

NORTHERN TERRITORY OF AUSTRALIA

TERRORISM (EMERGENCY POWERS) ACT

As in force at 20 April 2005

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 20 April 2005

TERRORISM (EMERGENCY POWERS) ACT

An Act to give special powers to police officers and others to deal with terrorist acts and imminent terrorist acts, to protect public health, public safety and property in the event of a terrorist act or imminent terrorist act, and for related purposes

Part 1 Preliminary

1 Short title

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

2 Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3 Act binds the Crown

This Act binds the Crown in right of the Territory and, to the extent that the legislative powers of the Legislative Assembly permit, the Crown in all its other capacities.

4 Interpretation

(1) In this Act, unless the contrary intention appears:

Chief Health Officer means the Chief Health Officer appointed under the *Public Health Act*.

Commissioner means the Commissioner of Police.

contaminant means a radioactive substance, biological organism, gas or poison or any other substance that is a risk to public health or public safety.

decontamination procedure does not include the internal examination of a person.

person assisting a police officer means a person acting in accordance with a request under section 34.

Police Minister means the Minister with primary responsibility for the administration of the *Police Administration Act*.

police officer means a member of the Police Force.

premises includes:

- (a) residential premises;
- (b) a building or structure; and
- (c) a place, whether built on or not.

target has the meaning in section 7(2).

terrorist act has the meaning in section 5.

vehicle includes a vessel and an aircraft.

(2) In this Act:

- (a) a reference to public health or public safety includes a reference to the public health or public safety of a State, of another Territory or of a country other than Australia;
- (b) a reference to public health includes a reference to the health of a section of the public; and
- (c) a reference to public safety includes a reference to the safety of a section of the public.

(3) For the purposes of this Act:

- (a) a reference to a person in an area that is the target of an authorisation includes a reference to a person who is about to enter the area or who has recently left the area;
- (b) a reference to a vehicle in an area that is the target of an authorisation includes a reference to a vehicle that is about to enter the area or that has recently left the area; and
- (c) a reference to a person in or on a vehicle includes a reference to a person who is in or on a thing attached to the vehicle or who has recently left the vehicle or thing.

5 Terrorist act

(1) In this Act, **terrorist act** means an action that:

- (a) falls within subsection (2) and does not fall within subsection (3);

- (b) is done with the intention of advancing a political, religious or ideological cause; and
 - (c) is done with the intention of:
 - (i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or
 - (ii) intimidating the public or a section of the public.
- (2) Action falls within this subsection if it:
- (a) causes serious harm that is physical harm to a person;
 - (b) causes serious damage to property;
 - (c) causes a person's death;
 - (d) endangers a person's life, other than the life of the person taking the action;
 - (e) creates a serious risk to public health or public safety; or
 - (f) seriously interferes with, seriously disrupts, or destroys, an electronic system, including but not limited to:
 - (i) an information system;
 - (ii) a telecommunications system;
 - (iii) a financial system;
 - (iv) a system used for the delivery of essential government services;
 - (v) a system used for, or by, an essential public utility; or
 - (vi) a system used for, or by, a transport system.
- (3) Action falls within this subsection if it:
- (a) is advocacy, protest, dissent or industrial action; and
 - (b) it is not intended:
 - (i) to cause serious harm that is physical harm to a person;
 - (ii) to cause a person's death;

- (iii) to endanger a person's life, other than the life of the person taking the action; or
 - (iv) to create a serious risk to public health or public safety.
- (4) In this section, a reference to a person or property is a reference to a person or property wherever situated, within or outside the Territory (including within or outside Australia).

Part 2 Powers exercisable under authorisations

Division 1 Giving of authorisations

6 When authorisation may be given

An authorisation may be given by a person under section 8 if the person is satisfied that there are reasonable grounds for believing that:

- (a) a terrorist act has occurred or is imminent; and
- (b) the exercise of the powers given by the authorisation will substantially assist in:
 - (i) preventing the imminent terrorist act or minimising the risk to public health or public safety relating to the terrorist act or the imminent terrorist act;
 - (ii) finding, preserving or removing evidence relating to the terrorist act or the imminent terrorist act; or
 - (iii) apprehending a person responsible for committing the terrorist act or intending to commit the imminent terrorist act.

