

**REPORT TO THE
MINISTER**

**REVIEW OF THE
*Terrorism (Extraordinary Powers) Act 2005***

Legal and Legislative Services
Western Australia Police

December 2014

CONTENTS

EXECUTIVE SUMMARY	1
RECOMMENDATIONS	1
1. INTRODUCTION	3
1.1 Terms of reference for the review	3
1.2 Conduct of the review	3
2. BACKGROUND TO THE INTRODUCTION OF THE ACT	4
2.1 Background to the Act	4
2.2 Objectives of the Act	4
2.3 Summary of the provisions of the Act	5
2.4 The utilisation of the provisions of the Act	5
2.5 Practice directions	7
2.6 Earlier reviews	7
3. REVIEWS CONDUCTED IN OTHER JURISDICTIONS	7
3.1 Australian Capital Territory	8
3.2 New South Wales	8
3.3 Northern Territory	10
3.4 Queensland	10
3.5 South Australia	11
3.6 Victoria	11
3.7 Tasmania	11
4. ISSUES IDENTIFIED DURING THE INAUGURAL REVIEW	11
4.1 Access to driver's licence information	12
4.2 Appointment of foreign police officers as special officers	12
4.3 Burden of proof	13
4.4 Retention and/or destruction of documents	13
4.5 Report to judge about covert search warrant and relevant timeframes	14
4.6 Directions from the Supreme Court in relation to covert search warrants	15
5. ISSUES IDENTIFIED DURING THE SECOND REVIEW	15
5.1 Amending the definition of "terrorist act"	15
5.2 Membership offences included in definition of "terrorist act" for covert search warrants	18
5.3 Covert searches to include reference to vehicles	19
5.4 Access to computers outside premises the subject of a warrant	19
6. ISSUES IDENTIFIED DURING THE CURRENT REVIEW	19
6.1 Exemption of acts relating to armed conflict from the definition of "terrorist act"	19
6.2 Expiry date	20
7. CONCLUSION AND RECOMMENDATIONS	20
7.1 Conclusion	20
7.2 Recommendations	21

Executive Summary

The majority of the provisions of the *Terrorism (Extraordinary Powers) Act 2005* came into effect on 16 January 2006, with Part 3, dealing with covert search warrants, coming into operation on 1 July 2006.

The Act provides Western Australia Police with necessary powers in order to prevent a terrorist act from occurring or to be able to appropriately respond in the aftermath of a terrorist attack. These powers supplement the functions performed by Western Australia Police under the National Counter Terrorism Plan (NCTP).

As yet, the powers under the Act have not been exercised. As a consequence, it is difficult to gauge their efficacy. However, despite there having been no use of the *Terrorism (Extraordinary Powers) Act 2005* since its enactment, this does not, in the view of Western Australia Police, invite or provide a reason for any reduction or repeal of the present powers.

While such powers cannot guarantee that Western Australia will not be the target of a terrorist attack in the future, they do provide the police and other agencies with the enhanced ability to better investigate terrorist activity, respond to threats, and more expeditiously apprehend perpetrators.

The limited use of these powers, and similar powers nationwide, does not reflect a reduced need for the powers but, rather, reflects the policy intent that they are extraordinary provisions which are to be used sparingly. The need for these provisions comes from the terrorist threat – a threat that has evolved but not abated since these provisions were introduced.

The raising of the terrorism alert level - from Medium to High - on 12 September 2014 by the Director-General of ASIO highlights the continuing need for this type of legislation. Terrorist activity, both globally and domestically, increased sharply during the month of September 2014, with the rise of the Islamic State of Iraq and the Levant (ISIL) - the self-styled 'Islamic State' - a cause for major concern. Already, the Australian Government had moved to introduce Commonwealth legislative reforms with regard to 'foreign fighters' returning to Australia from conflicts in Iraq and Syria and, consequently, further legislative reform has been effected in recent months. The Sydney siege on 15-16 December 2014 further reinforces the need for extraordinary police powers and, as such, amendments to the *Terrorism (Extraordinary Powers) Act 2005* warrant consideration without delay.

The Act is due to expire on the tenth anniversary of Royal Assent, being 19 December 2015. Three reviews of the Act have now been completed, although no amendments to the Act have been made. An amendment to prevent the expiry of the Act, and where necessary reflect any relevant Commonwealth amendments, is now required.

Recommendations

The Review finds that the provisions of the *Terrorism (Extraordinary Powers) Act 2005* are appropriate to prevent and respond to terrorist acts, and should therefore continue in operation.

During the course of the Review a number of issues have been raised which warrant consideration in terms of the drafting of amendments to the Act to improve its effectiveness.

These amendments centre around:

- the definition of “terrorist act”;
- the ability of the Commissioner to appoint “special officers” from overseas jurisdictions;
- the execution, reporting, and retention of documents in relation to covert search warrants;
- the burden of proof;
- the inclusion of membership offences as grounds for covert search warrants;
- the inclusion of vehicles in covert searches;
- access to and downloading of data from computers ‘networked’ outside premises the subject of a warrant,
- the impending expiry date, and
- a number of minor clarifications to improve the operation of the Act.

Further information on these matters is detailed in Parts 4, 5 and 6 of this report.

It is recommended, therefore, that amending legislation extending the operation of the Act and addressing the matters of concern outlined above be prepared and introduced into Parliament as a matter of some urgency.

1. Introduction

1.1 Terms of reference for the review

Section 34 of the *Terrorism (Extraordinary Powers) Act 2005* provides as follows:

34 Review of the Act

- (1) The Minister must carry out a review of this Act as soon as is practicable after –
 - (a) the first anniversary of the commencement of this section; and
 - (b) thereafter after every third year after the first anniversary.
- (2) The review must review the operation and effectiveness of this Act, whether its provisions are appropriate to prevent and respond to terrorist acts, and whether it should continue in operation.
- (3) The Minister must prepare a report based on the review and, as soon as practicable or no later than 90 days after it is prepared, cause it to be tabled before each House of Parliament.

The Act was commenced on 16 January 2006, with Part 3 coming into operation by proclamation on 1 July 2006. The inaugural review of the Act was conducted in 2007/2008 with the subsequent review falling due in 2010. The second review of the Act was conducted in 2010/2011 and tabled in Parliament on 27 March 2012.

1.2 Conduct of the review

This Review was conducted on behalf of the Minister for Police by the Legal and Legislative Services Directorate of Western Australia Police.

