the warrant, and	36 37

-
- | | | |
|-----|--|----------------------------|
| (c) | to use such force as is reasonably necessary for the purposes of entering the subject premises, and | 1
2 |
| (d) | if the warrant authorises entry to premises adjoining or providing access to the subject premises—to enter premises adjoining or providing access to the subject premises, using such force as is reasonably necessary, for the purposes of entering the subject premises, and | 3
4
5
6
7 |
| (e) | to search the subject premises for any kind of thing described in the warrant, and | 8
9 |
| (f) | to break open any receptacle in or on the subject premises for the purposes of that search if it is reasonably necessary to do so, and | 10
11
12 |
| (g) | if the warrant authorises the seizure of a kind of thing—to seize and detain a thing of that kind and any relevant thing that the person finds in the course of executing the warrant, and | 13
14
15
16 |
| (h) | to seize and detain any other thing that the person finds in the course of executing the warrant and that is connected with a serious indictable offence, and | 17
18
19 |
| (i) | if the warrant authorises the placing of a kind of thing in substitution for a seized thing—to place a thing of that kind on the subject premises in substitution for a thing seized under paragraph (g), and | 20
21
22
23 |
| (j) | if the warrant authorises the copying, photographing or recording of a kind of thing—to copy, photograph or otherwise record a thing of that kind and any relevant thing that the person finds in the course of executing the warrant, and | 24
25
26
27
28 |
| (k) | if the warrant authorises the operation of a kind of electronic equipment: | 29
30 |
| | (i) to operate any electronic equipment of that kind and any relevant electronic equipment that the person finds in the course of executing the warrant, and | 31
32
33 |
| | (ii) to print, copy or otherwise record from that equipment information that is of a kind that the warrant authorises to be printed, copied or recorded and any relevant information that the person finds in the course of executing the warrant, and | 34
35
36
37
38 |
| (l) | if the warrant authorises the testing of a kind of thing—to test a thing of that kind and any relevant thing that the person finds in the course of executing the warrant. | 39
40
41 |
-

(2)	A reference in this section to an eligible person, in relation to a warrant, is a reference to:	1
		2
(a)	an eligible police officer if the applicant for the warrant was an eligible police officer, or	3
		4
(b)	an eligible staff member of the Crime Commission if the applicant for the warrant was an eligible staff member of the Crime Commission.	5
		6
		7
(3)	A reference in this section to a relevant thing (including electronic equipment and information) found by an eligible person is a reference to a thing that the person has reasonable grounds to suspect or believe will substantially assist in responding to or preventing a terrorist act.	8
		9
		10
		11
		12
(4)	For the purposes of this section, a thing is connected with a serious indictable offence only if it is:	13
		14
(a)	a thing with respect to which there are reasonable grounds for suspecting or believing the offence has been, is being, or will be committed, or	15
		16
		17
(b)	a thing that there are reasonable grounds for suspecting or believing will provide evidence of the commission or intended commission of the offence, or	18
		19
		20
(c)	a thing that there are reasonable grounds for suspecting or believing has been, is being, or is intended to be used, in or in connection with the offence.	21
		22
		23
27P	Use of assistants to execute warrant	24
	A person who is authorised under section 27O to execute a warrant may do so with the aid of such assistants as the person considers necessary.	25
		26
		27
27Q	Expiry of covert search warrant	28
	Subject to section 27R, a covert search warrant ceases to have effect:	29
		30
(a)	on the expiry date specified in the warrant, or	31
(b)	if it is withdrawn by the eligible Judge who issued the warrant—when it is withdrawn, or	32
		33
(c)	when it is executed,	34
	whichever occurs first.	35