7 Purposes for which authorisation may be given

- (1) An authorisation may authorise the exercise of powers given under Division 2 for one of the following purposes or any combination of them:
- (a) for the purpose of finding a person named or described (including by a photograph or drawing or other visual depiction) in the authorisation;
 - (b) for the purpose of finding a particular vehicle, or a vehicle of a particular kind, described in the authorisation;

- (c) for the purpose of preventing an imminent terrorist act in a particular area described in the authorisation or apprehending in the area a person who may be responsible for committing a terrorist act or be intending to commit an imminent terrorist act;
 - (d) for the purpose of minimising, in the particular area described in the authorisation, the risk to public health or public safety relating to a terrorist act or an imminent terrorist act;
 - (e) for the purpose of finding, preserving or removing evidence relating to a terrorist act or an imminent terrorist act.
- (2) The person, vehicle or area referred to in subsection (1) is referred to in this Act as the target of the authorisation.

8 Who may give authorisation

- (1) The Commissioner, or a police officer who is authorised in writing by the Commissioner, may give an authorisation.
- (2) If an authorisation is sought as a matter of urgency and the Commissioner or a police officer authorised under subsection (1) is not able to be contacted, a police officer of the rank of Assistant Commissioner may give an authorisation.
- (3) Subject to subsection (4), an authorisation may only be given with the agreement of the Police Minister.
- (4) An authorisation may be given without the agreement of the Police Minister if the authorisation is sought as a matter of urgency and the Police Minister could not be contacted at the time the authorisation was given.
- (5) If an authorisation is given in accordance with subsection (4):
 - (a) the person who gave the authorisation must ensure that the Police Minister is notified as soon as possible; and
 - (b) the authorisation ceases to have effect if the Police Minister has not confirmed the authorisation within 48 hours after the authorisation was given.

9 Form of authorisation

- (1) An authorisation may be given orally or in writing.
- (2) If an authorisation is given orally, it is to be confirmed in writing as soon as it is reasonably practicable to do so.

- (3) An authorisation is to:
- (a) specify that it is given under this Act;
 - (b) describe the general nature of the terrorist act, or imminent terrorist act, to which it applies;
 - (c) name or describe the person, vehicle, or area, who or that is the target of the authorisation and the purpose or purposes for which the authorisation is given; and
 - (d) specify the time at which the authorisation is given and the time at which it is to cease to have effect.

10 Duration of authorisation

- (1) Subject to this Act, an authorisation has effect for the period, specified in the authorisation, beginning at the time the authorisation is given and ending at the time that is specified in the authorisation as the time at which the authorisation is to cease to have effect.
- (2) Subject to subsections (3) and (5), a period specified under subsection (1) in an authorisation may not be longer than 7 days, beginning on the day on which the authorisation is given.
- (3) The Commissioner, or a police officer authorised under section 8(1), may extend the period for which an authorisation has effect by giving, with the agreement of the Police Minister, one further authorisation.
- (4) An authorisation in accordance with subsection (3) may be given for a period of not more than 7 days specified in the authorisation.
- (5) The Police Minister may extend the period for which an authorisation (which may be a further authorisation in accordance with subsection (3)) has effect.
- (6) An extension under subsection (5) has effect for the period of not more than 14 days, beginning at the time the extension is given and ending at the time that is specified in the extension as the time at which the extension is to cease to have effect.

11 Revocation of authorisation

- (1) A police officer who gave an authorisation may revoke the authorisation.
- (2) The Commissioner may revoke an authorisation, other than an authorisation extended under section 10(5).

- (3) The Police Minister may revoke an authorisation.

12 Legality of authorisation

- (1) The cessation of an authorisation (by revocation or otherwise) does not affect anything lawfully done in reliance on the authorisation before it ceased to have effect.
- (2) An authorisation and a decision of the Police Minister under this Part in relation to an authorisation may not be:
- (a) challenged, reviewed, quashed or called into question on any grounds whatsoever before a court, tribunal, body or person in legal proceedings; or
 - (b) restrained, removed or otherwise affected by an injunction or proceedings in the nature of prohibition or mandamus.
- (3) The powers conferred on a police officer by virtue of an authorisation may be exercised by any police officer, whether or not he or she has been provided with, or notified of, the terms of the authorisation.

13 Report to be given to Attorney-General and Police Minister

As soon as practicable after an authorisation ceases to have effect, the Commissioner must provide a report in writing to the Attorney-General and the Police Minister:

- (a) setting out the terms of the authorisation and the period in which it had effect;
- (b) identifying as far as reasonably practicable the matters that were relied on for giving the authorisation;
- (c) describing generally the powers exercised under the authorisation and the manner in which they were exercised; and
- (d) specifying the results of the exercise of the powers.