A minimal review of the Act was authorised by the Minister on 19 January 2014. It was envisaged this would entail a general assessment of the current level of terrorist threat within Australia, consideration of reviews conducted elsewhere, and amendments introduced into legislation as a result of those reviews. Additionally, lessons learned from exercises involving counter-terrorism legislation would form the basis for refining the Act.

The process has involved a detailed consideration of Commonwealth legislation, as well as legislation in the other States and Territories, along with a general review of international counter-terrorism legislation and relevant background information. Consultation has been sought at an operational level in Western Australia Police, and the opinion of the State Solicitor's Office has been canvassed in relation to a number of matters. Additionally, the Council of Australian Governments Review of Counter-Terrorism Legislation¹ (COAG Review) and the Independent National

¹ *Council of Australian Governments Review of Counter-Terrorism Legislation*, Report, Commonwealth of Australia, 2013.

Security Legislation Monitor's (INSLM) reports of 2012² and 2013³ have been taken into consideration. The Act is due to expire in December 2015. If extended, the next review of the Act may be expected in 2016.

2. Background to the Introduction of the Act

2.1 Background to the Act

Following the terrorist attacks of September 2001 in the United States of America, the Council of Australian Governments (COAG) agreed to implement counter-terrorism legislation throughout Australia. Subsequently, in mid 2002, counter-terrorism legislation was introduced for the Commonwealth and all Australian States and Territories, designed to meet the emerging challenges of combating terrorism. Later, in 2003, the States and Territories enacted legislation to refer power in these matters to the Commonwealth under the Australian Constitution.

The July 2005 bombings in London shifted the focus of terrorism from 'foreign nationals' to 'home grown' terrorists. Following the 27 September 2005 meeting of COAG to discuss national counter-terrorism arrangements:

COAG considered the evolving security environment in the context of the terrorist attacks in London in July 2005 and agreed that there is a clear case for Australia's counter-terrorism laws to be strengthened. Leaders agreed that any strengthened counter-terrorism laws must be necessary, effective against terrorism and contain appropriate safeguards against abuse, such as parliamentary and judicial review, and be exercised in a way that is evidence-based, intelligence-led and proportionate. Leaders also agreed that COAG would review the new laws after five years and that they would sunset after 10 years....

State and Territory leaders agreed to enact legislation to give effect to measures which, because of constitutional constraints, the Commonwealth could not enact, including preventative detention for up to 14 days and stop, question and search powers in areas such as transport hubs and places of mass gatherings. COAG noted that most States and Territories already had or had announced stop, question and search powers.⁴

2.2 Objectives of the Act

The primary objective of the *Terrorism (Extraordinary Powers) Act 2005* is to confer special powers on police officers to respond to terrorist acts and deal with threats of imminent terrorist acts in Western Australia. Secondly, it enables police officers to apply for authority, under a special covert search warrant, to covertly enter and search premises for the purposes of responding to or preventing terrorist acts.

² Independent National Security Legislation Monitor, Annual Report, 20 December 2012, Commonwealth of Australia, 2013.

³ Independent National Security Legislation Monitor, Annual Report, 7 November 2013, Commonwealth of Australia, 2013.

⁴ Council of Australian Governments' Communiqué, Special Meeting on Counter-Terrorism, 27 September 2005, *Strengthening Counter-Terrorism Laws*, pages 3-4, http://www.coag.gov.au/coag_meeting_outcomes/2005-09-27/docs/coag270905.pdf.

The Act does not allow for covert searches to be conducted outside the parameters of counter terrorism.

2.3 Summary of the provisions of the Act

The provisions of the Act which deal with the exercise of special police powers are based on similar provisions contained in Australian legislation enacted elsewhere. Specifically, the *Terrorism (Police Powers) Act 2002* (NSW) and the *Terrorism (Emergency Powers) Act 2003* (NT). Provisions dealing with covert search warrants are based upon similar provisions such as those contained in the *Terrorism (Community Protection) Act 2003* (VIC) and the *Police Powers and Responsibilities Act 2000* (QLD).

Under the Act, police officers are able to detain and search a person, detain and search a vehicle, obtain personal details of certain people, enter and search any place the officer reasonably suspects may harbour a target person or target vehicle, and/or seize things found that have been used to commit a terrorist act or may provide evidence of the commission of a serious indictable offence. The Act also allows for the appointment of special officers from other jurisdictions and authorises the Commissioner of Police to give directions to government agencies to facilitate the exercise of the special powers conferred on police officers.

Oversight of the powers conferred under the Act is provided via a Commissioner's report to the Minister for Police and the Attorney General as soon as practicable after expiry of a Commissioner's warrant and, in the case of a covert search warrant, a report within 7 days to the Supreme Court Judge who issued the warrant. The reports to the Minister or Attorney-General are required to be tabled in Parliament. The Commissioner is also required to report annually to the Minister for Police in relation to the exercise of powers relating to covert search warrants.

Separate provisions are set down for the searching of people, the return of seized things, the use of animals, and the disclosure of confidential information.

2.4 The utilisation of the provisions of the Act

Investigative powers such as those introduced under the originating legislation have been critical to many of Australia's overseas allies in the fight against terrorism. As yet, however, the powers of the *Terrorism (Extraordinary Powers) Act 2005* have not been exercised. One application for a covert search warrant was made in 2009/10, however, it was never executed. Consequently, it is difficult to gauge the efficacy of these provisions.

Queensland's Public Interest Monitor's 14th annual report, dated 31 October 2012, reveals that the Queensland Police Service made three applications to the Supreme Court for covert search warrants during the 12 month period from 1 July 2011 to 30 June 2012.⁵ The following year, the Public Interest Monitor reported the Queensland Police Service had made one successful application for a covert search warrant while the Crime and Misconduct Commission had made three applications, two of which were successful and one which was refused.⁶ These

⁵ Queensland Government, *Fourteenth Annual Report of the Queensland Public Interest Monitor*, 31 October 2012, p2, p6.

⁶ Queensland Government, *Fifteenth Annual Report of the Queensland Public Interest Monitor*, 31 October 2013, p4, p8.

reports indicate that covert search warrants, along with surveillance device warrants, have been of assistance in Queensland in gathering evidence which has assisted in the progress of investigations and, on occasion, resulted in an arrest.