27R	Return or retrieval of a thing seized or placed	1
(1)	A covert search warrant may authorise the return of a thing seized under section 27O (1) (g), or the retrieval of a thing placed under section 27O (1) (i), if the warrant expressly authorises such a return or retrieval.	2 3 4 5
(2)	If the warrant authorises the return or retrieval of a thing, the subject premises may be re-entered by a person authorised under section 27O to execute the warrant, but only for the purpose of returning or retrieving the thing (as the case may be) and any such re-entry must occur within 7 days of the first entry under the warrant (or such longer period as is allowed, prior to the expiration of the 7-day period, by an eligible Judge).	6 7 8 9 10 11 12
(3)	A person authorised to re-enter premises and return or retrieve a thing under this section may do so with the aid of such assistants as the person considers necessary.	13 14 15
27S	Report to eligible Judge on execution of warrant	16
(1)	A person who executes a covert search warrant must provide a report in writing to the eligible Judge who issued the warrant:	17 18
(a)	stating the address or other description of the subject premises, and	19 20
(b)	stating whether or not the warrant was executed, and	21
(c)	if the warrant was executed:	22
(i)	stating the date on which the warrant was executed, and	23 24
(ii)	stating the name of any person who executed the warrant, and	25 26
(iii)	stating the name of any police officer, staff member of the New South Wales Crime Commission or intelligence gathering officer who assisted in the execution of the warrant and the nature of the assistance provided, and	27 28 29 30 31
(iv)	stating the name of any person believed to be knowingly concerned in the commission of the terrorist act in respect of which the warrant was executed and, if no such person is an occupier of the premises, any occupier (if known) of the premises at which the warrant was executed, and	32 33 34 35 36 37
(v)	stating the powers that were exercised under the warrant, and	38 39

(vi)	setting out briefly the result of the execution of the warrant (including a brief description of anything seized, placed in substitution for a seized thing, copied, photographed, recorded, operated, printed or tested), and	1 2 3 4 5
(vii)	if a thing was found in the course of executing the warrant and, under section 27O, that thing was (but was not of a kind expressly authorised by the warrant to be) copied, photographed, recorded, operated, printed or tested—specifying particulars of the grounds on which the thing was believed to be a relevant thing or connected with a serious indictable offence (as the case may be),	6 7 8 9 10 11 12 13
(viii)	if a thing was tested or was seized for the purposes of testing—including a description of the thing and the type of information obtained (or proposed to be obtained) by testing, and	14 15 16 17
(ix)	stating whether or not the execution of the warrant assisted in the prevention of, or response to, the terrorist act in respect of which the warrant was executed and, if so, how it assisted, and	18 19 20 21
(x)	stating whether or not the execution of the warrant assisted in the prevention of, or response to, any other terrorist act or any serious indictable offence and, if so, how it assisted, and	22 23 24 25
(d)	if the warrant was not executed—setting out briefly the reasons why the warrant was not executed, and	26 27
(e)	containing such other particulars as may be prescribed by the regulations.	28 29
(2)	The report must be provided:	30
(a)	if the warrant was executed—within 10 days after it was executed, or	31 32
(b)	if the warrant was not executed—within 10 days after:	33
(i)	the expiry date specified in the warrant, or	34
(ii)	the date the warrant was withdrawn by the eligible Judge who issued the warrant.	35 36
(3)	If premises are entered for the purposes of returning or retrieving a thing under section 27R, a report must also be provided in writing to the eligible Judge who issued the warrant:	37 38 39
(a)	stating the address or other description of the premises, and	40
(b)	stating the date on which the premises were re-entered, and	41

(c)	stating the name of any person who entered the premises for the purposes of the return or retrieval, and	1 2
(d)	stating the name of any other police officer, staff member of the New South Wales Crime Commission or intelligence gathering officer who assisted in the re-entry of the premises or the return or retrieval of the thing and the nature of any assistance provided, and	3 4 5 6 7
(e)	setting out a brief description of the thing, and	8
(f)	if the thing was not returned or retrieved—setting out the reasons why the thing was not returned or retrieved, and	9 10
(g)	containing such other particulars as may be prescribed by the regulations.	11 12
(4)	The report is to be provided within 10 days after the entry to the premises for the purposes of retrieving or returning the thing under section 27R.	13 14 15
(5)	The Commissioner of Police or the Crime Commissioner is to ensure that a copy of any report provided under this section is given to the Attorney General.	16 17 18
(6)	In this section:	19
	<i>intelligence gathering officer</i> means a person employed by or in the Australian Security Intelligence Organisation or any other intelligence gathering agency prescribed for the purposes of this definition.	20 21 22 23
	<i>police officer</i> means a member of:	24
(a)	NSW Police, or	25
(b)	the Australian Federal Police, or	26
(c)	a police force or police service (however described) of another State, a Territory or another country.	27 28
27T	Defects in covert search warrants	29
	A covert search warrant is not invalidated by any defect, other than a defect that affects the substance of the warrant in a material particular.	30 31 32
27U	Notice to occupiers of execution of covert search warrant	33
(1)	A person who executes a covert search warrant is to cause an occupier's notice to be prepared under this section.	34 35
(2)	The occupier's notice:	36
(a)	is to specify the name of the person who applied for the warrant, and	37 38

