

Terrorism (Extraordinary Powers) Amendment Bill 2015

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Western Australia

LEGISLATIVE ASSEMBLY

**Terrorism (Extraordinary Powers) Amendment
Bill 2015**

A Bill for

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

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This is the *Terrorism (Extraordinary Powers) Amendment*
3 *Act 2015.*

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. Section 3 amended**

13 In section 3 insert in alphabetical order:

14

15 *data* includes any record, any computer program, and
16 any part of a computer program, in a digital, electronic
17 or magnetic form;

18

19 **5. Section 7 amended**

20 In section 7(2) delete “believe —” and insert:

21

22 suspect —

23

1 **6. Section 14 amended**

2 (1) In section 14(1)(b) delete “is” and insert:

3

4 is, or contains,

5

6 (2) In section 14(2):

7 (a) in paragraph (b) delete “search.” and insert:

8

9 search;

10

11 (b) after paragraph (b) insert:

12

13 (c) access and operate any device or equipment in
14 the vehicle that holds or processes data.

15

16 **7. Section 15 amended**

17 After section 15(1) insert:

18

19 (2A) For the purposes of searching a place under
20 subsection (1), a police officer may access and operate
21 any device or equipment in the place that holds or
22 processes data.

23

24 **8. Section 16 amended**

25 After section 16(2) insert:

26

27 (3) If a thing is seized under this section, a police officer
28 may access and operate any device or equipment in the
29 thing that holds or processes data.

30

- 1 **9. Section 17 amended**
- 2 In section 17(1):
- 3 (a) in paragraph (b) delete “Territory.” and insert:
- 4
- 5 Territory; or
- 6
- 7 (b) after paragraph (b) insert:
- 8
- 9 (c) a sworn employee of the New Zealand Police;
- 10 or
- 11 (d) a law enforcement officer of a foreign
- 12 jurisdiction prescribed for the purposes of this
- 13 subsection.
- 14
- 15 **10. Section 20 amended**
- 16 After section 20(2) insert:
- 17
- 18 (3) Subsection (1) does not limit judicial review for
- 19 jurisdictional error.
- 20
- 21 **11. Section 22 amended**
- 22 (1) In section 22 insert in alphabetical order:
- 23
- 24 ***Commonwealth terrorist offence*** means an offence set
- 25 out in section 23(2)(b) or (c);
- 26 ***target vehicle***, in relation to a covert search warrant,
- 27 means a vehicle that is specified to be searched under
- 28 the warrant.
- 29

1 (2) In section 22 in the definition of *target place* delete “warrant.”
2 insert:

3

4 warrant;

5

6 **12. Section 23 amended**

7 Delete section 23(2) and insert:

8

9 (2) The Commissioner must not authorise a police officer
10 to apply for a covert search warrant unless the
11 Commissioner is satisfied there are reasonable grounds
12 to suspect —

13 (a) that a terrorist act has been, is being, or is about
14 to be, committed, whether in or outside this
15 State; or

16 (b) that a person has committed an offence under
17 *The Criminal Code* section 102.3 set out in the
18 Schedule to the *Criminal Code Act 1995*
19 (Commonwealth); or

20 (c) that a person has committed, or is committing,
21 an offence under *The Criminal Code*
22 section 80.2C set out in the Schedule to the
23 *Criminal Code Act 1995* (Commonwealth).

24 (3A) On being satisfied under subsection (2), the
25 Commissioner may authorise a police officer to apply
26 for a covert search warrant if the Commissioner is
27 satisfied there are reasonable grounds to believe —

28 (a) that entry to and search of a place or vehicle in
29 this State will substantially assist in preventing
30 an act, or investigating an act or offence; and

31 (b) that the entry and search needs to be carried out
32 without the knowledge of the occupier of the
33 place or the person in charge of the vehicle.

s. 13

- 1 **13. Section 24 amended**
- 2 (1) In section 24(3):
- 3 (a) in paragraph (b) delete “place;” and insert:
- 4
- 5 place or target vehicle; and
- 6
- 7 (b) in paragraph (c) delete “occupier of the target place,”
- 8 and insert:
- 9
- 10 occupier of the target place, or person in charge of the
- 11 target vehicle,
- 12
- 13 (c) delete paragraph (d) and insert:
- 14
- 15 (d) state the grounds on which the applicant
- 16 suspects that a terrorist act or Commonwealth
- 17 terrorist offence has been, is being, or is about
- 18 to be, committed, whether in or outside this
- 19 State; and
- 20 (ea) state the grounds on which the applicant
- 21 believes —
- 22 (i) that entry to and search of the target
- 23 place or target vehicle will substantially
- 24 assist in preventing or investigating the
- 25 act or offence; and
- 26 (ii) that the entry and search needs to be
- 27 carried out without the knowledge of the
- 28 occupier of the target place or person in
- 29 charge of the target vehicle;
- 30 and
- 31

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(d) in paragraph (e) delete “act, or the class of such things, to be searched for in the target place;” and insert:

act or Commonwealth terrorist offence, or the class of such things, to be searched for in the target place or target vehicle; and