14 Report to be tabled in Legislative Assembly

The Police Minister must, within 6 months after receiving the Commissioner's report on an authorisation, lay a copy of the report in the Legislative Assembly.

Division 2 Powers given by authorisation

15 Purposes for which powers under authorisation may be exercised

The powers under this Part may be exercised for the purposes for which an authorisation is given.

16 Power to make person disclose identity and address

(1) A police officer may request a person to disclose the person's identity and residential address if:

- (a) the police officer suspects on reasonable grounds that the person is the target of an authorisation;
- (b) the person is found in suspicious circumstances in the company of a person who the police officer suspects on reasonable grounds is the target of an authorisation;
- (c) the person is in or on a vehicle that the officer suspects on reasonable grounds is the target of an authorisation; or
- (d) the person is in an area that is the target of an authorisation.

(2) A person to whom a request is made under subsection (1) must not, without reasonable excuse, fail or refuse to comply with the request.

Penalty: 100 penalty units or imprisonment for 6 months.

(3) A person to whom a request is made under subsection (1) must not, without reasonable excuse, give in response to the request:

- (a) a name that is false in a material particular; or
- (b) an address other than the person's full and correct address.

Penalty: 100 penalty units or imprisonment for 6 months.

(4) A police officer may request a person to whom a request is made under subsection (1) to provide to the officer proof of the person's identity.

(5) A person to whom a request is made under subsection (4) must not, without reasonable excuse, fail or refuse to comply with the request.

Penalty: 100 penalty units or imprisonment for 6 months.

17 Power to search persons

- (1) A police officer may, without a warrant, stop and search a person and anything in the possession of or under the control of the person if:
 - (a) the police officer suspects on reasonable grounds that the person is the target of an authorisation;
 - (b) the person is found in suspicious circumstances in the company of a person who the police officer suspects on reasonable grounds is the target of an authorisation;
 - (c) the person is in or on a vehicle that the police officer suspects on reasonable grounds is the target of an authorisation; or
 - (d) the person is in an area that is the target of an authorisation.
- (2) A police officer may detain a person stopped under subsection (1) for as long as is reasonably necessary to conduct a search of the person or anything in the possession of or under the control of the person.

18 Power to search vehicles

- (1) A police officer may, without a warrant, stop and search a vehicle and anything in, on or attached to the vehicle, if:
 - (a) the police officer suspects on reasonable grounds that the vehicle is the target of an authorisation;
 - (b) the police officer suspects on reasonable grounds that a person in or on the vehicle is the target of an authorisation; or
 - (c) the vehicle is in an area that is the target of an authorisation.
- (2) A police officer may detain a vehicle stopped under subsection (1) for as long as is reasonably necessary to conduct a search of the vehicle and anything in, on or attached to the vehicle.
- (3) A police officer may detain a person who is in or on a vehicle stopped under subsection (1) for as long as is reasonably necessary to conduct a search of the vehicle.

19 Power to enter and search premises

- (1) A police officer may, without a warrant, enter and search premises if:
 - (a) the police officer suspects on reasonable grounds that a person who is the target of an authorisation may be on the premises;
 - (b) the police officer suspects on reasonable grounds that a vehicle that is the target of an authorisation may be on the premises; or
 - (c) the premises are in an area that is the target of an authorisation.
- (2) A police officer may detain a person who is on premises entered under subsection (1) for as long as is reasonably necessary to conduct a search of the premises.

20 Power to enter premises for surveillance or to protect persons

- (1) A police officer may, without a warrant, enter, search and remain on premises that are in an area that is the target of an authorisation if he or she suspects on reasonable grounds that it is necessary to do so for one of the following purposes or both:
 - (a) to enable the surveillance or observation of a person who the officer suspects on reasonable grounds may have committed a terrorist act or may be intending to commit an imminent terrorist act;
 - (b) to ensure the health or safety of a person by ensuring that a person on the premises leaves or remains at the premises.
- (2) A police officer may direct a person who is on premises that are entered under subsection (1) to remain on the premises, or to leave the premises, for as long as is reasonably necessary to do so for a purpose specified in subsection (1).