Terrorism Legislation Amendment (Warrants) Bill 2005

Schedule 1 Principal amendments to Terrorism (Police Powers) Act 2002

- (b) is to specify the name of the eligible Judge who issued the warrant, and 1
2
- (c) is to specify the date when the warrant was issued, and 3
- (d) is to specify the date when the warrant was executed, and 4
- (e) is to specify the address or other description of the subject premises, and 5
6
- (f) is to specify the number of police officers, staff members of the New South Wales Crime Commission or intelligence gathering officers who entered the subject premises for the purposes of executing, or assisting in the execution of, the warrant, and 7
8
9
10
11
- (g) is to contain a summary of the nature of the warrant (including the grounds on which a covert search warrant may be issued) and the powers conferred and exercised under the warrant, and 12
13
14
15
- (h) is to describe any thing seized or placed in substitution for a seized thing, and 16
17
- (i) is to describe any thing returned or retrieved under section 27R and the date on which the thing was returned or retrieved, and 18
19
20
- (j) if the occupier was not, at the time that the warrant was executed, believed to be knowingly concerned in the commission of the terrorist act in respect of which the warrant was executed—is to state this, and 21
22
23
24
- (k) is to specify or contain any other matters required by the regulations. 25
26
- (3) Within 6 months of executing the covert search warrant, the person who executed the warrant is to provide the occupier's notice to the eligible Judge who issued the warrant for that Judge's approval. 27
28
29
30
- (4) The person must provide such further information (either orally or in writing) as the eligible Judge requires for the purposes of assisting the Judge in determining whether to approve the occupier's notice. 31
32
33
34
- (5) As soon as practicable after the eligible Judge approves the occupier's notice, the person who executed the warrant is to cause the notice to be given to: 35
36
37
 - (a) any person who, at the time the warrant was executed, was believed to be knowingly concerned in the commission of the terrorist act in respect of which the warrant was executed, and 38
39
40
41

-
- | | | |
|------------|---|----------------------------------|
| (b) | if no such person was an occupier of the subject premises when the warrant was executed—a person of or above the age of 18 years known to have occupied the premises at the time the warrant was executed. | 1
2
3
4 |
| (6) | If no such person is known, or the person’s whereabouts are unknown to the person who executed the warrant, the person who executed the warrant is to report back to the eligible Judge who issued the warrant and the Judge may give such directions about the giving of the occupier’s notice as the Judge thinks fit. | 5
6
7
8
9 |
| (7) | The giving of an occupier’s notice under this section may be postponed by the eligible Judge who issued the warrant if that eligible Judge is satisfied that there are reasonable grounds for that postponement. | 10
11
12
13 |
| (8) | Directions under subsection (6) may be given at the same time as a postponement is granted. | 14
15 |
| (9) | The giving of an occupier’s notice under this section may be postponed on more than one occasion, but: | 16
17 |
| (a) | must not be postponed on any one occasion for a period exceeding 6 months, and | 18
19 |
| (b) | must not be postponed for a total period of more than 18 months unless the eligible Judge is satisfied that there are exceptional circumstances justifying the postponement. | 20
21
22 |
| (10) | In this section:
<i>intelligence gathering officer</i> and <i>police officer</i> have the same meanings as in section 27S. | 23
24
25 |
| (11) | A reference in this section and in section 27V to a person who executes a warrant includes a reference to another eligible police officer (if the person was an eligible police officer) or another eligible staff member of the Crime Commission (if the person was such a staff member), but only if the person who executed the warrant: | 26
27
28
29
30
31 |
| (a) | has died, or | 32 |
| (b) | has ceased to be an eligible police officer or eligible staff member of the Crime Commission (as the case may be), or | 33
34 |
| (c) | is absent from duty. | 35 |
| 27V | Notice to adjoining occupiers of execution of covert search warrant | 36
37 |
| (1) | A person who executes a covert search warrant is to cause an occupier’s notice to be prepared under this section if the | 38
39 |
-

