

South Australia

Terrorism (Police Powers) Act 2005

An Act to give special powers to police officers to prevent and investigate terrorist acts; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Terrorism (Police Powers) Act 2005*.

2—Interpretation

- (1) In this Act—

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

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

in or about to enter a vehicle—see subsection (2);

investigative authorisation—see section 3(2);

Police Minister means the Minister administering the *Police Act 1998*;

police officer means—

- (a) a police officer; or
- (b) a person appointed as a recognised law enforcement officer under section 20;

premises includes land;

preventative authorisation—see section 3(1);

relevant authority—see section 3(3);

relevant judicial officer means—

- (a) a Judge of the Supreme Court; or
- (b) a Judge of the District Court;

special area means the site or area specified in a special area declaration;

special area declaration means a special area declaration issued under Part 2 Division 3;

special event means a community, cultural, arts, entertainment, recreational, sporting or other similar event that is to be held over a limited period of time;

special powers authorisation means a special powers authorisation issued under Part 2 Division 1;

target of an authorisation—see section 5(2);

terrorist act has the same meaning as in Part 5.3 of the *Criminal Code* of the Commonwealth, except that it does not include a terrorist act comprised of a threat;

terrorist act declaration—see section 27A;

vehicle means anything designed to transport a person or goods by road, rail, air or water.

- (2) In this Act, a reference to a person or thing **in a vehicle** includes a reference to a person or thing on a vehicle and a reference to a person **about to enter a vehicle** includes a reference to a person about to be on a vehicle.

Part 2—Special powers

Division 1—Special powers authorisation

3—Issue of authorisation

- (1) The relevant authority may issue a special powers authorisation (a **preventative authorisation**) if there are reasonable grounds to believe—
 - (a) that a terrorist act is imminent, whether in or outside this State; and
 - (b) that the exercise of powers under this Act will substantially assist in the prevention of the terrorist act.
- (2) The relevant authority may issue a special powers authorisation (an **investigative authorisation**) if there are reasonable grounds to believe—
 - (a) that a terrorist act is being or has been committed, whether in or outside this State; and

- (b) that the exercise of powers under this Act will substantially assist in the investigation of the terrorist act.
- (3) The **relevant authority** is—
 - (a) the Commissioner of Police; or
 - (b) if the Commissioner of Police is unavailable to issue an authorisation, the Deputy Commissioner of Police; or
 - (c) if the Commissioner of Police and the Deputy Commissioner of Police are both unavailable to issue an authorisation, an Assistant Commissioner of Police; or
 - (d) if the Commissioner of Police, the Deputy Commissioner of Police and all Assistant Commissioners of Police are unavailable to issue an authorisation, a police officer above the rank of superintendent.
- (4) A special powers authorisation may be issued orally in urgent circumstances, but if issued orally, must be confirmed in writing as soon as practicable after its issue.
- (5) The relevant authority must not issue a special powers authorisation unless both the Police Minister and a relevant judicial officer have confirmed that the relevant authority has proper grounds for issuing the authorisation under subsection (1) or subsection (2), as the case may be.
- (6) However, the relevant authority may issue a special powers authorisation without the confirmation required under subsection (5) if satisfied that it is necessary to do so because of the urgency of the circumstances, but, in that event—
 - (a) the relevant authority must seek confirmation, as soon as possible, of the Police Minister and a relevant judicial officer that the relevant authority had proper grounds for issuing the authorisation; and
 - (b) the authorisation ceases to operate if the Police Minister or relevant judicial officer refuses to confirm that the relevant authority had proper grounds for issuing the authorisation.

4—Duration of authorisation

- (1) A special powers authorisation commences to operate when it is issued.
- (2) A special powers authorisation ceases to operate at the time specified in the authorisation (unless it ceases to operate at an earlier time under section 3 or 6).
- (3) The period for which an authorisation operates must not exceed—
 - (a) in the case of a preventative authorisation—7 days;
 - (b) in the case of an investigative authorisation—24 hours.
- (4) A further special powers authorisation may be issued in relation to the same terrorist act in order to extend the period of operation of an earlier authorisation, but only so that the total period of operation of the authorisations does not exceed—
 - (a) in the case of preventative authorisations—14 days;
 - (b) in the case of investigative authorisations—48 hours.