Similar police powers have been exercised, and continue to be exercised, in NSW (for example, 'Operation Pendennis' on 8 November 2005) and more recently in Victoria -

The [COAG Review] Committee has been made aware of one recent use of the 'special powers' procedure in Victoria.²³⁴ This is the only actual use of the powers in recent times. The particular operation (during an important visit by overseas dignitaries) was reported as being successful, and the operation was thought to be effective in that no terrorist disruption actually occurred. The exercise of the powers was said to have been restrained, and occasioned no public dissatisfaction or complaint.⁷

From these reports, certain insights can be drawn which form the basis of necessary amendments to the Act. Extensive comparisons have been made with a range of Federal and State Acts to ensure that the legislation meets both the unique Western Australian context and is compatible with the other States' and Commonwealth legislation.

The limited use of these extraordinary powers, and similar powers nationwide, does not reflect a reduced need for the powers but, rather, reflects the policy intent that they are extraordinary provisions which are to be used sparingly. The need for these provisions comes from the terrorist threat – a threat that has evolved but not abated since these provisions were introduced.

In July 2014 the Commonwealth Attorney-General introduced amending national security legislation. The associated media release made reference to Australians engaged with terrorist organisations involved in civil conflicts and insurgencies in places such as Syria and Iraq, stating:

The threat posed by returning foreign fighters is the most significant risk to Australia's domestic security that we have faced in many years. The threat of 'home grown' terrorism is enduring and the risk of an attack on Australian soil is real and undiminished.⁸

The ongoing need for this legislation is evident. The *ASIO Report to Parliament 2012-13* reported that ASIO had completed over 130,000 counter-terrorism security assessments during the year.⁹ More recently, ASIO Director-General of Security David Irvine has stated:

Nothing that I have seen in my five years as Director-General of Security has led me to think that the threat of terrorism, and particularly

⁷ COAG Review, p93, para 234 'Private submission of the Victorian Police to the COAG Review Committee', 30 October 2012.

⁸ Attorney-General, the Hon George Brandis QC, *National Security Legislation Amendment Bill (No.1) 2014*, media release, Canberra, 16 July 2014, <http://www.attorneygeneral.gov.au/Mediareleases/Pages/2014/ThirdQuarter/16July2014-NationalSecurityLegislationAmendmentBillNo12014.aspx>

⁹ *ASIO Report to Government 2012-13*, Commonwealth of Australia (Australian Intelligence Security Organisation), 2013.

*the Islamist extremist terrorism is – and will remain – anything but real and persistent, both globally and within Australia itself.*¹⁰

Moreover, the COAG Review Committee supports the retention of the legislation:-

*... the Committee, while acknowledging that there has been very little use made of the 'special powers' legislation, does not regard this as a persuasive argument for their repeal. We accept the arguments advanced by the States and Territories that legislation of this kind is presently warranted and that it should remain 'on the books' in the current terrorism climate.*¹¹

Meanwhile, in Western Australia, since 2010 only one covert search warrant has been issued. The warrant was not executed.¹²

2.5 Practice directions

Practice directions have been put in place by the Chief Justice. These cover both the process for applying for a covert search warrant and the process required for a judge to authorise a covert search warrant or validate a Commissioner's warrant.

2.6 Earlier reviews

The first review of the Act under section 34 of the *Terrorism (Extraordinary Powers) Act 2005* was tabled in Parliament on 11 November 2008. The second review of the Act was tabled in Parliament on 27 March 2012. Recommendations arising from these earlier reviews are still under consideration and no amendments have been made to the Act to date.

3. Reviews Conducted in Other Jurisdictions

New South Wales conducted its fourth statutory review of the *Terrorism (Police Powers) Act 2002* in mid 2013, while the Australian Capital Territory has conducted only one review to date of its *Terrorism (Extraordinary Temporary Powers) Act 2006*, tabled in late 2010.¹³

Queensland and the Northern Territory have each previously reviewed their corresponding legislation and were due to conduct further reviews in 2011/2012. The Queensland *Police Powers and Responsibilities Act 2000* was reviewed in 2012/2013, however, the review did not cover the Act's terrorism provisions. Meanwhile, the scheduled review of Part 2A of the *Public Safety Preservation Act 1986*, due for tabling by 1 March 2014, had been put on hold due to the COAG Review.¹⁴

¹⁰ David Irvine, 'Director-General's speech: Address to the Australian Institute of International Affairs', *Evolution of terrorism – and what it means for Australia*, 12 August 2014, <http://www.asio.gov.au/Publications/Speeches-and-Statements/Speeches-and-Statements/DGs-Speech-12-August-2014.html>, (accessed 29 August 2014).

¹¹ COAG Review, p94.

¹² Personal communication, Western Australia Police, 26 February 2014.

¹³ ACT Government, *Terrorism laws to continue*, media release, 16 November 2010, <http://www.chiefminister.act.gov.au/media.php?v=10153>.

¹⁴ Personal communication, Queensland Police Service, 11 September 2014.

A review of the Northern Territory legislation was undertaken in 2011, however, due to an oversight, the report was never tabled in Parliament.

South Australia has twice reviewed its legislation, which is now due to expire in December 2015. There is presently no indication of whether the expiry date will be extended.

Victoria was due to table a review report by the end of June 2011, however, a last minute Bill was passed extending the review period until June 2013 to accommodate the COAG Review. A further extension has been negotiated with the review now being due by 31 December 2014.

Tasmania has no statutory requirement to review its terrorism legislation and, to date, has not done so. The legislation is due to expire in December 2015 and there is presently no indication of whether the expiry date will be extended.

In addition to State and Territory reviews, national reviews have been carried out by COAG and the INSLM.

3.1 Australian Capital Territory

The Australian Capital Territory's review of the *Terrorism (Extraordinary Temporary Powers) Act 2006* tabled in November 2010 resulted in eight recommendations, the principal of which was that the legislation be extended beyond the expiry date of November 2011 to November 2016. The remainder of the recommendations (now amendments) were of a purely administrative nature. A further review is due in November 2014 for tabling by 19 November 2015.

3.2 New South Wales

New South Wales has conducted four statutory reviews of the *Terrorism (Police Powers) Act 2002*. The fourth review, conducted on behalf of the Attorney General by the Department of Attorney General and Justice, found that the policy and objectives of the Act continue to remain valid. The fourth review covered the period between 2010 and early 2013 and made two recommendations, one aimed at clarifying the operation of the Act and the other relating to the repeal or retention of the preventative detention powers, a matter which does not concern this Review.