execution of the warrant involved entering under section 27O (1)	1
(d) premises (the <i>adjoining premises</i>) adjoining or providing	2
access to the subject premises.	3
(2) The occupier’s notice:	4
(a) is to specify or state the matters set out in section 27U (2)	5
(a)–(e), and	6
(b) is to specify or contain any other matters required by the	7
regulations.	8
(3) The occupier’s notice is to be provided to the eligible Judge who	9
issued the warrant for that Judge’s approval at the same time as	10
the occupier’s notice prepared under section 27U in relation to	11
the execution of the warrant is provided under section 27U (3).	12
(4) As soon as practicable after the eligible Judge approves the	13
occupier’s notice under this section, the person who executed the	14
warrant is to cause the notice to be given to a person of or above	15
the age of 18 years known to have occupied the adjoining	16
premises.	17
(5) The provisions of section 27U apply in relation to an occupier’s	18
notice prepared under this section as follows:	19
(a) section 27U (4) and (6)–(9) apply as if a reference in those	20
provisions to an occupier’s notice were a reference to an	21
occupier’s notice prepared under this section,	22
(b) section 27U (6) applies as if a reference in that provision	23
to a person referred to in section 27U (5) were a reference	24
to an occupier referred to in subsection (4).	25
27W Destruction of records	26
(1) Within 12 months of the execution of a covert search warrant, the	27
Commissioner of Police or the Crime Commissioner is to	28
determine whether any copy, photocopy or other record made in	29
the execution of the warrant is reasonably required for the	30
purpose of an investigation or proceedings.	31
(2) Within each subsequent period of 12 months, the Commissioner	32
of Police or the Crime Commissioner is to further determine	33
whether any such record is reasonably required for that purpose	34
for so long as the record remains in existence.	35
(3) The Commissioner of Police or the Crime Commissioner is to	36
ensure that any such record is destroyed as soon as practicable	37
after determining that its retention is no longer reasonably	38
required for that purpose.	39

(4)	A requirement imposed under this section on the Commissioner of Police applies only in relation to a record made in the execution of a warrant by an eligible police officer.	1 2 3
(5)	A requirement imposed under this section on the Crime Commissioner applies only in relation to a record made in the execution of a warrant by an eligible staff member of the Crime Commission.	4 5 6 7
Division 5 Miscellaneous		8
27X	Death or absence of eligible Judge who issued covert search warrant	9 10
	If the eligible Judge who issued a covert search warrant has died, has ceased to be an eligible Judge or is absent:	11 12
	(a) a warrant required to be provided to that Judge under section 27I, or	13 14
	(b) a report required to be provided to that Judge under section 27S, or	15 16
	(c) an occupier's notice required to be provided to that Judge under section 27U or 27V, or	17 18
	(d) a power exercisable by that Judge under section 27U or 27V,	19 20
	may be provided to, or may be exercised by, as the case may be, any other eligible Judge.	21 22
27Y	Applications to be dealt with in absence of public	23
	Applications under this Part and any other matters arising under this Part that are dealt with by an eligible Judge are to be dealt with in the absence of the public.	24 25 26
27Z	False or misleading information in applications or reports to eligible Judge	27 28
(1)	A person must not, in or in connection with an application for a covert search warrant, a report or an occupier's notice, give information to an eligible Judge that the person knows to be false or misleading in a material particular.	29 30 31 32
	Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.	33 34
(2)	This section applies to an application for a telephone warrant as well as an application for a covert search warrant made in person.	35 36