5—Content of authorisation

- (1) A special powers authorisation must—
 - (a) state that it is issued under this Act; and
 - (b) state whether it is a preventative authorisation or an investigative authorisation; and
 - (c) state whether it has been confirmed by the Police Minister and a relevant judicial officer; and
 - (d) state the date and time it is issued; and
 - (e) state the date and time it will cease to operate; and
 - (f) describe the general nature of the terrorist act to which it applies; and
 - (g) name or describe (if appropriate by using a picture, map or other visual depiction) 1 or more of the following:
 - (i) an area of the State in which the powers conferred by this Act may be exercised;
 - (ii) a person sought in connection with the terrorist act;
 - (iii) a vehicle sought in connection with the terrorist act.
- (2) The person, vehicle or area is referred to in this Act as the ***target of the authorisation***.
- (3) An area that is the target of an authorisation must not be larger than is reasonably necessary for the prevention or investigation of the terrorist act.

6—Revocation of authorisation

- (1) A special powers authorisation may be revoked by the relevant authority who issued it or a police officer of a more senior rank.
- (2) The Commissioner of Police must revoke a special powers authorisation if directed to do so by the Police Minister.
- (3) The cessation of operation of a special powers authorisation (by revocation or otherwise) does not affect anything lawfully done in reliance on the authorisation before it ceased to operate.

Division 2—Powers resulting from special powers authorisation

7—Exercise of powers under authorisation

- (1) A special powers authorisation authorises any police officer, with such assistants as the police officer considers necessary, to exercise the powers conferred by this Division for the purposes of—
 - (a) in the case of a preventative authorisation—preventing the terrorist act described in the authorisation; and
 - (b) in any case—investigating the terrorist act described in the authorisation.
- (2) A police officer may exercise a power conferred by this Division without being in possession of a copy of the special powers authorisation and without any other warrant.

8—Power to require disclosure of identity

- (1) A police officer may require a person to disclose his or her identity if the officer suspects on reasonable grounds that the person—
 - (a) is the target of an authorisation; or
 - (b) is, in suspicious circumstances, in the company of a person who is the target of an authorisation; or
 - (c) is about to enter, is in, or has recently left, a vehicle that is the target of an authorisation; or
 - (d) is about to enter, is in, or has recently left, an area that is the target of an authorisation.
- (2) A police officer may require a person who is required under this section to disclose his or her identity to provide proof of his or her identity.

9—Power to search persons

- (1) A police officer may stop and search a person, and anything in the possession of or under the control of the person, if the officer suspects on reasonable grounds that the person—
 - (a) is the target of an authorisation; or
 - (b) is, in suspicious circumstances, in the company of a person who is the target of an authorisation; or
 - (c) is about to enter, is in, or has recently left, a vehicle that is the target of an authorisation; or
 - (d) is about to enter, is in, or has recently left, an area that is the target of an authorisation.
- (2) Schedule 1 applies to a search conducted under this section.
- (3) Section 81 of the *Summary Offences Act 1953* and regulations made under that section apply to a videotape recording made under Schedule 1 as if the recording had been made under that section.
- (4) A police officer may detain a person for as long as is reasonably necessary to conduct a search under this section.

10—Power to search vehicles

- (1) A police officer may stop and search a vehicle, and anything in the vehicle, if the officer suspects on reasonable grounds that—
 - (a) the vehicle is the target of an authorisation; or
 - (b) a person who is about to enter, is in, or has recently left, the vehicle is the target of an authorisation; or
 - (c) the vehicle is about to enter, is in, or has recently left, an area that is the target of an authorisation.
- (2) A police officer may detain a vehicle for so long as is reasonably necessary to conduct a search under this section.

- (3) A police officer may detain a person who is in a vehicle stopped under this section for as long as is reasonably necessary to conduct a search under this section.

11—Power to search premises

- (1) A police officer may enter and search premises in an area that is the target of an authorisation.
- (2) A police officer may enter and search any premises for a person or vehicle that is the target of an authorisation if the officer suspects on reasonable grounds that the person or vehicle is on the premises.
- (3) A police officer may detain a person who is on premises entered under this section for as long as is reasonably necessary to conduct a search of the premises.

12—Powers in relation to target area

- (1) A police officer may cordon off an area that is the target of an authorisation or any part of it.
- (2) If an area is cordoned off—
- (a) the cordon may include any form of physical barrier, including a roadblock on any road in, or in the vicinity of, the target area; and
 - (b) reasonable steps must be taken to ensure that the existence of the cordon is apparent to persons approaching the cordon; and
 - (c) a police officer must remain near the cordoned off area.
- (3) A police officer may—
- (a) require a person not to enter, to leave, or to remain in, an area that is the target of an authorisation or an area that is cordoned off;
 - (b) require a person in charge of a vehicle not to take the vehicle into, to remove the vehicle from, or not to remove the vehicle from, an area that is the target of an authorisation or an area that is cordoned off.