In addition to statutory reviews, the New South Wales Ombudsman is required to keep under scrutiny the exercise of powers conferred on police and other officers under Parts 2A and 3 of the *Terrorism (Police Powers) Act 2002*. The Ombudsman has reported on two occasions, September 2008 and August 2011.

Of the 15 recommendations made in the Ombudsman's September 2008 report, 12 recommendations were implemented by the *Terrorism (Police Powers) Amendment Act 2010* and one by the *Terrorism (Police Powers) Regulation 2011*. Many of the 15 recommendations related to preventative detention provisions. As such, they were not relevant to the review of the *Terrorism (Extraordinary Powers) Act 2005* (WA). Recommendations relating to preventative detention provisions were addressed in the August 2012 review of the *Terrorism (Preventative Detention) Act 2006* (WA).

The Ombudsman's August 2011 report makes 19 recommendations, the majority of which relate to preventative detention provisions. While the Attorney-General's 2013 review supports most of the Ombudsman's recommendations, only one

legislative amendment is proposed by the Attorney-General's review. The proposed amendment relates to preventative detention legislation.

Of the three Ombudsman's recommendations made specifically with regard to covert search powers, two have been implemented and the third was not supported. Recommendations 14 and 15 related to the development of forms whereas Recommendation 16 proposed a legislative amendment which would allow the Ombudsman access to information about the considered use of covert search warrant powers. The recommendation was not supported because the Attorney-General's review agreed with the NSW Police Force that "there is a high degree of sensitivity surrounding situations where covert search warrant powers were considered but ultimately not used."¹⁵

The Ombudsman also discusses the introduction of covert search warrant provisions granted to police under the *Law Enforcement (Powers and Responsibilities) Act 2002*. The Ombudsman reports that neither the NSW Crime Commission nor the NSW Police Force considers the introduction of 'serious offence' covert search warrants has had any impact on the use or non-use of covert search powers under the *Terrorism (Police Powers) Act 2002*.¹⁶

An amendment made to the *Crimes Act 1900* in September 2013 extended the expiry date of the sunset clause applying to the offence of being a member of a terrorist organisation. This offence was introduced in 2005 to support the operation of covert search powers for terrorism investigations under the *Terrorism (Police Powers) Act 2002*. The provision will now continue until September 2016.

Lindt Café Incident – 15/16 December 2014

On the morning of Monday 15 December 2014 a long-feared but anticipated event suddenly escalated the terrorism response in New South Wales. A lone gunman, Man Haron Monis, walked into the Lindt Chocolat Café in Martin Place, Sydney sparking a 16-hour siege which would see the powers of the *Terrorism (Police Powers) Act 2002* invoked and the city of Sydney in lockdown.

NSW Police utilised their powers under the *Terrorism (Police Powers) Act 2002* to establish a geographical area within which they could stop, search and detain persons entering or leaving.¹⁷

Task Force Pioneer was activated six hours after the hostage situation began, setting up a coordinated police operations centre and invoking control protocols. Task Force Pioneer is used only when responding to a terrorism-related event. As stated by Deputy Commissioner Catherine Burn, it ensures the best police response utilising all resources and long-term planning.¹⁸

¹⁵ NSW Government, 'Review of the *Terrorism (Police Powers) Act 2002*', Department of Attorney General & Justice, 2013, p.27, [http://www.parliament.nsw.gov.au/prod/la/latabdoc.nsf/30d097ada2f32772ca256e84007f076b/f9cab23d24ef429cca257bd5002365a8/\\$FILE/Review%20of%20Terrorism%20\(Police%20Powers\)%20Act%202002.pdf](http://www.parliament.nsw.gov.au/prod/la/latabdoc.nsf/30d097ada2f32772ca256e84007f076b/f9cab23d24ef429cca257bd5002365a8/$FILE/Review%20of%20Terrorism%20(Police%20Powers)%20Act%202002.pdf).

¹⁶ NSW Ombudsman, 'Review of Parts 2A and 3 of the *Terrorism (Police Powers) Act 2002*', August 2011, p.45, http://www.ombo.nsw.gov.au/_data/assets/pdf_file/0016/3409/Review-of-Parts-2A-and-3-of-the-Terrorism-Police-Powers-Act.pdf.

¹⁷ Personal communication, Western Australia Police, 17 December 2014.

¹⁸ Nick Ralston and Emma Partridge, 'Martin Place siege being treated as terrorist attack, police confirm', *The Sydney Morning Herald*, 15 December 2014,

After many hours of vigilance, gunshots from within the café led police to move to an emergency action plan.¹⁹ They breached the building, firing their weapons and rescuing the majority of the hostages still held within the café. The offender and two hostages were killed; 15 hostages either escaped or were rescued.

The Prime Minister, Tony Abbott, subsequently announced an investigation into the matter.

3.3 Northern Territory

As was the case in New South Wales, the first Northern Territory review of the *Terrorism (Emergency Powers) Act 2003* found that the objectives and scheme of the legislation remained valid. Participation in two major national counter-terrorism exercises identified some potential problems with the operation of the Act and, as a consequence, a number of amendments were effected in 2006 to correct the inadequacies and maintain consistency with other jurisdictions. Issues identified in the first review of the Northern Territory's legislation were found to be adequately covered in the Western Australian legislation.

A subsequent review of the Northern Territory legislation was undertaken in 2011, however, the report was never tabled in Parliament due to an oversight. Northern Territory Police reports the outcomes of the review as:

- Since the commencement of the *Terrorism (Emergency Powers) Act* in July 2003, it has not been necessary to invoke any of the provisions under the Act.
- The overall policy objectives and scheme of the legislation remain valid.
- The legislation has been tested during two major national counter terrorism exercises, namely the Tactical Resolution Exercise (TACREX) Ochre Baru in September 2009 and the Multi-Jurisdictional Exercise (MJEX) Mercury 10 conducted in September 2010. No major deficiencies with the operation of the Act were identified through these exercises.
- The Act will continue to be assessed through future operational circumstances should they arise, or through exercises as they are conducted, to determine its ongoing effectiveness.

Consideration will be given to the implementation of any recommendations and/or outcomes arising from the COAG Review.²⁰

3.4 Queensland

Following the enactment of the *Terrorism (Preventative Detention) Act 2005*, the Queensland Government promised to undertake a review of the State's counter-terrorism legislation, resulting in the *Terrorism Legislation Amendment Act 2007*.