(e) in paragraph (f) delete “and that it is in the target place;” and insert:

or Commonwealth terrorist offence and that it is in the target place or target vehicle; and

(f) in paragraph (g) delete “place —” and insert:

place or target vehicle —

(g) in paragraph (h) after “place” insert:

or target vehicle

(h) in paragraph (i) after “target place” insert:

or target vehicle

(i) in paragraph (i) after “place” insert:

or vehicle

(j) in paragraph (j) after “target place” insert:

or target vehicle

s. 14

1 (2) In section 24(4) after “place” insert:

2

3 or target vehicle

4

5 (3) In section 24(3) after each of paragraphs (a), (c) and (g) to (i)
6 insert:

7

8 and

9

10 **14. Section 26 amended**

11 (1) In section 26(1):

12 (a) after “a place” insert:

13

14 or vehicle

15

16 (b) in paragraph (a) delete “suspects, there are reasonable
17 grounds for the applicant to have that suspicion;” and
18 insert:

19

20 suspects or believes, there are reasonable grounds for
21 the applicant to have those suspicions and beliefs; and

22

23 (c) in paragraph (c) after “target place” insert:

24

25 or target vehicle

26

27 (2) In section 26(2):

28 (a) after “target place” insert:

29

30 or target vehicle

31

- 1 (b) in paragraph (a) delete “place;” and insert:
2
3 place or target vehicle; or
4
- 5 (3) In section 26(3)(a) after “terrorist act” insert:
6
7 or Commonwealth terrorist offence
8
- 9 (4) In section 26(5):
10 (a) in paragraph (b) delete “place;” and insert:
11
12 place or target vehicle;
13
- 14 (b) delete paragraph (d) and insert:
15
16 (d) if the warrant authorises the entry of a place
17 that adjoins or is near the target place or target
18 vehicle — a description of the place;
19
- 20 (c) in paragraph (e) after “place” insert:
21
22 or target vehicle
23
- 24 (d) in paragraph (f) after “target place” insert:
25
26 or target vehicle
27
- 28 (e) in paragraph (f) after “place” insert:
29
30 or vehicle
31

s. 15

- 1 **15. Section 27 amended**
- 2 (1) In section 27(6) after “place” insert:
- 3
- 4 or vehicle
- 5
- 6 (2) In section 27(7):
- 7 (a) in paragraph (a) delete “place;” and insert:
- 8 place or target vehicle;
- 9
- 10 (b) in paragraph (b) delete “place;” and insert:
- 11 place or person in charge of the target vehicle;
- 12
- 13 (c) in paragraph (d) after “place” insert:
- 14 or target vehicle
- 15
- 16 (d) in paragraph (e) after “terrorist act” insert:
- 17 or Commonwealth terrorist offence
- 18
- 19 (e) in paragraph (f) after “place” insert:
- 20 or target vehicle
- 21
- 22 (f) in paragraph (g)(i), (ii) and (iii) after “target place”
- 23 insert:
- 24 or target vehicle
- 25
- 26
- 27
- 28
- 29
- 30
- 31

- 1 (g) in paragraph (g)(iii) after “the place” insert:
2
3 or vehicle
4
- 5 (3) In section 27(8):
6 (a) in paragraph (a) after “target place” insert:
7
8 or target vehicle
9
- 10 (b) in paragraph (b) delete “place;” and insert:
11
12 place or target vehicle;
13
- 14 (c) in paragraph (c) after “target place” insert:
15
16 or target vehicle
17
- 18 (d) in paragraph (d) after “target place” insert:
19
20 or target vehicle
21
- 22 (e) in paragraph (d)(i) delete “place” and insert:
23
24 place, or person in charge of the vehicle,
25
- 26 (f) in paragraph (e) delete “record —” and insert:
27
28 record or other data —
29
- 30 (g) in paragraph (e)(i) after “target place” insert:
31
32 or target vehicle

s. 15

- 1 (h) in paragraph (e)(i) delete “record; and” and insert:
2
3 record or data; and
4
- 5 (i) delete paragraph (e)(ii) and insert:
6
7 (ii) to access and operate any device or
8 equipment that holds, records or
9 processes data and to exercise the
10 powers to copy and seize the records or
11 data set out in the *Criminal*
12 *Investigation Act 2006* section 148;
13
- 14 (j) in paragraph (f) after “target place” insert:
15
16 or target vehicle
17
- 18 (k) in paragraph (f)(i) and (ii) delete “place;” and insert:
19
20 place or vehicle;
21
- 22 (l) in paragraph (f)(iii), (iv) and (v) after “place” insert:
23
24 or vehicle
25
- 26 (4) After section 27(8) insert:
27
- 28 (9A) Access to data under a covert search warrant is subject
29 to any limitations imposed by the *Telecommunications*
30 *(Interception and Access) Act 1979* (Commonwealth)
31 and the *Telecommunications (Interception and Access)*
32 *Western Australia Act 1996*.
33