Division 3—Search powers in special areas

13—Special area declaration

- (1) The Commissioner of Police may issue a special area declaration declaring any of the following to be a special area:
- (a) the site of an airport, train station, bus station, tram station or ship or ferry terminal;
 - (b) the site of a special event;
 - (c) an area that is a public area where persons gather in large numbers,
- if the Commissioner is satisfied that the declaration is required because of the nature of the site or area and the risk of occurrence of a terrorist act.
- (2) A special area declaration—
- (a) must state that it is issued under this Act; and
 - (b) must describe the site or area and define its boundaries; and

- (c) commences to operate on the day and at the time stated in the declaration; and
 - (d) ceases to operate on the day and at the time stated in the declaration or on revocation of the declaration.
- (3) The Commissioner of Police must not issue a special area declaration unless both the Police Minister and a relevant judicial officer have confirmed that the issuing of the declaration is appropriate in the circumstances.
- (4) A special area declaration may be revoked by the Commissioner of Police.
- (5) The Commissioner of Police must revoke a special area declaration if directed to do so by the Police Minister.
- (6) The issuing or revocation of a special area declaration must be notified in the Gazette.
- (7) The cessation of operation of a special area declaration (by revocation or otherwise) does not affect anything lawfully done in reliance on the declaration before it ceased to operate.

14—Power to search baggage etc in special area

- (1) A police officer may, in a special area, stop and search anything in the possession of or under the control of any person.
- (2) A police officer conducting a search under this section may require the person to open any baggage, parcel, container or other thing and to do anything else that is reasonable to facilitate the search.
- (3) A police officer may detain a person for as long as is reasonably necessary to conduct a search under this section.
- (4) A police officer may conduct a search under this section without being in possession of a copy of the special area declaration and without any other warrant.

Division 4—Incidental powers

15—Power to seize and detain things

- (1) A police officer may, in connection with a search under this Act, seize and detain—
 - (a) all or part of a thing (including a vehicle) that the officer suspects on reasonable grounds may provide evidence of the commission of a terrorist act; or
 - (b) all or part of a thing (including a vehicle) that the officer suspects on reasonable grounds may provide evidence of the commission of an indictable offence (whether or not related to a terrorist act) that is punishable by imprisonment for life or for a term of 5 years or more.
- (2) A power conferred by this section to seize and detain a thing includes—
 - (a) a power to remove a thing from the place where it is found; and
 - (b) a power to guard the thing in or on the place where it is found.

16—Power to use reasonable force

It is lawful for a police officer exercising a power under this Act to use such force as is reasonably necessary to exercise the power (including force reasonably necessary to break into premises or a vehicle or anything in or on premises, a vehicle or a person).

Division 5—Constraints on exercise of powers**17—Constraints on exercise of powers**

Powers under this Act must be exercised with care—

- (a) to avoid inflicting unnecessary physical harm, humiliation or embarrassment; and
- (b) to avoid, as far as reasonably practicable, offending genuinely held cultural values or religious beliefs; and
- (c) to avoid causing unnecessary damage to property.

Division 6—Offences relating to exercise of powers**18—Offences relating to exercise of powers**

- (1) A person must not, without reasonable excuse, fail or refuse to comply with a requirement made by a police officer under this Act.
Maximum penalty: \$10 000 or imprisonment for 2 years.
- (2) A person must not, without reasonable excuse, in response to a requirement to disclose his or her identity under this Act—
 - (a) give a name that is false in a material particular; or
 - (b) give an address other than the person's full and correct address.Maximum penalty: \$10 000 or imprisonment for 2 years.
- (3) A person must not, without being authorised by a police officer to do so or without reasonable excuse—
 - (a) enter an area that is cordoned off under this Act; or
 - (b) damage, destroy, interfere with or remove any thing in an area that is cordoned off under this Act; or
 - (c) tamper with or remove the cordon or any part of it.Maximum penalty: \$10 000 or imprisonment for 2 years.
- (4) A person must not, without reasonable excuse, obstruct or hinder a police officer in the exercise of a power under this Act.
Maximum penalty: \$10 000 or imprisonment for 2 years.