The *Terrorism Legislation Amendment Act 2007* amended several earlier acts, including the *Public Safety Preservation Act 1986* to which was added substantial

<http://www.smh.com.au/nsw/martin-place-siege-being-treated-as-terrorist-attack-police-confirm-20141215-127mh5.html>, (accessed 17 December 2014).

¹⁹ NSW Police Commissioner Andrew Scipione, as reported by *The Australian* on 16 December 2014 in 'Martin Place siege: Sydney CBD café workers held up', page 3 of 52.

²⁰ Personal communication, Northern Territory Police, 18 March 2014.

provisions relating to “terrorist emergency”. These provisions brought the Queensland legislation into line with that of New South Wales and, consequently, Western Australia. The terrorist emergency provisions enacted in August 2007 became due for review in August 2012. However, given the parameters of the COAG Review, it was decided that the scheduled review of Part 2A of the *Public Safety Preservation Act 1986* should be deferred.²¹

A review of the *Police Powers and Responsibilities Act 2000* conducted in 2010 was directed at areas not related to terrorism. As a result, the *Police Powers and Responsibilities and Other Legislation Amendment Act 2014* contained no amendments to terrorism-related powers.²² It is therefore not relevant to this Review. As the Act is required to be “regularly reviewed” (s.807), it is anticipated a review of relevant powers such as covert search provisions will follow in the near future.

3.5 South Australia

The *Terrorism (Police Powers) Act 2005* was reviewed in 2007 and 2010 in accordance with section 30(1) of the Act. No amendments were made as a result of the reviews. The Act is due to expire in 2015 and, failing any amendment to the review or expiry provisions, there is no statutory requirement for any further review of the Act to be undertaken. There is presently no indication of whether the expiry date will be extended.

3.6 Victoria

The *Terrorism (Community Protection) Act 2003* was originally due for review by June 2006. Since then the review date has been extended, first, to end June 2011 and, subsequently, by virtue of a last minute Bill in 2011, to June 2013 to accommodate the COAG Review. A further extension was granted in 2013 as the COAG Review was not complete. The review is now due by 31 December 2014. The Act is due to expire on 1 December 2016.

3.7 Tasmania

Tasmania has no statutory requirement to review its terrorism legislation and, to date, has not done so. The *Police Powers (Public Safety) Act 2005* is due to expire in December 2015 and there is presently no indication of whether the expiry date will be extended. In its submission to the COAG Review, Tasmania reported that the powers under the legislation had not yet been used.²³

4. Issues Identified during the Inaugural Review

During the course of the inaugural review, several issues were identified which gave rise to a number of proposed amendments. These issues were:-

- the need for access to driver’s licence information (now resolved);

²¹ Personal communication, Queensland Police Service, 11 September 2014.

²² Personal communication, Queensland Police Service, 30 March 2011.

²³ *Tasmanian Government Submission to the COAG Review of Counter Terrorism Legislation*, October 2012, p5,
<http://www.coagctreview.gov.au/submissions/Documents/TasmanianGovernment.pdf>.

- the potential need/desire to appoint overseas police officers as ‘special officers’ in the event of a terrorism investigation;
- an inconsistency with regard to the burden of proof;
- the need for a provision addressing the retention and/or destruction of documents (the destruction of documents issue is now resolved);
- the necessity of allowing someone other than the applicant to report back to the judge should the applicant be unavailable;
- the amount of time found to be necessary for the compiling of reports; and
- directions from the Supreme Court in relation to covert search warrants.

Since the inaugural review was conducted, circumstances in respect of some of the above issues have changed. Where relevant, updated comments appear below the recommendations hereunder reproduced from the 2008 Review Report.

4.1 Access to driver’s licence information

The State Solicitor’s Office suggested that, in order to enable police officers to better locate a ‘target person’, police officers should be able to access driver’s licence information held by the Department of Planning and Infrastructure. In order to achieve this, an amendment to s.42B of the *Road Traffic Act 1974* may be required.

Update 2011: This recommendation is no longer relevant. Amendments effected in 2011 now allow for the disclosure of driver licence information and photographs.²⁴

4.2 Appointment of foreign police officers as special officers

The *Terrorism (Extraordinary Powers) Act 2005* allows the Commissioner to appoint as “special officers” members of the Australian Federal Police or members of the police force of another State or Territory. An agreement currently exists between Australia and New Zealand for the complementary use of police officers for counter-terrorism purposes.

In the event that it may be necessary, or desirable, to engage officers with specialist counter-terrorism skills and/or experience, the Commissioner’s capacity to appoint special officers should be extended to encompass members of the police force of other foreign jurisdictions at the Commissioner’s discretion. It is considered preferable that this be according to the Commissioner’s determination rather than nominating prescribed jurisdictions.

²⁴ *Road Traffic Act 1974*, sections 8 and 44AC(3) – inserted by 18 of 2011.

4.3 Burden of proof

Section 23(2) of the *Terrorism (Extraordinary Powers) Act 2005* requires the Commissioner, before authorising an application for a covert search warrant, to be “satisfied there are reasonable grounds to believe ...”, while section 26 states that a judge may issue a covert search warrant “if the judge is satisfied ... there are reasonable grounds for the applicant to have that suspicion” and “that the issue of the warrant is justified”.

Elsewhere, in section 19(3) of the Act, the Commissioner is constrained in exercising powers under a Commissioner’s warrant unless he or she “reasonably suspects ...”, a term which is defined in section 4 of the Act.

In *George v Rockett* (1990) 170 CLR 104, the High Court highlighted a distinction between the evidence needed to ground a suspicion and the evidence needed to ground a belief stating, in part, “facts which can reasonably ground a suspicion may be quite insufficient to ground a belief...” Section 8(1) of the equivalent Victorian legislation specifies “reasonable grounds for the suspicion or belief”.

Given that the matters contained in section 23 are almost identical to section 24, to which section 26 applies, it seems anomalous that the Commissioner must be satisfied to a higher degree as to those matters than the judge who actually issues the warrant. Amendments to the Act are required, therefore, to clarify these burden of proof issues in relation to applications for covert search warrants.

4.4 Retention and/or destruction of documents

The equivalent New South Wales legislation requires retention of documents relating to covert searches. It also allows for the destruction of any records made in the execution of the search warrant. The Northern Territory legislation allows for regulations requiring the keeping of records (s.27J), and the Queensland legislation requires a terrorist emergency certificate to be kept by the commissioner for at least six years after the emergency has ended – *Public Safety Preservation Act 1986* s.8J(3).