(3)	This section applies whether or not the information given is also verified on oath or affirmation or by affidavit.	1 2
27ZA	Publication of documents	3
(1)	A person must not intentionally or recklessly publish an application for a covert search warrant, a report prepared under section 27S, an occupier's notice or any information directly derived from such an application, report or notice unless:	4 5 6 7
(a)	an occupier's notice that relates to the execution of the warrant has been given under section 27U, or	8 9
(b)	directions have been given in relation to the giving of the occupier's notice under section 27U (6).	10 11
	Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.	12 13
(2)	This section does not make it an offence to publish any application, report, notice or information if the publication is for the purposes of:	14 15 16
(a)	exercising any functions under this Part, or	17
(b)	the internal management of NSW Police, the New South Wales Crime Commission, the Supreme Court or the Attorney General's Department.	18 19 20
27ZB	Annual reports to be given to Attorney General and Police Minister	21
(1)	The Commissioner of Police and the Crime Commissioner must each report annually on the exercise of powers under this Part by eligible police officers and eligible staff members of the Crime Commission respectively.	22 23 24 25
(2)	Each report is to be provided, within 4 months after each 30 June, to the Police Minister and the Attorney General.	26 27
(3)	The report is to specify the following matters in relation to the year ended on that 30 June:	28 29
(a)	the number of applications for covert search warrants made under this Part and the number of those applications granted,	30 31 32
(b)	the number of applications for telephone warrants and the number of those applications granted,	33 34
(c)	the number of covert search warrants executed,	35
(d)	the number of covert search warrants under which any things were seized,	36 37

(e)	the number of covert search warrants under which any things were placed in substitution for seized things,	1 2
(f)	the number of covert search warrants under which any things were returned or retrieved,	3 4
(g)	the number of covert search warrants under which any things were copied, photographed or otherwise recorded,	5 6
(h)	the number of covert search warrants under which any electronic equipment was operated by eligible police officers or eligible staff members of the Crime Commission,	7 8 9 10
(i)	the number of covert search warrants under which any things were tested,	11 12
(j)	the number of arrests made in connection with a terrorist act in respect of which a covert search warrant was executed and the number of those arrests that have led to the laying of charges in relation to the terrorist act,	13 14 15 16
(k)	the number of complaints that are made under any Act about conduct relating to the execution of a covert search warrant by an eligible police officer or an eligible staff member of the Crime Commission and the number of those complaints that are, or have been, the subject of an investigation under any Act,	17 18 19 20 21 22
(l)	any other matters requested by the Police Minister or the Attorney General.	23 24
(4)	The reports may be combined with any other annual report of NSW Police or the New South Wales Crime Commission.	25 26
(5)	The reports are to be tabled in each House of Parliament as soon as practicable after they are received by the Attorney General.	27 28
27ZC	Monitoring by Ombudsman	29
(1)	For the period of 2 years after the commencement of this Part (as inserted by the <i>Terrorism Legislation Amendment (Warrants) Act 2005</i>), the Ombudsman is to keep under scrutiny the exercise of powers conferred on members of NSW Police, the Crime Commissioner and members of staff of the New South Wales Crime Commission by this Part.	30 31 32 33 34 35
(2)	For that purpose, the Ombudsman may require the Commissioner of Police, the Crime Commissioner or the Director-General of the Attorney General's Department to provide information about the exercise of those powers.	36 37 38 39

