

Terrorism (Extraordinary Powers) Amendment Bill 2018

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Western Australia

LEGISLATIVE ASSEMBLY

**Terrorism (Extraordinary Powers) Amendment
Bill 2018**

A Bill for

An Act to amend the *Terrorism (Extraordinary Powers) Act 2005*.

The Parliament of Western Australia enacts as follows:

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1 **1. Short title**

2 This is the *Terrorism (Extraordinary Powers) Amendment*
3 *Act 2018.*

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 (Extraordinary Powers)*
11 *Act 2005.*

12 **4. Part 2 Division 4 deleted**

13 Delete Part 2 Division 4.

14 **5. Part 2A inserted**

15 After section 21 insert:
16

17 **Part 2A — Police use of force: ongoing**
18 **terrorist acts**

19 **21A. Interpretation**

20 In this Part —

21 *declaration* means a declaration made under
22 section 21C(1);

23 *declared incident* means an incident in respect of
24 which a declaration is made;

1 *detain* has the meaning given in *The Criminal Code*
2 section 332(1).

3 **21B. Non-application of Part to certain officers**

4 (1) In this section —

5 *support officer* means any of the following —

- 6 (a) a special constable appointed under the *Police*
7 *Act 1892* section 35(1);
8 (b) an Aboriginal police liaison officer appointed
9 under the *Police Act 1892* section 38B(1);
10 (c) a police auxiliary officer appointed under the
11 *Police Act 1892* section 38G(1).

12 (2) For the purposes of the *Police Act 1892* sections 36,
13 38C and 38H —

- 14 (a) a support officer does not have any of the
15 powers, duties or obligations that a police
16 officer has under this Part; and
17 (b) any authorisation, exemption or exception in
18 this Part that applies to a police officer does not
19 apply to a support officer; and
20 (c) a reference in this Part to a police officer does
21 not include a reference to a support officer.

22 (3) Despite the *Corruption, Crime and Misconduct*
23 *Act 2003* section 184(3c), an authorised officer as
24 defined in the *Corruption, Crime and Misconduct*
25 *Act 2003* section 184(1) who is not a police officer
26 does not have, and may not perform, the functions that
27 a police officer has and may perform under this Part.

28 **21C. Commissioner may declare this Part applies to**
29 **terrorist act**

30 (1) The Commissioner may declare that this Part applies to
31 an incident to which police officers are responding if

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- 1 the Commissioner is satisfied there are reasonable
2 grounds to suspect —
- 3 (a) that the incident is or is likely to be a terrorist
4 act; and
- 5 (b) that planned and coordinated police action is
6 required —
- 7 (i) to defend a person threatened by the
8 incident; or
- 9 (ii) to prevent a person from being detained
10 or end the detention of a person.
- 11 (2) The declaration applies to each location at which police
12 officers are responding to the incident.
- 13 (3) The Commissioner must notify the police officer in
14 charge of the police officers responding to the declared
15 incident that the declaration has been made.
- 16 (4) The Commissioner must notify the Minister of the
17 declaration before, or as soon as practicable after, the
18 declaration is made.

19 **21D. Declaration must be in writing**

- 20 (1) Except as provided in subsection (2), a declaration
21 must be in writing.
- 22 (2) If, due to the urgency of the situation, it is not
23 practicable to make the declaration in writing —
- 24 (a) the declaration may be made orally with details
25 recorded contemporaneously; and
- 26 (b) if it is made orally, it must be put in writing as
27 soon as practicable after it is made and in any
28 event within 6 hours.

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- 1 **21E. Declaration may be revoked**
- 2 (1) The Commissioner may at any time revoke a
- 3 declaration.
- 4 (2) Without limiting the power in subsection (1), if no
- 5 further police response is required in response to a
- 6 declared incident, the Commissioner must revoke the
- 7 declaration.
- 8 (3) The Commissioner must notify the police officer in
- 9 charge of the police officers responding to the declared
- 10 incident that the declaration has been revoked.
- 11 (4) If the police officer in charge of the police officers
- 12 responding to the declared incident becomes aware that
- 13 the declaration has been revoked, the police officer in
- 14 charge must notify the other police officers of the
- 15 revocation.
- 16 **21F. Police action authorised under declaration**
- 17 (1) The police action authorised under a declaration, when
- 18 police officers respond to a declared incident, is the
- 19 authorisation, direction or use of force (including lethal
- 20 force) that a police officer believes, on reasonable
- 21 grounds, is necessary to —
- 22 (a) defend a person threatened by the incident; or
- 23 (b) prevent a person from being detained or end the
- 24 detention of a person.
- 25 (2) A police officer who does something that, apart from
- 26 this section, would be an offence is not criminally
- 27 responsible for the offence if the thing constitutes
- 28 police action authorised under a declaration.
- 29 (3) Nothing in this section limits the availability of any
- 30 excuse or defence under Chapter V or Chapter XXVI
- 31 of *The Criminal Code*.

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- 1 (4) If a declaration is revoked, this section continues to
2 apply to any action taken by a police officer before the
3 earlier of the following —
4 (a) when the police officer became aware of the
5 revocation of the declaration;
6 (b) when the police officer ought reasonably to
7 have been aware of the revocation of the
8 declaration.
- 9 (5) If a court finds that a purported declaration was not
10 validly made, this section continues to apply to any
11 action taken by a police officer before the finding as if
12 it were a valid declaration.

