

South Australia

Terrorism (Police Powers) (Use of Force) Amendment Act 2018

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

Contents

Part 1—Preliminary

- 1 Short title
- 2 Amendment provisions

Part 2—Amendment of *Terrorism (Police Powers) Act 2005*

- 3 Amendment of section 2—Interpretation
- 4 Insertion of Part 2A

Part 2A—Terrorist act declarations

- 27A Declaration
 - 27B Use of force in relation to declared terrorist act
 - 27C Identity of police officers not to be revealed in court or published
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Terrorism (Police Powers) (Use of Force) Amendment Act 2018*.

2—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Terrorism (Police Powers) Act 2005*

3—Amendment of section 2—Interpretation

- (1) Section 2(1)—after the definition of *Commissioner of Police* insert:

Deputy Commissioner of Police includes a person appointed as acting Deputy Commissioner of Police;

- (2) Section 2(1)—after the definition of *terrorist act* insert:

terrorist act declaration—see section 27A;

4—Insertion of Part 2A

After section 27 insert:

Part 2A—Terrorist act declarations

27A—Declaration

- (1) If the Commissioner of Police is satisfied that—
 - (a) an incident to which police officers are responding is, or is likely to be, a terrorist act; and
 - (b) planned and coordinated police action is required to defend any persons threatened by that act or to prevent or terminate their unlawful deprivation of liberty,the Commissioner may make a terrorist act declaration in respect of the incident.
- (2) A terrorist act declaration made in respect of an incident applies to each location at which police officers are responding to the incident.
- (3) The Commissioner of Police is to notify the police officer in charge of the police officers responding to the incident that a terrorist act declaration has been made.
- (4) Before, or as soon as practicable after, a terrorist act declaration is made, the Commissioner of Police is to notify the Police Minister of the declaration.
- (5) The Deputy Commissioner of Police may make and notify a terrorist act declaration on behalf of the Commissioner of Police if satisfied that the Commissioner is not able to be contacted when a declaration is sought as a matter of urgency.
- (6) A terrorist act declaration may be made under this Part orally or by instrument in writing (but if the declaration is made orally, it must be confirmed by instrument in writing as soon as it is reasonably practicable to do so).
- (7) The Commissioner of Police may at any time revoke a terrorist act declaration, and must do so if no further police response is required in respect of the incident.
- (8) The Commissioner of Police or the Deputy Commissioner of Police may revoke a terrorist act declaration made by the Deputy Commissioner of Police on behalf of the Commissioner of Police.

27B—Use of force in relation to declared terrorist act

- (1) A police officer does not incur any criminal liability for authorising, directing or using force (including lethal force) that is reasonably necessary, in the circumstances as the police officer perceives them, to defend any persons threatened by an incident that is the subject of a terrorist act declaration or to prevent or terminate their unlawful deprivation of liberty.
- (2) Subsection (1) does not apply to an action of a police officer—
 - (a) that was in contravention of an order of the police officer in charge of the police officers responding to the incident; or
 - (b) that was not in good faith.
- (3) If a terrorist act declaration is revoked, this section continues to apply to any action taken by a police officer before the earlier of the following:
 - (a) when the police officer became aware of the revocation of the declaration;
 - (b) when the police officer, acting reasonably, ought to have been aware of the revocation of the declaration.
- (4) If a court finds that a purported terrorist act declaration was not validly made, this section continues to apply to any action taken by a police officer before the finding as if it were a valid declaration.
- (5) This Part does not limit the powers of police officers to deal with a terrorist act, and police officers may exercise those powers whether or not the Commissioner of Police has been requested or has declined to make a terrorist act declaration in relation to the terrorist act.

27C—Identity of police officers not to be revealed in court or published

- (1) If, in any proceedings in a court, a person is to give evidence (including evidence admitted in the form of an audio visual record) that directly or indirectly identifies a person as a relevant police officer, the court must make an order requiring all persons to absent themselves from the place in which the evidence is to be given, while the evidence is being given, except the following:
 - (a) a person whose presence is required for the purposes of the proceedings;
 - (b) a person who is present at the request or with the consent of the relevant police officer;
 - (c) a person who, in the opinion of the court, should be allowed to be present.

- (2) The court may, on the application of a person against whom an order under subsection (1) operates, make available to the person a transcript of evidence, and a record of proceedings, taken during the operation of the order.
- (3) If a court refuses an application under subsection (2), the applicant may appeal against the refusal to the Supreme Court.
- (4) Subject to this section, a person must not publish any statement or representation—
 - (a) by which the identity of a relevant police officer is revealed; or
 - (b) from which the identity of a relevant police officer might reasonably be inferred,

unless the relevant police officer consents to the publication.

Maximum penalty:

- (a) in the case of a natural person—\$10 000;
 - (b) in the case of a body corporate—\$120 000.
- (5) If a relevant police officer has not consented to the publication of material under subsection (4), the Supreme Court may, on application, make an order (a **publication order**) that the restriction on publication under that subsection be varied or removed altogether, if satisfied that to do so—
 - (a) may assist in the investigation of an offence; or
 - (b) is otherwise in the public interest.
 - (6) A publication order may be subject to such exceptions and conditions as the Court thinks fit and specifies in the order.
 - (7) An application for a publication order may be made, with the permission of the Court, by any person who has, in the opinion of the Court, a proper interest in the question of whether an order should be made.
 - (8) If the Court permits an application for a publication order to be made, any of the following persons may make submissions to the Court on the application and, with the permission of the Court, call or give evidence in support of those submissions:
 - (a) the applicant for the publication order;
 - (b) the relevant police officer;
 - (c) the Commissioner of Police;
 - (d) a party to any proceedings in which the order is sought;
 - (e) a representative of a newspaper or a radio or television station;

- (f) any other person who has, in the opinion of the Court, a proper interest in the question of whether an order should be made.
- (9) A publication order may be varied or revoked by the Supreme Court on the application of any of the persons entitled to make submissions by virtue of subsection (8).
- (10) On an application for the making, variation or revocation of a publication order—
 - (a) a matter of fact is sufficiently proved if proved on the balance of probabilities; and
 - (b) if there appears to be no serious dispute as to a particular matter of fact, the Court (having regard to the desirability of dealing expeditiously with the application) may—
 - (i) dispense with the taking of evidence on that matter; and
 - (ii) accept the relevant fact as proved.
- (11) This section has effect despite any other Act or law.
- (12) In this section—

publish includes any means by which material is communicated to the public;

relevant police officer means a police officer who has taken police action to which section 27B(1) applies (and includes a person who was formerly a relevant police officer).