(3)	The Ombudsman must, as soon as practicable after the expiration of that 2-year period, prepare a report on the exercise of those powers and furnish a copy of the report to the Minister, the Commissioner of Police and the Crime Commissioner.	1 2 3 4
(4)	The Minister is to lay (or cause to be laid) a copy of the report before both Houses of Parliament as soon as practicable after the Minister receives the report.	5 6 7
(5)	If a House of Parliament is not sitting when the Minister seeks to lay a report before it, the Minister may present copies of the report to the Clerk of the House concerned.	8 9 10
(6)	The report:	11
(a)	is, on presentation and for all purposes, taken to have been laid before the House, and	12 13
(b)	may be printed by authority of the Clerk of the House, and	14
(c)	if so printed, is for all purposes taken to be a document published by or under the authority of the House, and	15 16
(d)	is to be recorded:	17
(i)	in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and	18 19
(ii)	in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,	20 21
	on the first sitting day of the House after receipt of the report by the Clerk.	22 23
[2] Section 29A		24
	Insert after section 29:	25
29A Ministerial arrangements for things seized in connection with extra-territorial offences		26 27
	The Minister may enter into arrangements with a Minister of the Commonwealth under which:	28 29
(a)	things seized under this Act that may be relevant to the investigation of an offence against the law of the Commonwealth:	30 31 32
(i)	are to be transmitted to the Commissioner of the Australian Federal Police for the purposes of the investigation of, or proceedings in respect of, that offence, and	33 34 35 36
(ii)	when no longer required for the purposes of any such investigation or proceedings, are (unless	37 38

disposed of by order or direction of a court or Magistrate) to be returned to the Commissioner of Police or (if the things have been seized by a member of staff of the New South Wales Crime Commission) the Commissioner for the New South Wales Crime Commission, and	1 2 3 4 5 6
(b) things seized under the law of the Commonwealth that may be relevant to the investigation of an offence against the law of this State:	7 8 9
(i) are to be transmitted to the Commissioner of Police, and	10 11
(ii) when no longer required for the purposes of the investigation of an offence, or proceedings in respect of an offence, are (unless disposed of by order or direction of a court or Magistrate) to be returned to the Commissioner of the Australian Federal Police.	12 13 14 15 16 17
[3] Section 36 Review of Act	18
Insert after section 36 (1):	19
(1A) For the purpose of the review, the Minister may require the Commissioner of Police or the Commissioner for the New South Wales Crime Commission to provide information about the exercise of functions in respect of covert search warrants under this Act by members of NSW Police, members of the Crime Commission or members of staff of the Crime Commission.	20 21 22 23 24 25

Schedule 2	Consequential amendments to Terrorism (Police Powers) Act 2002	1 2
	(Section 3)	3
[1] Section 4 Other definitions		4
	Omit the definitions of <i>authorisation</i> , <i>recognised law enforcement officer</i> and <i>target</i> from section 4 (1).	5 6
[2] Section 4 (1)		7
	Insert in alphabetical order:	8
	<i>exercise</i> a function includes perform a duty.	9
	<i>function</i> includes a power or duty.	10
	<i>occupier</i> of premises includes a person in charge of the premises.	11
[3] Section 4 (2)		12
	Omit the subsection.	13
[4] Section 4A		14
	Insert after section 4:	15
	4A Extraterritoriality of terrorist act no barrier	16
	To avoid doubt, functions conferred by this Act in relation to a terrorist act may be exercised whether or not the terrorist act has been, is being, or is likely to be committed in New South Wales.	17 18 19
[5] Part 2		20
	Insert after Part 1:	21
	Part 2 Special powers	22
	Division 1 Preliminary	23
	4B Interpretation	24
	(1) In this Part:	25
	<i>authorisation</i> means an authorisation given under this Part in accordance with Division 2.	26 27
	<i>recognised law enforcement officer</i> means a person appointed under Division 4.	28 29
	<i>target</i> of an authorisation—see section 7 (2).	30