13 **21G. Part does not limit police powers relating to**
14 **terrorism**

15 This Part does not limit the powers of police officers
16 under any other Part of this Act, any other written law
17 or the common law to deal with an incident that is or is
18 likely to be a terrorist act (whether or not that incident
19 is a declared incident).

20 **21H. Commissioner’s functions under this Part may be**
21 **performed by authorised Deputy Commissioner**

- 22 (1) In this section —
23 *authorised* means authorised under subsection (3);
24 *Deputy Commissioner* means a police officer who
25 holds or is acting in the office of Deputy
26 Commissioner.
- 27 (2) The Commissioner’s functions under this Part, other
28 than the power in subsection (3), may be performed by
29 an authorised Deputy Commissioner if —
30 (a) the office of Commissioner is vacant; or

- 1 (b) the Commissioner is on leave or out of the
2 State; or
3 (c) the Commissioner is otherwise unavailable to
4 exercise the functions.
- 5 (3) For the purposes of this section, the Commissioner may
6 authorise in writing one or more Deputy
7 Commissioners to perform the Commissioner's
8 functions under this Part.
- 9 (4) If any of the Commissioner's functions under this Part
10 is performed by a person other than the Commissioner,
11 the person must notify the Commissioner of the fact as
12 soon as practicable.
13

14 **6. Section 31 amended**

15 In section 31(2) after "other than" insert:

16
17 a function under Part 2A or
18

19 **7. Sections 31A, 31B and 31C inserted**

20 After section 31 insert:
21

22 **31A. Power to appoint special officers**

- 23 (1) The Commissioner may appoint as a special officer any
24 person who is —
25 (a) a member of the Australian Federal Police; or
26 (b) a member of the police force of another State or
27 of a Territory; or
28 (c) a sworn employee of the New Zealand Police;
29 or

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- 1 (d) a law enforcement officer of a foreign
2 jurisdiction prescribed for the purposes of this
3 subsection.
- 4 (2) The Commissioner may appoint a person as a special
5 officer for the purposes of Part 2 or 2A.
- 6 (3) The Commissioner must not make an appointment
7 under subsection (1) unless the Commissioner is of the
8 opinion that the appointment is necessary —
- 9 (a) in the case of an appointment for the purposes
10 of Part 2, for the more effective exercise of the
11 powers that may be exercised under a
12 Commissioner’s warrant as defined in
13 section 6; or
- 14 (b) in the case of an appointment for the purposes
15 of Part 2A, to more effectively respond to a
16 declared incident as defined in section 21A.

17 **31B. Provisions relating to special officer appointments**

- 18 (1) The appointment of a special officer under
19 section 31A —
- 20 (a) must be in writing; and
21 (b) must state the date and time it is made; and
22 (c) must state the date and time it ceases to have
23 effect; and
24 (d) must state whether the appointment is for the
25 purposes of Part 2 or 2A; and
26 (e) may be made subject to any condition the
27 Commissioner thinks fit; and
28 (f) must be signed by the Commissioner.
- 29 (2) The date and time stated under subsection (1)(c) must
30 not be more than 14 days after the date on which the
31 appointment is made.

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- 1 (3) The appointment of 2 or more special officers may be
2 in 1 instrument of appointment.
- 3 (4) The Commissioner may cancel the appointment of a
4 special officer at any time.
- 5 (5) A special officer's appointment has effect until the date
6 and time stated in it or until it is cancelled under this
7 section, whichever happens first.
- 8 (6) The life of a special officer's appointment (the *current*
9 *appointment*) cannot be extended, but nothing prevents
10 the Commissioner from making a further appointment
11 under section 31A that has effect from the time the
12 current appointment ceases to have effect.

13 **31C. Functions of special officers**

- 14 (1) In this section —
- 15 *Part 2 special officer* means a person appointed under
16 section 31A for the purposes of Part 2;
- 17 *Part 2A special officer* means a person appointed
18 under section 31A for the purposes of Part 2A;
- 19 *special officer* means a Part 2 special officer or a
20 Part 2A special officer.
- 21 (2) Unless a special officer's appointment provides to the
22 contrary, a Part 2 special officer —
- 23 (a) has and may perform any function that a police
24 officer has and may perform under Part 2; and
- 25 (b) in connection with exercising any such
26 function, has and may perform any function
27 that a police officer has under this Act other
28 than Part 2A, any other written law or the
29 common law.

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- 1 (3) Unless a special officer's appointment provides to the
2 contrary —
- 3 (a) a Part 2A special officer —
- 4 (i) has and may perform any function that a
5 police officer has and may perform
6 under Part 2A; and
- 7 (ii) in connection with exercising any such
8 function, has and may perform any
9 function that a police officer has under
10 this Act other than Part 2, any other
11 written law or the common law;
- 12 and
- 13 (b) Part 2A applies to a Part 2A special officer as if
14 any reference in Part 2A to a police officer
15 includes a reference to the Part 2A special
16 officer.
- 17 (4) A special officer is to be taken to be a public officer for
18 the purposes of *The Criminal Code*.
- 19 (5) For the purposes of the *Police Act 1892* section 137, a
20 special officer is to be taken to be a member of the
21 Police Force performing or purporting to perform the
22 functions of a member of the Police Force if —
- 23 (a) the special officer is a Part 2 special officer
24 exercising a function under subsection (2)(a)
25 or (b); or
- 26 (b) the special officer is a Part 2A special officer
27 exercising a function under subsection (3)(a).
28

29