There is no corresponding requirement in the *Terrorism (Extraordinary Powers) Act 2005*. Also, there are no provisions addressing the destruction of records once it has been determined they are no longer required. Provisions consistent with s.27W of the New South Wales legislation are sought, which provides:

27W Destruction of records

- (1) Within 12 months of the execution of a covert search warrant, the Commissioner of Police or the Crime Commissioner is to determine whether any copy, photocopy or other record made in the execution of the warrant is reasonably required for the purpose of an investigation or proceedings.
- (2) Within each subsequent period of 12 months, the Commissioner of Police or the Crime Commissioner is to further determine whether any such record is reasonably required for that purpose for so long as the record remains in existence.
- (3) The Commissioner of Police or the Crime Commissioner is to ensure that any such record is destroyed as soon as practicable after

determining that its retention is no longer reasonably required for that purpose.

- (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.
- (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.

Update 2011: The third New South Wales review resulted in s.27W being repealed:-

This provision was originally included in the Act as a safeguard of the privacy of those subject to a covert search. However, it was noted in the Ombudsman's review that the destruction of these records limits the ability of any independent oversight agency to properly review the exercise of the powers. As such, the Government agrees with the Ombudsman's recommendation that the requirement to destroy the records should be removed in order to enable proper oversight of the covert search provisions. (NSW Hansard)²⁵

The recommendation in relation to the destruction of records is withdrawn. It is appropriate that the records be maintained for independent oversight requirements.

With regard to the retention of covert search documents, it is recommended that consultation take place to establish clear policies and procedures for the retention and secure storage of covert search documentation. Consideration should be given to including a specific provision in the *Terrorism (Extraordinary Powers) Act 2005* or in regulations made in accordance with s.33.

4.5 Report to judge about covert search warrant and relevant timeframes

The *Terrorism (Extraordinary Powers) Act 2005* requires "the authorised applicant named in a covert search warrant" to provide a written report to the issuing judge 7 days after the warrant is executed. A penalty of \$12,000 or 12 months' imprisonment applies. In contrast, the New South Wales legislation allows 10 days for reporting back to the judge, with no penalty attached, and the Northern Territory legislation follows the same line as in New South Wales.

Provision should be made for a person other than the authorised applicant to provide the report to the issuing judge in circumstances where the authorised applicant is not able to do so. This would complement the current provision which allows for the report to be made to the Chief Justice in the absence of the judge who issued the warrant. It is recommended that allowance be made for a senior police officer actively involved in executing the warrant or with adequate knowledge of the matter to provide the report.

²⁵ NSW, House of Representatives 2010, *Terrorism (Police Powers) Amendment Bill 2010*, 'Agreement in Principle' Speech, [Item 20], 24 June 2010, [http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/0/b8a1711ce42278e8ca25774b0019df67/\\$FILE/LA%207210.pdf](http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/0/b8a1711ce42278e8ca25774b0019df67/$FILE/LA%207210.pdf).

Further, the New South Wales Ombudsman indicated that operational matters are delaying reports by an average of 14-16 days; that is a 24-26 day turnaround. Given the potential complexity of a terrorist event and the evidence provided by the New South Wales Ombudsman, it seems reasonable to allow more than 7 days for lodging the report. At the same time, maintaining accountability is paramount. It is suggested that the timeframe for reporting back be extended to 14 days, with no amendment to the current penalty.

Update 2011: New South Wales legislation was amended in 2009 to allow a person other than the authorised person named in a covert search warrant to provide the necessary report. Section 74A(7) of the *Law Enforcement (Powers and Responsibilities) Act 2002* reads:

If an executing officer for a covert search warrant has died or is absent the report may be provided by another person from the authority in which the executing officer was or is employed who is authorised to make an application for a covert search warrant.

An amendment similar to the above is recommended, along with an extension to the reporting period as previously outlined.

4.6 Directions from the Supreme Court in relation to covert search warrants

Additionally, it is suggested that it may be necessary for the judge to make orders consequent upon receipt of a report in relation to the execution of a covert search warrant. For example, the judge may wish to issue an order relating to the return of seized goods, or order that particular concerns be referred to the Commissioner or the Chief Justice. It is proposed, therefore, that this issue be brought to the attention of the Chief Justice for his comment as to what powers he might like to see contained in the Act for the judge to exercise in terms of the report.

5. Issues Identified during the Second Review

During the course of the second review, several issues were identified which give rise to a further number of proposed amendments. These issues are:-

- the need to amend the definition of “terrorist act”;
- the inclusion of membership offences as grounds for covert search warrants;
- the inclusion of vehicles in covert searches;
- access to and downloading of data from computers ‘networked’ outside premises the subject of a warrant.

5.1 Amending the definition of “terrorist act”

In February 2009 the Western Australian State Solicitor’s Office provided advice in relation to certain difficulties with the definition of “terrorist act”.²⁶ Briefly, counter-terrorism exercises had highlighted a problem with establishing sufficient evidence to meet the “reasonable belief” threshold for obtaining a Commissioner’s warrant. Additionally, the three parts to the intent element (ie, political/religious/ideological) made it difficult to satisfy the required intents even if “reasonable suspicion” was

²⁶ State Solicitor’s Office, correspondence, 10 February 2009.

substituted for “reasonable belief”. The State Solicitor’s Office advice proposed a number of solutions, particularly with respect to the matter of ‘intent’, as follows:

- (1) specifying acts which are terrorist acts;
- (2) specifying the response required;
- (3) simplifying the intention requirements;
- (4) removing the requirement to show intention in specific circumstances.

These four suggestions are considered below.

- (1) There are specific acts commonly associated with terrorism. It is suggested the legislation could be amended so as to list specific acts without the need to show intention. The difficulty with listing specific acts is that such acts are not always associated with terrorism. Kidnapping may have the singular purpose of extracting a ransom, while hostage-taking may be merely a consequential act associated with bank robbery. To avoid capturing offences not relating to terrorism, an additional element would need to be included. State Solicitors’ Office suggested an element relating to the level of response required, as explained in (2).
- (2) Specifying the response required would allow immediate action to be taken in situations where the public is put at high risk of sudden and significant harm, without the need to first establish political, religious or ideological intent. The approach here is to replace the ‘twin intention’ paragraphs, that is s.5(2)(b) and (c), with words indicating a terrorist act falling within subsection (2) “is an act which is of such a nature or magnitude that it requires a significant and co-ordinated response from 2 or more emergency response agencies”. An “emergency response agency” could then be defined to include, for example, police, fire, ambulance, state emergency service, health, child protection, local government, and essential services such as water, electricity and gas. The difficulty of determining intent in order to satisfy the definition of “terrorist act” and obtain a warrant would be consequently overcome and critical delays avoided.