Part 3 Powers relating to public health and safety

Division 1 Movement of persons and vehicles

21 Vehicles may be required to be moved or prevented from entering area

- (1) A police officer may direct the driver of a vehicle to stop the vehicle and to take the vehicle out of an area or not to take the vehicle into an area, if the police officer suspects on reasonable grounds that:
 - (a) a terrorist act has occurred or is imminent; and
 - (b) it is necessary or desirable in the interests of public health or public safety that the vehicle leave the area or not enter the area.
- (2) A police officer may arrange for a vehicle to be taken out of an area if the police officer suspects on reasonable grounds that:
 - (a) a terrorist act has occurred or is imminent; and
 - (b) it is necessary or desirable in the interests of public health or public safety that the vehicle leave the area.
- (3) A police officer who arranges for a vehicle to be taken out of an area must, as soon as reasonably practicable, take all reasonable measures to inform the driver or the owner of the vehicle of the place to which the vehicle has been taken.

22 Area may be cordoned off

- (1) A police officer may cordon off an area if he or she suspects on reasonable grounds that:
 - (a) a terrorist act has occurred or is imminent; and
 - (b) it is necessary or desirable in the interests of public health or public safety that persons not leave the area or not enter the area.
- (2) An area is cordoned off under subsection (1) if a tape, or other barrier, that is marked "POLICE – NO ENTRY" or "POLICE – NO EXIT" or that otherwise clearly indicates that a person is not permitted to enter or to exit the area, extends across all usual entry points to, or exit points from, the area.

- (3) A person must not, without reasonable excuse:
- (a) enter an area that is cordoned off under subsection (1) by a tape, or other barrier, that is marked "POLICE – NO ENTRY" or that otherwise clearly indicates that a person is not permitted to enter the area; or
 - (b) leave an area that is cordoned off under subsection (1) by a tape, or other barrier, that is marked "POLICE – NO EXIT" or that otherwise clearly indicates that a person is not permitted to exit the area.

Penalty: 200 penalty units or imprisonment for 12 months.

- (4) A person must not, without reasonable excuse, tamper with or remove a tape or other barrier used to cordon off an area under subsection (1).

Penalty: 200 penalty units or imprisonment for 12 months.

23 Person may be directed to leave, remain in or not enter area

- (1) A police officer may direct a person to leave an area, or not to enter an area, if the police officer suspects on reasonable grounds that:
- (a) a terrorist act has occurred or is imminent; and
 - (b) it is necessary or desirable in the interests of public health or public safety that the person leave the area or not enter the area.
- (2) A police officer may direct a person to remain in an area if the police officer suspects on reasonable grounds that:
- (a) a terrorist act has occurred or is imminent; and
 - (b) it is necessary or desirable in the interests of public health or public safety that the person remain in the area.

Division 2 Quarantine

24 Police officer may direct person to submit to decontamination and quarantine for up to 48 hours

A police officer may, without a warrant, direct a person:

- (a) to remain at a place for a period of not more than 48 hours and submit to a decontamination procedure at the place;

- (b) to remain at a place for a period of not more than 48 hours so as to prevent the spread of a contaminant;
- (c) to go to a place, remain at the place for a period of not more than 48 hours and submit to a decontamination procedure at the place; or
- (d) to go to a place and remain at the place for a period of not more than 48 hours so as to prevent the spread of a contaminant,

if the police officer suspects on reasonable grounds that:

- (e) a terrorist act has occurred; and
- (f) the exercise of the power is necessary or desirable in the interests of public health or public safety, because the person may have come into contact with a contaminant used in, or released as a consequence of, the terrorist act.

25 Chief Health Officer may direct person to submit to decontamination and quarantine for more than 48 hours

The Chief Health Officer may, without a warrant, direct a person:

- (a) to remain at a place for a period and submit to a decontamination procedure at the place;
- (b) to remain at a place for a period so as to prevent the spread of a contaminant;
- (c) to go to a place, remain at the place for a period and submit to a decontamination procedure at the place; or
- (d) to go to a place and remain at the place for a period so as to prevent the spread of a contaminant,

if the Chief Health Officer suspects on reasonable grounds that:

- (e) a terrorist act has occurred; and
- (f) the exercise of the power is necessary or desirable in the interests of public health or public safety, because the person may have come into contact with a contaminant used in, or released as a consequence of, the terrorist act.