- 1 (5) In section 27(11):
2 (a) after “target place” insert:
3
4 or target vehicle
5
6 (b) after “the place” insert:
7
8 or vehicle
9
10 (c) in paragraphs (a), (b) and (c) after “the place” insert:
11
12 or vehicle
13

14 **16. Section 28A inserted**

15 After section 27 insert:
16

17 **28A. Order to provide access to data**

- 18 (1) For the purpose of seizing a record or data, or
19 exercising a power under a covert search warrant, an
20 officer may order a person to provide any information
21 or assistance that is reasonable and necessary to enable
22 the officer to seize the record or data or exercise the
23 power.
24 (2) An order under subsection (1) may be given to the
25 person from whom the record or data may be seized; or
26 an employee (whether under a contract of service or a
27 contract for services) of that person, if an officer
28 reasonably suspects that the person knows how to gain
29 access to or operate any such device or equipment.

s. 17

- 1 (3) A person who is given an order under subsection (1)
2 and who, without reasonable excuse (the onus of
3 proving which is on the person), does not obey it
4 commits an offence.
5 Penalty for this subsection: a fine of \$12 000 and
6 imprisonment for 12 months.
7 (4) It is not a defence to a charge of an offence under
8 subsection (3) that information that becomes available
9 under the access order would or may incriminate the
10 accused.
11

12 **17. Section 28 amended**

- 13 (1) After section 28(1) insert:
14
15 (2A) However, if the authorised applicant named in a covert
16 search warrant has died or is unavailable, the report
17 may be given to the judge by another police officer of
18 the same or higher rank who has been nominated by
19 the Commissioner, in writing, to replace the original
20 authorised applicant.
21 (2B) A replacement police officer under subsection (2A)
22 must give the judge who issued the warrant (or, in the
23 absence of that judge, the Chief Justice) a written
24 report about the execution of the warrant in accordance
25 with this section.
26 Penalty for this subsection: a fine of \$12 000 and
27 imprisonment for 12 months.
28

- 1 (2) Delete section 28(2) and insert:
2
- 3 (2) If the warrant was not executed, the report must be
4 given to the judge within 7 days after the expiry date
5 specified in the warrant.
- 6 (3A) If the warrant was executed, then within 7 days after
7 the day on which it was executed —
8 (a) the report must be given to the judge; or
9 (b) an interim report, together with an application
10 for an extension of time to give the report, must
11 be given to the judge.
- 12 (3B) If the judge grants an extension of time to give the
13 report, the report must be given to the judge on or
14 before the date specified in the extension of time.
15
- 16 (3) In section 28(3):
17 (a) in paragraph (b) after “place” insert:
18
19 or vehicle
20
- 21 (b) in paragraph (c) delete “place” and insert:
22
23 place, and person in charge of each vehicle,
24
- 25 (c) in paragraph (f)(ii) after “place” insert:
26
27 or vehicle
28
- 29 (d) in paragraph (f)(iii) delete “act; or” and insert:
30
31 act or Commonwealth terrorist offence; or
32

s. 18

- 1 (e) delete paragraph (h) and insert:
2
3 (h) if the target place or target vehicle was
4 re-entered to return any thing removed from, or
5 to retrieve any thing substituted in, the place or
6 vehicle when it was first entered under the
7 warrant —
8 (i) state when the re-entry took place; and
9 (ii) describe any other place that was
10 entered in order to effect the re-entry;
11 and
12 (iii) name each person who re-entered the
13 target place, target vehicle or any other
14 place in order to effect the re-entry; and
15 (iv) describe the thing that was returned or
16 retrieved; and
17 (v) if the thing that was not returned or
18 retrieved, explain why it was not;
19
20 (f) in paragraph (i) after “terrorist act” insert:
21
22 or Commonwealth terrorist offence
23

24 **18. Section 29 amended**

- 25 In section 29(1) in the definition of *confidential information*
26 paragraph (b) after “report” insert:
27
28 or interim report
29

1 **19. Section 30 amended**

2 In section 30(1):

3 (a) in paragraph (d) after “places” insert:

4

5 and vehicles

6

7 (b) in paragraph (e) after “terrorist acts” insert:

8

9 or Commonwealth terrorist offences

10

11 (c) in paragraph (g) after “place” insert:

12

13 or vehicle

14

15 **20. Section 35 amended**

16 (1) In section 35(1) delete “the tenth anniversary of the day on
17 which it receives the Royal Assent.” and insert:

18

19 19 December 2025.

20

21 (2) In section 35(2) delete “the tenth anniversary of the day on
22 which the Act receives the Royal Assent,” and insert:

23

24 19 December 2025,

25

s. 21

1 **21. Schedule 1 clause 7 amended**

2 In Schedule 1 after clause 7(1) insert:

3

4 (2A) If under subclause (1), any device or equipment is seized, a
5 police officer may operate the device or equipment to gain
6 access to, and recover and reproduce, a record or other data
7 held or processed by that device or equipment if the officer
8 reasonably suspects that the record or other data may be
9 seized under the warrant.

10

11

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