Division 7—Procedural and other matters

19—Process for seeking judicial officer confirmation

The Commissioner of Police or other police officer concerned must comply with the process prescribed by the regulations in seeking to obtain from a relevant judicial officer the confirmation required under this Part in respect of the issuing of a special powers authorisation or special area declaration.

20—Recognition of other law enforcement officers

- (1) The Commissioner of Police or an Assistant Commissioner of Police may, by instrument in writing, appoint—
 - (a) a member of the Australian Federal Police; or
 - (b) a member of the police force of another State or a Territory of the Commonwealth,as a recognised law enforcement officer.
- (2) An appointment as a recognised law enforcement officer may be made subject to conditions.
- (3) The instrument of appointment must specify the term of the appointment which may not exceed 14 days.
- (4) The Commissioner of Police or an Assistant Commissioner of Police may revoke an appointment under this section.
- (5) A recognised law enforcement officer has the powers and immunities of a constable appointed under the *Police Act 1998* (including powers and immunities at common law or under any Act).
- (6) A recognised law enforcement officer remains subject to the control and command of the police force of which he or she is a member.

21—Supplying police officer's details and other information

- (1) A police officer must, before or at the time of exercising a power under this Act or as soon as is reasonably practicable after exercising the power—
 - (a) if requested to identify himself or herself by the person the subject of the exercise of the power—
 - (i) produce his or her police identification; or
 - (ii) state orally or in writing his or her surname, rank and identification number; and
 - (b) if the person seeks an explanation of the reason for the exercise of the power—inform the person that the power is exercised under a special powers authorisation or special area declaration (as the case requires) under this Act.
- (2) The Commissioner of Police is to arrange for a written statement to be provided, on written request made within 12 months of the search, to a person who was searched, or whose vehicle or premises were searched, under this Act stating that the search was conducted under this Act.

22—Return of seized things

- (1) If—
 - (a) a police officer has seized a thing in the exercise of a power under this Act; and
 - (b) the police officer is satisfied that—
 - (i) its retention as evidence is not required; and
 - (ii) it is lawful for the person to have possession of it,the police officer must, as soon as reasonably practicable, return it to the owner or person who had lawful possession before it was seized.
- (2) This section is subject to any order made under section 23.

23—Disposal of property on application to court

- (1) A court may, on application by any person, make an order that property seized by a police officer exercising a power under this Act—
 - (a) be delivered to the person who appears to be lawfully entitled to the property; or
 - (b) if that person cannot be ascertained, be dealt with as the court thinks fit.
- (2) In determining an application, the court may do any 1 or more of the following:
 - (a) adjust rights to property as between people who appear to be lawfully entitled to the same property or the same or different parts of property;
 - (b) make a finding or order as to the ownership and delivery of property;
 - (c) make a finding or order as to the liability for and payment of expenses incurred in keeping property in police custody;
 - (d) order, if the person who is lawfully entitled to the property cannot be ascertained, that the property be forfeited to the State;
 - (e) make incidental or ancillary orders.
- (3) Property ordered to be forfeited to the State—
 - (a) in the case of money—is to be paid to the Treasurer for payment into the Consolidated Account; or
 - (b) in any other case—may be sold by or on behalf of the Commissioner of Police at public auction and the proceeds of sale paid to the Treasurer for payment into the Consolidated Account.
- (4) If the property is not money or is not fit or suitable for sale, or fails to sell at public auction, it is to be disposed of in accordance with the directions of the Commissioner of Police.

24—Protection of police acting in execution of authorisation

If proceedings (including criminal proceedings) are brought against a police officer for anything done or purportedly done by the police officer under this Act, the police officer is not to be convicted or held liable merely because—

- (a) there was an irregularity or defect in the issuing of a special powers authorisation or special area declaration; or
- (b) the person who issued a special powers authorisation or special area declaration lacked the power to do so.

25—Other Acts do not limit powers and powers under other Acts not limited

- (1) Nothing in any other Act limits the powers, or prevents a police officer from exercising powers, that the police officer has under this Act.
- (2) Nothing in this Act limits the powers, or prevents a police officer from exercising powers, that the police officer has under any other Act or at common law.

26—Authorisation or declaration not open to challenge

- (1) A special powers authorisation or special area declaration may not be challenged, reviewed, quashed or called into question on any grounds whatsoever before any court, tribunal, body or person in any legal proceedings, or restrained, removed or otherwise affected by proceedings in the nature of prohibition or mandamus.
- (2) However, subsection (1) does not prevent a special powers authorisation or special area declaration being called into question in proceedings under the *Police (Complaints and Disciplinary Proceedings) Act 1985*.

