

# Terrorism (Extraordinary Powers) Amendment Bill 2018

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Western Australia

LEGISLATIVE ASSEMBLY

*(As amended during consideration in detail)*

**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.

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          **21EA. Revocation must be in writing**

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

- 1           **21F.    Police action authorised under declaration**
- 2           (1) The police action authorised under a declaration, when
- 3                 police officers respond to a declared incident, is the
- 4                 authorisation, direction or use of force (including lethal
- 5                 force) that a police officer believes, on reasonable
- 6                 grounds, is necessary to —
- 7                 (a) defend a person threatened by the incident; or
- 8                 (b) prevent a person from being detained or end the
- 9                 detention of a person.
- 10          (2) A police officer who does something that, apart from
- 11                 this section, would be an offence is not criminally
- 12                 responsible for the offence if the thing constitutes
- 13                 police action authorised under a declaration.
- 14          (3) Nothing in this section limits the availability of any
- 15                 justification, excuse or defence under Chapter V or
- 16                 Chapter XXVI of *The Criminal Code*.
- 17          (4) If a declaration is revoked, this section continues to
- 18                 apply to any action taken by a police officer before the
- 19                 police officer became aware of the revocation.
- 20          (5) If a court finds that a purported declaration was not
- 21                 validly made, this section continues to apply to any
- 22                 action taken by a police officer before the police officer
- 23                 became aware of the finding as if it were a valid
- 24                 declaration.
- 25           **21G.    Part does not limit police powers relating to**
- 26                 **terrorism**
- 27                 This Part does not limit the powers of police officers
- 28                 under any other Part of this Act, any other written law
- 29                 or the common law to deal with an incident that is or is
- 30                 likely to be a terrorist act (whether or not that incident
- 31                 is a declared incident).



- 1           **21H. Commissioner’s functions under this Part may be**  
2           **performed by authorised Deputy Commissioner**
- 3           (1) In this section —  
4           *authorised* means authorised under subsection (3);  
5           *Deputy Commissioner* means a police officer who  
6           holds or is acting in the office of Deputy  
7           Commissioner.
- 8           (2) The Commissioner’s functions under this Part, other  
9           than the power in subsection (3), may be performed by  
10          an authorised Deputy Commissioner if —  
11          (a) the office of Commissioner is vacant; or  
12          (b) the Commissioner is on leave or out of the  
13          State; or  
14          (c) the Commissioner is otherwise unavailable to  
15          exercise the functions.
- 16          (3) For the purposes of this section, the Commissioner may  
17          authorise in writing one or more Deputy  
18          Commissioners to perform the Commissioner’s  
19          functions under this Part.
- 20          (4) If any of the Commissioner’s functions under this Part  
21          is performed by a person other than the Commissioner,  
22          the person must notify the Commissioner of the fact as  
23          soon as practicable.  
24

25   **6. Section 31 amended**

26           In section 31(2) after “other than” insert:

27

28           a function under Part 2A or  
29

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

2            After section 31 insert:

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4            **31A.     Power to appoint special officers**

5            (1) The Commissioner may appoint as a special officer any  
6            person who is —

- 7                   (a) a member of the Australian Federal Police; or  
8                   (b) a member of the police force of another State or  
9                   of a Territory; or  
10                  (c) a sworn employee of the New Zealand Police;  
11                  or  
12                  (d) a law enforcement officer of a foreign  
13                  jurisdiction prescribed for the purposes of this  
14                  subsection.

15           (2) The Commissioner may appoint a person as a special  
16           officer for the purposes of Part 2 or 2A.

17           (3) The Commissioner must not make an appointment  
18           under subsection (1) unless the Commissioner is of the  
19           opinion that the appointment is necessary —

- 20                   (a) in the case of an appointment for the purposes  
21                   of Part 2, for the more effective exercise of the  
22                   powers that may be exercised under a  
23                   Commissioner’s warrant as defined in  
24                   section 6; or  
25                   (b) in the case of an appointment for the purposes  
26                   of Part 2A, to more effectively respond to a  
27                   declared incident as defined in section 21A.

28           **31B.     Provisions relating to special officer appointments**

29           (1) The appointment of a special officer under  
30           section 31A —

- 31                   (a) must be in writing; and

- 
- 1 (b) must state the date and time it is made; and  
2 (c) must state the date and time it ceases to have  
3 effect; and  
4 (d) must state whether the appointment is for the  
5 purposes of Part 2 or 2A; and  
6 (e) may be made subject to any condition the  
7 Commissioner thinks fit; and  
8 (f) must be signed by the Commissioner.
- 9 (2) The date and time stated under subsection (1)(c) must  
10 not be more than 14 days after the date on which the  
11 appointment is made.
- 12 (3) The appointment of 2 or more special officers may be  
13 in 1 instrument of appointment.
- 14 (4) The Commissioner may cancel the appointment of a  
15 special officer at any time.
- 16 (5) A special officer's appointment has effect until the date  
17 and time stated in it or until it is cancelled under this  
18 section, whichever happens first.
- 19 (6) The life of a special officer's appointment (the *current*  
20 *appointment*) cannot be extended, but nothing prevents  
21 the Commissioner from making a further appointment  
22 under section 31A that has effect from the time the  
23 current appointment ceases to have effect.

24 **31C. Functions of special officers**

- 25 (1) In this section —  
26 *Part 2 special officer* means a person appointed under  
27 section 31A for the purposes of Part 2;  
28 *Part 2A special officer* means a person appointed  
29 under section 31A for the purposes of Part 2A;  
30 *special officer* means a Part 2 special officer or a  
31 Part 2A special officer.

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

- 1 (5) For the purposes of the *Police Act 1892* section 137, a  
2 special officer is taken to be a member of the Police  
3 Force performing or purporting to perform the  
4 functions of a member of the Police Force if —
- 5 (a) the special officer is a Part 2 special officer  
6 exercising a function under subsection (2)(a)  
7 or (b); or
- 8 (b) the special officer is a Part 2A special officer  
9 exercising a function under subsection (3)(a).
- 10 (6) Subsection (7) applies to a person whose purported  
11 appointment as a special officer was not validly made.
- 12 (7) In relation to any action taken by the person before  
13 they became aware of the invalidity —
- 14 (a) the person is not criminally responsible for the  
15 action to the extent that, if the appointment had  
16 been valid, the person would not have been  
17 criminally responsible for the action by virtue  
18 of subsection (3)(b); and
- 19 (b) for the purposes of the *Police Act 1892*  
20 section 137, the person is taken to be a member  
21 of the Police Force performing or purporting to  
22 perform the functions of a member of the  
23 Police Force, to the extent that they would have  
24 been so taken under subsection (5) if the  
25 appointment had been valid.  
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