Discussion: Similar to the additional element considered necessary if listing specific acts, it is considered, as part of this Review, that something more is required in addition to a significant and co-ordinated response from 2 or more emergency response agencies. At present, a chemical spill or suspected biological threat will provoke such a response from 2 or more agencies.

It is suggested therefore that the required additional element could be a modified intent. Rather than a political, religious or ideological intent designed to influence or intimidate, the intent could be simply defined as an act done knowingly (or that the person should have known) would cause mayhem - that is violent disorder, riotous confusion, havoc, or wanton destruction - or mass casualties. As such, a “terrorist act” would encompass events such as the mass shooting at Port Arthur and the indiscriminate use of explosives, even if the incident simply arose out of a personal grievance.

- (3) Alternatively, the ‘twin intentions’ could be simplified by deleting s.5(2)(b) (referring to “advancing a political, religious or ideological cause”) and modifying s.5(2)(c) by inserting after the word “done” the phrase “or by its

nature and context appears to be done”, thus restricting the scope of intent to coercing or influencing by intimidation.

Discussion: This option seems the most simple amendment, however, it leaves the legislation wide open. For example, if an offender caused a person’s death or caused serious physical harm to a person or damage to property with the apparent intention of intimidating a section of the public, the offender could be charged with a terrorism offence rather than a criminal offence carrying a much lesser penalty. A fight outside a tavern or sports arena could result in a single act of bravado leading to a charge of terrorism. An amendment along these lines would significantly broaden the legislation and is not recommended.

- (4) The final suggestion was to remove the requirement to show intention in specific circumstances. The example given was that of an act falling within subsection (3) where the use of firearms or explosives, or the use of chemical, biological or radiological (CBR) substances, were involved against the public or a section of the public.²⁷ Such an act would constitute a “terrorist act” whether or not the intention provision was satisfied. The qualification that firearms, explosives or CBR substances must be used against the public or a section of the public purportedly limits the application of this proposed amendment.

Discussion: Failing any more effective amendment to the definition of “terrorist act”, this proposed amendment would provide an immediate improvement for rapidly dealing with incidents where the public is significantly endangered but the motive is unclear. An example cited was the use of Sarin gas on the Tokyo subway in 1995.

Other suggestions for amending the definition of “terrorist act” have arisen in the course of desktop exercises and general discussion:

- The difficulty of satisfying the legal threshold of ‘intent’ raised the spectre of a senior police officer’s experience, resulting in the suggestion that the question of political, religious or ideological intent be replaced with reasonable suspicion on the part of the police operations commander. A “terrorist act” would become:-

an act that falls within subsection (3) and that causes a Police Operations Commander to reasonably suspect there is or may be a serious risk to public safety, property or infrastructure as a result of extremist activity.

Extremist activity may be defined to include (without limitation) -

the use of bombs and/or other explosive devices;
the use of firearms in public places or against members of the public;
the taking of hostages;
the oral or written declaration of any political, religious or ideological motivation for disturbing the peace or making threats,

²⁷ Based on section 1(3) of the *Terrorism Act 2000* (UK).

commonly associated with organisations or individuals who engage in unlawful, threatening or violent behavior in the interests of a cause or personal vendetta.

This approach follows (1) above in that it lists specific acts. At the same time it removes the 'twin intention' and instead relies on a standard of reasonable suspicion on the part of the senior police officer present at the scene.

- The final suggestion is that, rather than s.5(2)(b) being deleted, both s.5(2)(b) and s.5(2)(c) be amended as proposed at (3) above by inserting after the word "done" the words "or by its nature and context appears to be done". Simplifying the intent in this manner, or removing intent in specific circumstances as at (4) above, is considered the minimum level of amendment required to make the definition of "terrorist act" operationally workable.

This issue needs to be examined further before any concrete reforms can be determined for legislative progression.

Update 2014: There has been no resolution of this matter to date. Suggestions made by the UK Independent Reviewer of Terrorism Legislation, David Anderson QC²⁸ provide further comments for consideration. Mr Anderson suggested a compromise with regard to the matter of intent: retain the motive requirement but restrict it to "political" motives. He declined, however, to make a specific recommendation preferring to keep the matter under review.

Changes to Part 5.3 of the *Criminal Code 1995* (Cth), including to the definition of "terrorist act", are being considered in the context of the COAG Review and the current threat environment. Any amendment to Western Australian legislation must take into account proposed changes in other jurisdictions.

5.2 Membership offences included in definition of "terrorist act" for covert search warrants

The New South Wales *Terrorism (Police Powers) Act 2002* includes, at s.27A(2), membership of a terrorist organisation as grounds for application for a covert search warrant. This provision is based on s.310J of the *Crimes Act 1900* (NSW) which makes it an offence to knowingly be part of a terrorist organisation. Western Australia does not have a comparable State provision upon which to rely, however, the inclusion of such a provision is recommended for consideration given that intent has proved particularly difficult to establish during counter-terrorism exercises.

Update 2014: In September 2013 the *Crimes Amendment (Terrorism) Act 2013* extended by three years the operation of the sunset provision applying to the offence of being a member of a terrorist organisation. Until the Commonwealth introduces a national covert search warrant scheme, the membership offence ensures the validity of covert search warrants obtained under the New South Wales legislative regime.

²⁸ D Anderson QC, *The Terrorism Acts in 2012*, Report of the Independent Reviewer on the Operation of the *Terrorism Act 2000* and Part 1 of the *Terrorism Act 2006*, July 2013, London, The Stationery Office, pp.54-57, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/243472/9780108512629.pdf.

The inclusion of a membership offence as grounds for obtaining a covert search warrant may be of assistance in overcoming difficulties relating to intent identified in desktop exercises in Western Australia.

It is, once again, recommended consideration be given to this provision.

5.3 Covert searches to include reference to vehicles

Section 27A of the *Terrorism (Police Powers) Act 2002* (NSW) specifies, for covert search purposes, that “premises includes vehicles”; “vehicle”, defined in s.4, “includes a vessel or an aircraft”.