27—Evidentiary provision

In any legal proceedings, an apparently genuine document purporting to be a certificate of the Commissioner of Police and to certify that—

- (a) a special powers authorisation or special area declaration was issued under this Act in the terms specified in the certificate and was in operation between specified days and times; or
- (b) a specified person was, between specified days and times, a member of the Australian Federal Police or a member of the police force of another State or a Territory of the Commonwealth, appointed under this Act as a recognised law enforcement officer,

constitutes proof, in the absence of proof to the contrary, of the matters stated in the document.

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).

Part 3—Miscellaneous

28—Report to be given to Attorney-General and Police Minister

- (1) As soon as practicable after a special powers authorisation ceases to operate, the Commissioner of Police is to provide a report to the Attorney-General and the Police Minister—
- (a) setting out the terms of the authorisation and the period during which it operated; and
 - (b) identifying as far as reasonably practicable the matters that were relied on for issuing the authorisation; and
 - (c) describing generally the powers exercised under the authorisation and the manner in which they were exercised; and
 - (d) stating the result of the exercise of those powers; and

- (e) describing generally any inconvenience to, or adverse impact on, the community, sections of the community, businesses and individuals (other than individuals who were targets of the authorisation) arising out of the exercise of those powers.
- (2) If a special powers authorisation is issued so as to extend the period of operation of a special powers authorisation previously issued in relation to the same terrorist act, this section is to apply as if the series of authorisations were a single authorisation.
- (3) The Attorney-General must, within 14 sitting days or 3 months after receiving a report, whichever is the shorter period, lay a copy of the report before both Houses of Parliament.
- (4) Before the Attorney-General lays a copy of the report before both Houses of Parliament, the report may be edited to exclude material that, in the opinion of the Attorney-General, may be subject to privilege or public interest immunity.

29—Regulations

The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

30—Review of Act

- (1) The Minister must cause the operation of this Act to be reviewed as soon as is practicable after—
 - (a) the second anniversary of the commencement of this Act; and
 - (b) the fifth anniversary of the commencement of this Act; and
 - (c) the twelfth anniversary of the commencement of this Act; and
 - (d) the fourteenth anniversary of the commencement of this Act; and
 - (e) the sixteenth anniversary of the commencement of this Act; and
 - (f) the eighteenth anniversary of the commencement of this Act.
- (1a) The Minister must, within the 4 month period preceding the expiry of this Act, cause the operation of this Act to be finally reviewed.
- (2) The purpose of a review is to produce a report on the extent to which the exercise of powers under this Act has contributed to preventing and investigating terrorism.
- (3) The Minister must, within 12 sitting days after receiving a report, cause a copy of the report to be laid before both Houses of Parliament.

31—Expiry of Act

This Act expires on the twentieth anniversary of its commencement.

Schedule 1—Conduct of personal searches

1—Interpretation

- (1) In this Schedule—

electronic metal detection device means an electronic device that is capable of detecting the presence of metallic objects;

medical practitioner or nurse means a person who is registered under the law of this State as a medical practitioner or nurse;

strip search means an examination of a person's body after the removal of inner clothing or underwear or an article of inner clothing or underwear.

- (2) The ***gender*** of a person searched will be taken to be the gender that the person outwardly appears to the police officer conducting the search to be, but if the person states that he or she is of a particular gender, then the gender of the person will be taken to be that stated.

2—Action that may or may not be taken in conducting search

- (1) In conducting a search of a person or things in the possession of or under the control of a person, a police officer may—
- (a) remove, or require the person to remove, the person's outer clothing (for example, a coat or jacket), footwear, gloves or headwear; and
 - (b) remove, or require the person to hand over, anything in the person's possession or control that can be conveniently handed over or removed (other than an article of inner clothing or underwear worn by the person); and
 - (c) search the person by quickly running the hands over the person's outer or inner clothing or by passing an electronic metal detection device over or in close proximity to the person's outer or inner clothing; and
 - (d) search anything handed over or removed under this clause or found in the course of the search.
- (2) A police officer may conduct a strip search of a person but only if the officer suspects on reasonable grounds that—
- (a) the person is the target of an authorisation; and
 - (b) it is necessary to conduct the strip search; and
 - (c) the seriousness and urgency of the circumstances require the strip search to be conducted.
- (3) A police officer may search inner clothing and underwear removed for the purposes of a strip search.
- (4) A police officer conducting a strip search is not entitled to examine the person's body by touch.
- (5) A police officer conducting a search of a person is not entitled to introduce anything into an orifice (including the mouth) of the person's body.
- (6) A police officer conducting a search of a person, or things in the possession of or under the control of a person, may require the person to do anything reasonable to facilitate the search, including accompanying the officer to a place for the purposes of conducting a strip search.

