

Terrorism (Preventative Detention) Amendment Bill 2019

Contents

1.	Short title	2
2.	Commencement	2
3.	Act amended	2
4.	Section 4 amended	2
5.	Section 9 amended	2
6.	Section 13 amended	3
7.	Section 33 amended	4
8.	Section 35 amended	4
9.	Section 40 amended	4
10.	Section 43A inserted	5
	43A. Contact with approved religious or spiritual adviser	5
11.	Section 44 amended	6
12.	Section 45 amended	7
13.	Section 46 amended	8
14.	Section 47 amended	9
15.	Section 48 amended	9
16.	Section 49 amended	9

Western Australia

LEGISLATIVE ASSEMBLY

**Terrorism (Preventative Detention) Amendment
Bill 2019**

A Bill for

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

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

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

4 **2. Commencement**

5 This Act comes into operation as follows —

- 6 (a) sections 1 and 2 — on the day on which this Act
7 receives the Royal Assent;
8 (b) the rest of the Act — on the day after that day.

9 **3. Act amended**

10 This Act amends the *Terrorism (Preventative Detention)*
11 *Act 2006*.

12 **4. Section 4 amended**

13 In section 4(1) insert in alphabetical order:

14
15 *approved religious or spiritual adviser* means a person
16 approved under section 43A(1);

17 *photograph* includes a digital image and a video
18 recording;
19

20 **5. Section 9 amended**

21 Delete section 9(2) and insert:

22
23 (2) A terrorist act referred to in subsection (1) must be one
24 that —

- 25 (a) is capable of being carried out; and
26 (b) could occur at some time in the next 14 days.
27

6. Section 13 amended

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

or identified

(2) In section 13(4):

(a) delete paragraph (a) and insert:

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

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

period; and

(3) After section 13(4) insert:

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

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

s. 7

1 **7. Section 33 amended**

2 In section 33(4):

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

4

5 section 95E(b)

6

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

8

9 43, 43A and

10

11 **8. Section 35 amended**

12 In section 35(2):

13 (a) after paragraph (h) insert:

14

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

18

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

20

21 and

22

23 **9. Section 40 amended**

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

25

26 section 41, 42, 43, 43A or

27

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

2

3 43, 43A and

4

5 **10. Section 43A inserted**

6 After section 43 insert:

7

8 **43A. Contact with approved religious or spiritual adviser**

9 (1) A person may be approved as a religious or spiritual
10 adviser for the purposes of subsection (2) by —

11 (a) the Commissioner; or

12 (b) a senior police officer authorised by the
13 Commissioner to give the approval.

14 (2) A detainee is entitled to have contact with a person
15 who is a religious or spiritual adviser approved under
16 subsection (1) for the purpose of religious or spiritual
17 guidance.

18 (3) To avoid doubt, the detainee is entitled to disclose the
19 following to an approved religious or spiritual
20 adviser —

21 (a) the fact that the PDO has been made in relation
22 to the detainee;

23 (b) the period for which the detainee is to be kept
24 in detention.

25 (4) The form of contact that the detainee is entitled to have
26 with an approved religious or spiritual adviser under
27 subsection (2) is limited to being visited by the adviser.

28 (5) The police officer who is detaining the detainee must,
29 as far as reasonably practicable, assist the detainee in
30 exercising the detainee’s entitlement to have contact

s. 11

- 1 with an approved religious or spiritual adviser under
2 subsection (2).
- 3 (6) Before approving under subsection (1) a person who is
4 not a religious or spiritual adviser approved under the
5 *Prisons Act 1981* section 95E(b), the Commissioner or
6 the senior police officer must consult with the chief
7 executive officer of the department principally
8 assisting the Minister administering the *Prisons*
9 *Act 1981* to administer that Act.
10
- 11 **11. Section 44 amended**
- 12 (1) After section 44(2) insert:
13
- 14 (2A) The contact the detainee has with an approved religious
15 or spiritual adviser under section 43A may take place
16 only if it is conducted in such a way that the contact,
17 and the content and meaning of the communication that
18 takes place during the contact, can be effectively
19 monitored by a police officer exercising authority
20 under the PDO.
21
- 22 (2) In section 44(3) delete “subsection (1) or (2)” and insert:
23
- 24 subsection (1), (2) or (2A)
25
- 26 Note: The heading to amended section 44 is to read:
27 **Monitoring contact with family members, home or work**
28 **associates, lawyer or approved religious or spiritual adviser**

1 **12. Section 45 amended**

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

3

4 sections 41, 43 and 43A.

5

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

7

8 (12) The police officer who is detaining the detainee must,
9 as far as reasonably practicable, assist the detainee in
10 exercising the detainee’s entitlement to have contact
11 with persons under this Part.

12 (13) Without limiting subsection (12), the requirement
13 under that subsection includes giving the detainee
14 reasonable assistance in locating any person with
15 whom the detainee is entitled to have contact under this
16 Part.

17 (14) If the detainee is not entitled to have contact with
18 another person because the other person is not
19 acceptable to the police officer who is detaining the
20 detainee, the police officer must —

21 (a) give the detainee reasons why the person is not
22 acceptable, unless doing so would result in the
23 disclosure of criminal intelligence information;
24 and

25 (b) give the detainee an opportunity to nominate
26 another person with whom the detainee is
27 entitled to have contact; and

28 (c) offer the detainee contact with another person
29 who is acceptable to the police officer and who
30 has relevant experience in working with 1 or
31 more of the following, as appropriate in the
32 circumstances —

33 (i) young people;

s. 13

- 1 (ii) persons incapable of managing their
2 own affairs;
- 3 (iii) persons in a class of persons prescribed
4 for the purposes of this subsection.
- 5 (15) In subsection (14) —
- 6 ***criminal intelligence information*** means information
7 relating to actual or suspected criminal activity
8 (whether in this State or elsewhere) the disclosure of
9 which could reasonably be expected —
- 10 (a) to prejudice national security; or
11 (b) to endanger a person’s life or physical safety;
12 or
13 (c) to threaten significant damage to infrastructure
14 or property; or
15 (d) to prejudice a criminal investigation; or
16 (e) to reveal intelligence-gathering methodologies,
17 investigative techniques or technologies or
18 covert practices; or
19 (f) to enable the discovery of the existence or
20 identity of a confidential source of information
21 relevant to law enforcement.
22

23 **13. Section 46 amended**

- 24 (1) In section 46(1) delete “43 or 45.” and insert:
25

26 43, 43A or 45.
27

- 28 (2) After section 46(7) insert:
29

- 30 (7A) If the detainee has contact with an approved religious
31 or spiritual adviser (the ***adviser***) under section 43A, the

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

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

11 Penalty for this subsection: imprisonment for 5 years.
12

13 **14. Section 47 amended**

14 In section 47(a) delete “specified in the PDO;” and insert:
15

16 specified or identified in the PDO; or
17

18 **15. Section 48 amended**

19 In section 48(3)(b) and (4)(b) after “specified” insert:
20

21 or identified
22

23 **16. Section 49 amended**

24 In section 49(2) after “specified” insert:
25

26 or identified
27

28 =====