Division 3 Contaminated or unsafe property

26 Premises may be made safe

- (1) A police officer may, without a warrant, enter and search premises to determine whether reasonable measures may be required to be taken to make the premises safe, if the police officer suspects on reasonable grounds that:
 - (a) a terrorist act has occurred, or is imminent, on the premises or in the vicinity of the premises;
 - (b) the terrorist act or imminent terrorist act has made, or may make, the premises unsafe; and
 - (c) it is necessary or desirable in the interests of public health or public safety to determine whether reasonable measures are required to be taken to make the premises safe.
- (2) A police officer may, after entering premises under this Act, take reasonable measures to make the premises safe, or arrange for such measures to be taken, if the police officer suspects on reasonable grounds that:
 - (a) a terrorist act has occurred, or is imminent, on the premises or in the vicinity of the premises;
 - (b) the terrorist act has made, or may make, the premises unsafe; and
 - (c) it is necessary or desirable in the interests of public health or public safety to take reasonable measures to make the premises safe or to arrange for such measures to be taken.
- (3) The Commissioner may authorise the making of arrangements for the decontamination of premises if he or she suspects on reasonable grounds that the premises have become contaminated as a consequence of a terrorist act or preparation for a terrorist act or imminent terrorist act.
- (4) In this section:

reasonable measures include but are not limited to the shutting down of gas, water or electricity services to premises.

27 Decontamination etc. of things

- (1) A police officer may detain and make arrangements for the disposal, destruction or decontamination of a thing seized in connection with a search under this Act, if he or she suspects on reasonable grounds that the thing:
 - (a) is a risk to public health or public safety, including because it has become contaminated as a consequence of a terrorist act or preparation for a terrorist act or an imminent terrorist act; or
 - (b) may significantly increase the risk to public health or public safety as a consequence of a terrorist act that has occurred or may significantly increase the risk to public health or public safety if an imminent terrorist act occurs.
- (2) A power given by this section to 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.

Part 4 Other powers

Division 1 Enforcement

28 Use of force

- (1) Subject to this section, it is lawful for a police officer exercising a power under this Act in relation to a person, premises, vehicle or thing, and for a person assisting a police officer in the exercise of such a power, to use the force that is reasonably necessary to exercise the power.
- (2) It is lawful for a police officer, and a person assisting a police officer, to use the force that is reasonably necessary to ensure that a person ceases to contravene or to fail to comply with a direction given under this Act.
- (3) It is lawful for a police officer, and a person assisting a police officer, to use the force that is reasonably necessary to ensure that:
 - (a) a person leaves an area or place that the person is required to leave or not to enter under section 22 or 30; or
 - (b) a person ceases to tamper with, or to remove, a tape or other barrier in contravention of section 22 or 30.

- (4) In exercising a power under this Act a police officer, and a person assisting the officer in the exercise of the power, may only cause damage to a thing or premises if it is reasonably necessary to do so to enable the effective exercise of the power.

29 Power to seize and detain things etc.

- (1) A police officer may seize and detain all or part of a thing, found in connection with a search under this Act, that the police officer suspects on reasonable grounds:
- (a) may have been used, or is or was reasonably likely to be, or to have been intended to be, used to commit a terrorist act;
 - (b) may provide evidence of the commission of an indictable offence (whether or not related to a terrorist act); or
 - (c) may significantly increase the risk to public health or public safety as a consequence of a terrorist act or may significantly increase the risk to public health or public safety if an imminent terrorist act occurs.
- (2) A power given by this section to seize and detain a thing includes:
- (a) a power to remove the thing from the place where it is found; and
 - (b) a power to guard the thing at the place where it is found.

30 Securing of crime scene

- (1) A police officer may direct a person to leave a place, or not to enter a place, if the police officer suspects on reasonable grounds that the place may contain evidence of a terrorist act or an imminent terrorist act.
- (2) A police officer may direct a person not to interfere with or remove a thing from a place, if the police officer suspects on reasonable grounds that the thing may provide evidence of a terrorist act or an imminent terrorist act.
- (3) A police officer may cordon off a place that the officer suspects on reasonable grounds may contain evidence of a terrorist act or an imminent terrorist act.
- (4) A place is cordoned off under subsection (3) if a tape, or other barrier, that is marked "CRIME SCENE – NO ENTRY" or that otherwise clearly indicates that a person is not permitted to enter the place, extends around the place or across all usual entry points to, or exit points from, the place.

- (5) A person must not, without reasonable excuse, enter a place that is cordoned off under subsection (3).

Penalty: 200 penalty units or imprisonment for 12 months.

- (6) A person must not, without reasonable excuse, tamper with or remove a tape or other barrier used to cordon off a place under subsection (3).

Penalty: 200 penalty units or imprisonment for 12 months.

31 Compulsory reporting of thefts and unusual sales of potential terrorism hazards

- (1) The Commissioner, or a person authorised in writing by the Commissioner, may, by notice in writing to a supplier of a potential terrorism hazard specified in the notice, require him or her to tell a police officer about:

(a) a theft of the potential terrorism hazard from the supplier, whether the theft occurred before or after the notice is given; or

(b) a sale, attempt to purchase, or inquiry about, the potential terrorism hazard, whether the sale, attempt or inquiry occurred before or after the notice is given.