3—Rules for conduct of searches

- (1) The following rules must be complied with, as far as is reasonably practicable, in the conduct of a search of a person or things in the possession of or under the control of a person:
 - (a) the cooperation of the person must be sought;
 - (b) if the person seeks an explanation of the reasons for the search being conducted in a particular manner, an explanation must be offered;
 - (c) the intrusion on the person's privacy must be no more than is necessary to fulfil the purpose of the search;
 - (d) the search must be conducted as quickly as is reasonably practicable;
 - (e) the search, if a search of the person, must be conducted by a person of the same gender as the person (unless the search is conducted by a medical practitioner or nurse and the person consents to it being conducted by a medical practitioner or nurse not of the same gender);
 - (f) if the search involves the removal of clothing or footwear, the person must be allowed to replace the clothing or footwear as soon as the search is finished;
 - (g) if clothing or footwear is seized because of the search and the person is left without adequate clothing or footwear, the person must be offered adequate replacements;
 - (h) the search must not be conducted while the person is being interviewed or is participating in an investigation, but the interview or investigation may be suspended while the search is conducted.
- (2) The following additional rules must be complied with, as far as is reasonably practicable, in the conduct of a strip search:
 - (a) the search must be conducted in a place that provides reasonable privacy for the person searched;
 - (b) the search must not involve removal of more articles being worn by the person than is reasonably necessary for the purposes of the search;
 - (c) the search must not involve more visual inspection of the person's body than is reasonably necessary for the purposes of the search and, in particular, visual inspection of the breasts of a female, the genital area, anal area and buttocks must be kept to a minimum;
 - (d) the search must not be conducted in the presence or view of—
 - (i) a person who is not of the same gender as the person being searched;
or
 - (ii) a person whose presence is not necessary for the purposes of the search or the safety of all present,except as follows:
 - (iii) a search may be conducted in the presence of a medical practitioner or nurse not of the same gender if the person consents;

- (iv) a search of a person who is under 18 years of age or has a mental or intellectual disability must be conducted in the presence of a parent or guardian of the person or of another person (other than a police officer) who can provide the person with support and represent the person's interests;
- (v) a search of a person other than a person who is under 18 years of age or has a mental or intellectual disability may, if the person so requests, be conducted in the presence of a person (other than a police officer) who can provide the person with support and represent the person's interests;
- (e) the search must be recorded on videotape unless it is not reasonably practicable to do so due to mechanical failure of recording equipment or the lack of availability of recording equipment within the period for which it would be lawful to detain the person.

4—Regulations

A search must be conducted in accordance with any other requirements imposed by regulation.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Expiry of Act

The *Terrorism (Police Powers) Act 2005* will expire on 8.12.2025: see s 31.

Legislation amended by principal Act

The *Terrorism (Police Powers) Act 2005* amended the following:

Emergency Management Act 2004

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2005	70	<i>Terrorism (Police Powers) Act 2005</i>	8.12.2005	8.12.2005
2015	33	<i>Statutes Amendment (Terrorism) Act 2015</i>	5.11.2015	Pt 2 (ss 3 & 4)—5.11.2015
2018	22	<i>Terrorism (Police Powers) (Use of Force) Amendment Act 2018</i>	1.11.2018	1.11.2018

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	5.11.2015
s 2		
s 2(1)		
Deputy Commissioner of Police	inserted by 22/2018 s 3(1)	1.11.2018
terrorist act declaration	inserted by 22/2018 s 3(2)	1.11.2018

Pt 2A	inserted by 22/2018 s 4	1.11.2018
Pt 3		
s 30		
s 30(1)	amended by 33/2015 s 3(1)	5.11.2015
s 30(1a)	inserted by 33/2015 s 3(2)	5.11.2015
s 31	amended by 33/2015 s 4	5.11.2015
<i>Sch 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>5.11.2015</i>

Historical versions

5.11.2015