(2)	For the purposes of this Part:	1
(a)	a person in an area that is the target of an authorisation includes a person who is about to enter the area or who has recently left the area, and	2 3 4
(b)	a vehicle in an area that is the target of an authorisation includes a vehicle that is about to enter the area or that has recently left the area.	5 6 7
[6]	Parts 2–4	8
	Renumber as Divisions 2–4 of Part 2 (as inserted by item [5]).	9
[7]	Sections 5, 6, 8 (2), 11 (3), 13 (1), 15, 19A (1), 20 (1), 21, 22, 23 (1), 24 (5) and 26	10 11
	Omit “this Part” wherever occurring. Insert instead “this Division”.	12
[8]	Sections 5–7, 10 (3) (a), 14 (and the note to the section), 14A (1), 15, 23 (2), 24 (1) and 25 (1)	13 14
	Omit “this Act” wherever occurring. Insert instead “this Part”.	15
[9]	Section 14, note	16
	Omit “Part 4”. Insert instead “Division 4”.	17
[10]	Part 2 (as inserted by item [5]), Division 3 (as renumbered by item [6])	18
	Omit “Special powers” from the heading. Insert instead “Powers”.	19
[11]	Section 26 Report to be given to Attorney General and Police Minister	20
	Renumber section 26 as section 14B and transfer to the end of Division 2 of Part 2 (as renumbered by item [6]).	21 22
[12]	Part 5 Miscellaneous	23
	Renumber as Part 4.	24
[13]	Section 27 Return of seized things	25
	Omit “special” from section 27 (1).	26
[14]	Section 27 (1) (a)	27
	Omit “as evidence”.	28
[15]	Section 28 Disposal of property on application to court	29
	Omit “special” from section 28 (1).	30

[16] Section 29 Protection of police acting in execution of Part 2 authorisation	1 2
Omit “this Act”. Insert instead “Part 2”.	3
[17] Section 35	4
Insert after section 34:	5
35 Savings and transitional provisions	6
Schedule 2 has effect.	7
[18] Schedule 2	8
Insert after Schedule 1:	9
Schedule 2 Savings and transitional provisions	10
(Section 35)	11
Part 1 General	12
1 Regulations	13
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	14 15 16
<i>Terrorism Legislation Amendment (Warrants) Act 2005</i>	17
(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	18 19
(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	20 21 22
(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	23 24 25
(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	26 27 28

**Part 2 Provision consequent on enactment of
Terrorism Legislation Amendment
(Warrants) Act 2005**

1
2
3

2 Covert search warrants

4

Part 3 of this Act (as inserted by the *Terrorism Legislation Amendment (Warrants) Act 2005*) applies in relation to a terrorist act, whether committed before or after the commencement of that Part.

5
6
7
8

**Schedule 3 Amendment of Listening Devices Act
1984**

1
2
3
4
5
6
7
8
9
10
11
12
13
14

(Section 4)

[1] Section 16 Warrants authorising use of listening devices

Insert “or, if the offence is a terrorism offence, 90 days” after “days” in section 16 (4) (c).

[2] Section 16 (8)

Insert after section 16 (7):

(8) In this section:

terrorism offence means an offence under Part 6B of the *Crimes Act 1900* or an offence against section 101.1, 101.2, 101.4, 101.5, 101.6, 102.2, 102.3, 102.4, 102.5, 102.6, 102.7 or 103.1 of the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth.

Schedule 4	Amendment of Crimes Act 1900	1
	(Section 5)	2
Part 6B		3
Insert after Part 6A:		4
Part 6B Terrorism		5
Note. This Part is to be repealed on the second anniversary of its commencement.		6
310I Definitions		7
In this Part:		8
<i>Commonwealth Criminal Code</i> means the Criminal Code set out in the Schedule to the <i>Criminal Code Act 1995</i> of the Commonwealth.		9 10 11
<i>terrorist organisation</i> and <i>member of a terrorist organisation</i> have the meaning they are given by section 102.1 of the Commonwealth Criminal Code.		12 13 14
310J Membership of terrorist organisation		15
(1) A person commits an offence if:		16
(a) the person intentionally is a member of a terrorist organisation, and		17 18
(b) the organisation is a terrorist organisation, and		19
(c) the person knows the organisation is a terrorist organisation.		20 21
Maximum penalty: Imprisonment for 10 years.		22
(2) Subsection (1) does not apply if the person proves that he or she took all reasonable steps to cease to be a member of the organisation as soon as practicable after the person knew that the organisation was a terrorist organisation.		23 24 25 26
310K Multiplicity of offences		27
If:		28
(a) an act or omission is an offence against both this Part and the Commonwealth Criminal Code, and		29 30

Terrorism Legislation Amendment (Warrants) Bill 2005

Schedule 4 Amendment of Crimes Act 1900

(b) the offender has been punished for that offence under the
Commonwealth Criminal Code,
the offender is not liable to be punished for the offence under this
Part.

1
2
3
4