- (2) The Commissioner may, by notice published in a newspaper circulating within the Territory, require a supplier of a potential terrorism hazard specified in the notice to tell a police officer about:

(a) a theft of the potential terrorism hazard from the supplier, whether the theft occurred before or after the notice is published; or

(b) a sale, attempt to purchase, or inquiry about, the potential terrorism hazard, whether the sale, attempt or inquiry occurred before or after the notice is published.

- (3) A person must not, without reasonable excuse, contravene or fail to comply with a requirement of a notice given to him or her or published under subsection (1) or (2).

Penalty: 200 penalty units or imprisonment for 12 months.

- (4) In this section:

potential terrorism hazard means a substance or thing that may be used in the commission of a terrorist act.

Division 2 Assistance with enforcement

32 Recognition of other law enforcement officers

- (1) The Commissioner may, in writing, appoint any of the following:
 - (a) members of the Australian Federal Police;
 - (b) members of the police force of a State or another Territory,to be recognised law enforcement officers for the purpose of this Act.
- (2) An appointment under subsection (1) may be made subject to conditions.
- (3) Subject to this Act, an appointment has effect for the period, specified in the appointment, beginning at the time the appointment is made and ending at the time that is specified in the appointment as the time at which the appointment is to cease to have effect.
- (4) Subject to subsection (5), a period specified under subsection (3) in an appointment may not be longer than 14 days, beginning on the day on which the appointment is made.
- (5) The Police Minister may, in writing, extend the period of an appointment under subsection (1) for an additional period of not more than 14 days.
- (6) An appointment under subsection (1) may be extended under subsection (5) as often as the Police Minister thinks fit.
- (7) The Commissioner or the Police Minister may, at any time, in writing, revoke an appointment under subsection (1).
- (8) A person remains, for the period of his or her appointment under subsection (1) as a recognised law enforcement officer, under the command and control of the police force of which he or she is a member.

33 Recognised law enforcement officers to have police powers

Subject to any limitations imposed by the conditions of his or her appointment under section 32, a recognised law enforcement officer has and may exercise all the powers and functions, immunities, liabilities and responsibilities that a police officer of the rank of constable under the *Police Administration Act* has and may exercise:

- (a) under this Act; and

- (b) in any matter arising under this Act – under any law of the Territory (including the common law),

including functions conferred after the commencement of this section.

34 Police officer may require assistance from members of public

A police officer may require a person to assist him or her:

- (a) in the exercise of a power or the performance of a function of the police officer under this Act; or
- (b) in the exercise of a power of a police officer to arrest or detain under an Act (including an Act of the Commonwealth) a person who the police officer suspects on reasonable grounds has committed, is committing or is intending to commit:
 - (i) a terrorist act within the meaning of this Act; or
 - (ii) a terrorist act, or an act of terrorism, within the meaning of that other Act.

35 Protection of persons acting under this Act

- (1) This section applies to a person who is or has been:
 - (a) the Chief Health Officer;
 - (b) a police officer; or
 - (c) a person assisting a police officer.
- (2) No civil or criminal proceedings lie against a person to whom this section applies in relation to an act done, or an omission made, in good faith in the exercise or purported exercise of a power or the performance or purported performance of a function under this Act or the Regulations.
- (3) Subsection (2) does not affect any liability that the Territory would, but for that subsection, have for an act or omission.
- (3A) Subsections (2) and (3) have effect subject to Part VIIA of the *Police Administration Act* to the extent it relates to the civil liability of a police officer.
- (4) The Territory is liable for the actions of a person assisting a police officer, in relation to anything done, or omitted to be done, in good faith by the person.

- (5) The Territory is not to be held liable merely because:
- (a) there was an irregularity or defect in the giving of an authorisation; or
 - (b) the person who gave an authorisation did not have jurisdiction to do so.

Division 3 Offences

36 Offence of failing to comply with direction

A person to whom a direction is given under this Act must not, without reasonable excuse, contravene or fail to comply with the direction.

Penalty: 200 penalty units or imprisonment for 12 months.

37 Offence of obstructing or hindering exercise of powers

A person must not, without reasonable excuse, obstruct or hinder a police officer, or a person assisting a police officer, in the exercise of a power under this Act.

Penalty: 200 penalty units or imprisonment for 12 months.