Section 22 of the *Terrorism (Extraordinary Powers) Act 2005* (WA), by contrast, provides only for the covert search of a “target place”. A “target vehicle” may be searched under a Commissioner’s warrant (Part 2), however, there is no similar provision for the search of a vehicle under a covert search warrant (Part 3). The term “place” is defined in s.3 in terms of “any land, building or structure” or part thereof.

The definition of “vehicle” in s.3 is broad and clearly allows for vessels, aircraft, and any thing that transports people or goods. It is conceivable that at some time circumstances may arise which make the covert search of a “target vehicle” desirable. The terrorist attack on Mumbai in 2008 was largely effected by sea²⁹, making it clear that vehicles such as boats and ocean-going vessels, usually not kept at the “target place”, may become relevant to terrorist investigations.

An amendment allowing for the search of a vehicle under a covert search warrant, in line with the NSW legislation, is recommended.

5.4 Access to computers outside premises the subject of a warrant

Section 27OB of the *Terrorism (Police Powers) Act 2002* (NSW) makes provision for access to and downloading of data from computers ‘networked’ outside premises the subject of a warrant “if the person believes on reasonable grounds that the data might be data that could be seized under the warrant”. Access under s.27(8)(e) of the *Terrorism (Extraordinary Powers) Act 2005* (WA) is restricted to the “target place”. Consideration should be given to extending access to computers outside the “target place”.

6. Issues Identified during the Current Review

During the course of the current Review, very few issues were identified over and above those reported previously. Specifically,

6.1 Exemption of acts relating to armed conflict from the definition of “terrorist act”

The INSLM Report of 20 December 2012 and the COAG Review³⁰ both recommend Australian law be amended to exempt acts “committed by parties regulated by the

²⁹ Australian Broadcasting Corporation, ‘Pakistani ships seized after Mumbai attacks’, *ABC News*, 28 November 2008, <http://www.abc.net.au/news/stories/2008/11/28/2432350.htm>.

³⁰ INSLM December 2012, pp. 122-124; COAG Review, paras 41-44.

law of armed conflict” from the definition of “terrorist act”. This view is also supported by the UK Independent Reviewer of Terrorism Legislation, David Anderson QC.³¹

The amendment, however, is not supported by the Australia-New Zealand Counter-Terrorism Committee (ANZCTC). It is recommended, therefore, that this issue be monitored and reassessed if necessary once the Commonwealth has resolved the matter.

6.2 Expiry date

The Act is due to expire on the tenth anniversary of Royal Assent, 19 December 2015. Although the extraordinary powers provided by the Act have not been used, it is clear that similar provisions in other Australian jurisdictions have been of assistance in progressing investigations and preventing terrorist acts. The need for these powers is ongoing as the terrorism threat has not abated.

An argument may be raised that the sunset clause should be repealed: the threat of terrorism is ongoing and, as such, the need for this type of legislation may persist for many years to come. On the other hand, the gravity of these powers and their potential impact on human rights demands regular review of the operation and effectiveness of the Act and reconsideration of the legislation. This is best achieved by a sunset clause.³²

It is recommended, therefore, that the sunset clause be retained and the legislation be extended for a further period of 10 years with reviews of the Act continuing to be conducted in accordance with section 34(1)(b) of the Act. It is further recommended that amending legislation be introduced without delay, taking into account relevant legislative reforms effected by the Commonwealth during the drafting period and making allowance for a rapidly evolving counter-terrorism environment.

7. Conclusion and Recommendations

7.1 Conclusion

The Review finds that the policy objectives of the *Terrorism (Extraordinary Powers) Act 2005* continue to remain valid. While such powers cannot guarantee that Western Australia will not be the target of a terrorist attack in the future, they do provide the police and other agencies with the enhanced ability to better investigate terrorist activity and to respond to threats, and to more expeditiously apprehend perpetrators.

Despite there having been no use of the *Terrorism (Extraordinary Powers) Act 2005* to date, this does not, in the view of Western Australia Police, invite or provide a reason for any reduction or repeal of the present powers. As reported in *The West Australian* on 31 July 2014, “WA Police believe an increase in extremist activity is

³¹ D Anderson QC, *The Terrorism Acts in 2012*, Report of the Independent Reviewer on the Operation of the *Terrorism Act 2000* and Part 1 of the *Terrorism Act 2006*, July 2013, London, The Stationery Office, pp.54-57, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/243472/9780108512629.pdf.

³² N McGarrity, R Gulati and G Williams, ‘Sunset clauses in Australian anti-terror laws’, *Adelaide Law Review*, 2012, pp.307-333.

inevitable, revealing that a “small number” of home-grown radicals are being monitored because of their hard-line views.”³³

Growing government and law enforcement concern with regard to ‘foreign fighters’ returning to Australia from conflicts in Iraq and Syria has prompted the Australian Government to pursue Commonwealth legislative reforms. The *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014* was introduced on 24 September 2014 and received Royal Assent on 3 November 2014. This legislative reform amended 22 Acts, providing additional powers for security agencies, strengthening border security, and cancelling welfare payments for persons involved in terrorism. The *Crimes (Foreign Incursions and Recruitment) Act 1978*, under which previous prosecutions had been conducted, was repealed. These amendments will need to be assessed and, where necessary, replicated in State and Territory legislation.

September 2014 saw a sharp escalation in terrorist activity both globally and domestically, in particular with the rise of ISIL or, as they prefer to be known, the ‘Islamic State’. The lifting of the terrorism alert level by the Director-General of ASIO, from Medium to High, on 12 September 2014 and the Lindt Café incident in Sydney on 15/16 December 2014 highlights the continuing need for this type of legislation.

Additionally, the introduction of urgent legislative reforms in recent months indicates the process of amending the *Terrorism (Extraordinary Powers) Act 2005* needs to be commenced without delay.

Accordingly, the Review finds that the provisions of the *Terrorism (Extraordinary Powers) Act 2005* are appropriate to prevent and respond to terrorist acts, and should therefore continue in operation.

7.2 Recommendations

The inaugural review identified a number of minor amendments to the *Terrorism (Extraordinary Powers) Act 2005* which will strengthen its provisions. Since then a range of other issues have been canvassed and some further amendments considered. These matters are detailed in Parts 4, 5 and 6 of this Review Report and are recommended for further progression.

It is highly recommended that amending legislation be introduced to address these matters without further delay.

³³ Grant Taylor, ‘Number of radicals under surveillance ‘likely to increase’’, *The West Australian*, 31 July 2014, p.1.