38 Offence of resisting or inciting resistance to exercise of powers

A person must not:

- (a) resist a police officer in the execution of the officer's duty under this Act or resist a person assisting a police officer in the execution of the officer's duty under this Act; or
- (b) aid, or incite, another person to resist a police officer in the execution of the officer's duty under this Act or to resist a person assisting a police officer in the execution of the officer's duty under this Act.

Penalty: 200 penalty units or imprisonment for 12 months.

Part 5 Duties under this Act

39 Police officer to give details to certain persons

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, give the person subject to the exercise of the

power the reason for the exercise of the power and, if requested by the person, the following:

- (a) evidence that the police officer is a police officer (unless the police officer is in uniform);
- (b) the police officer's name and place of duty.

40 Conditions of search of persons

The Schedule applies to the search of a person carried out, or authorised to be carried out, by a police officer under this Act.

41 Return of seized things

- (1) A police officer who seizes a thing under this Act must return it to its owner, or to the person who had lawful possession of the thing when it was seized, if the officer is satisfied that:
 - (a) the thing does not need to be retained as evidence;
 - (b) it is lawful for the person to have possession of the thing;
 - (c) the thing does not pose a risk to public health or public safety; and
 - (d) the thing has not been destroyed under this Act.
- (2) A court may, on the application of a person, order that a thing that has been seized under this Act and that has not been destroyed:
 - (a) be delivered to the person who appears to be lawfully entitled to the thing; or
 - (b) if the person who is lawfully entitled to the thing cannot be determined – be dealt with as the court thinks fit.

42 Acquisition

If, but for this section, property is acquired under this Act otherwise than on just terms:

- (a) the person from whom the property is acquired is entitled to receive just compensation for the acquisition; and
- (b) a court of competent jurisdiction may determine the amount of the compensation or make the orders necessary to ensure that the compensation is on just terms.

Part 6 Miscellaneous**43 Relationship with other Acts**

- (1) Other Acts do not limit any powers, or prevent a police officer from exercising any powers, that the police officer has under this Act.
- (2) This Act does not limit any powers, or prevent a police officer from exercising any powers, that the police officer has under another Act.

44 Onus of proof

The onus of proof of reasonable excuse in proceedings for an offence against this Act or the Regulations lies on the person accused of the offence.

45 Authorisation may constitute reasonable grounds for suspicion

- (1) For the purposes of this Act, it is grounds for a police officer to have a reasonable suspicion that:
 - (a) a terrorist act has occurred if, at the time the suspicion is held, there is in force an authorisation given on the grounds that a terrorist act has occurred; and
 - (b) a terrorist act is imminent if, at the time the suspicion is held, there is in force an authorisation given on the grounds that a terrorist act is imminent.
- (2) Subsection (1) does not limit the grounds on which a reasonable suspicion may be held for the purposes of this Act.

46 Regulations

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The Regulations may create offences punishable by a penalty of not more than 100 penalty units.

47 Review of Act

- (1) The Police Minister must, within 12 months after the date of assent to this Act, review this Act to determine:
 - (a) whether its policy objectives remain valid; and
 - (b) whether its terms remain appropriate for securing those objectives.
- (2) The Police Minister must, within 12 months after the review is finalised, lay a copy of the report on the outcome of the review in the Legislative Assembly.

Schedule

section 40

1. Definitions

In this Schedule:

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

frisk search means:

- (a) a search of a person conducted by quickly running the hands over the person's outer clothing or by passing an electronic metal detection device over or in close proximity to the person's outer clothing; and
- (b) an examination of a thing worn or carried by the person that is conveniently and voluntarily removed by the person, including an examination conducted by passing an electronic metal detection device over or in close proximity to the thing.

ordinary search means a search of a person, or of things in the possession of a person, that may include:

- (a) requiring the person to remove only his or her overcoat, coat or jacket or similar article of clothing and any gloves, shoes and hat; and
- (b) an examination of those things.

strip search means a search of a person, or of things in the possession of a person, that may include:

- (a) requiring the person to remove all of his or her clothes; and
- (b) an examination of the person's body (but not of the person's body cavities) and of those clothes.

2. Frisk searches and ordinary searches

- (1) A police officer who is authorised to search a person may carry out a frisk search or an ordinary search of the person for any purpose for which the search may be conducted.

- (2) In conducting a frisk search, a police officer may, if the police officer has asked the person to remove a coat or jacket, treat the person's outer clothing as being the person's outer clothing after the coat or jacket has been removed.

3. Strip searches

A police officer who is authorised to search a person may conduct a strip search of the person:

- (a) if the person is suspected of being the target of an authorisation; and
- (b) if the police officer suspects on reasonable grounds that it is necessary to conduct a strip search of the person for the purposes of the search and that the seriousness and urgency of the circumstances require the strip search to be carried out.

4. Preservation of privacy and dignity during search

- (1) A police officer who searches a person must, as far as is reasonably practicable in the circumstances, comply with this clause.
- (2) The police officer must inform the person to be searched whether the person will be required to remove clothing during the search and why it is necessary to remove the clothing.
- (3) The police officer must ask for the person's co-operation.
- (4) The police officer must conduct the search:
 - (a) in a way that provides reasonable privacy for the person searched; and
 - (b) as quickly as is reasonably practicable.
- (5) The police officer must conduct the least invasive kind of search practicable in the circumstances.
- (6) The police officer must not search:
 - (a) the genital area of the person searched; or
 - (b) the breasts of a female or of a transgender person who identifies as a female,

unless the police officer suspects on reasonable grounds that it is necessary to do so for the purposes of the search.

- (7) Only a police officer of the same sex as the person to be searched or a person of the same sex under the direction of the police officer may conduct a search of the person.
- (8) A search of a person is not to be carried out while the person is being questioned.
- (9) If questioning has not been completed before a search is carried out, questioning is to be suspended while the search is carried out.
- (10) A person is to be allowed to dress as soon as a search is finished.
- (11) If clothing is seized because of the search, the police officer must ensure the person searched is left with or given reasonably appropriate clothing.
- (12) In this clause:

questioning of a person includes carrying out an investigation in which the person participates.

transgender person means a person:

- (a) who identifies as a member of the opposite sex, by living, or seeking to live, as a member of the opposite sex;
- (b) who has identified as a member of the opposite sex by living as a member of the opposite sex; or
- (c) who, being of indeterminate sex, identifies as a member of a particular sex by living as a member of that sex,

whether or not the person is a recognised transgender person, and includes a reference to a person who is thought of as a transgender person, whether or not the person is, or was, in fact a transgender person.

5. Rules for conduct of strip searches

- (1) A police officer who strip searches a person must, as far as is reasonably practicable in the circumstances:
 - (a) conduct the strip search in a private area;
 - (b) ensure that the strip search is not conducted in the presence or view of a person who is of the opposite sex to the person being searched; and

- (c) except as provided by this clause – ensure that the strip search is not conducted in the presence or view of a person whose presence is not necessary for the purposes of the search.
- (2) A parent, guardian or personal representative of the person being searched may, if it is reasonably practicable in the circumstances, be present during a search if the person being searched has no objection to that person being present.
- (3) A strip search of a child who is at least 10 years of age but under 18 years of age, or of a person who has impaired intellectual functioning, is, unless it is not reasonably practicable in the circumstances, to be conducted in the presence of:
 - (a) a parent or guardian of the person being searched; or
 - (b) if it is not acceptable to the child or person to comply with paragraph (a) – in the presence of another person (other than a police officer) who is capable of representing the interests of the child or person and who is, or appears to be, acceptable to the child or person.
- (4) A strip search is not to involve a search of a person's body cavities or an examination of the body by touch.
- (5) A strip search is not to involve the removal of more clothes than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.
- (6) A strip search is not to involve more visual inspection than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.
- (7) A strip search may be conducted in the presence of a medical practitioner of the opposite sex to the person searched if the person being searched has no objection to that person being present.
- (8) This clause is in addition to the other requirements of this Act relating to searches.
- (9) In this clause:

impaired intellectual functioning means:

- (a) total or partial loss of a person's mental functions;
- (b) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction;
or

- (c) a disorder, illness or disease that:
 - (i) affects a person's thought processes, perceptions of reality, emotions or judgment; or
 - (ii) results in disturbed behaviour.

6. No strip searches of children under 10 years of age

A strip search is not to be conducted on a person who is under the age of 10 years.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

Terrorism (Emergency Powers) Act 2003 (Act No. 22, 2003)

Assent date 29 May 2003
Commenced 2 July 2003 (*Gaz* G26, 2 July 2003, p 2)

Police Administration Amendment (Powers and Liability) Act 2005 (Act No. 11, 2005)

Assent date 17 March 2005
Commenced 20 April 2005 (*Gaz* G16, 20 April 2005, p 5)

3 LIST OF AMENDMENTS

s 35 amd No. 11, 2005, s 26