

## TASMANIA

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# **TERRORISM LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2015**

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# **TERRORISM LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2015**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*  
17 September 2015

*(Brought in by the Minister for Police and Emergency Management, the Honourable Marinus Theodoor Hidding)*

## **A BILL FOR**

**An Act to amend the *Terrorism (Preventative Detention) Act 2005* and the *Police Powers (Public Safety) Act 2005***

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

## **PART 1 – PRELIMINARY**

### **1. Short title**

This Act may be cited as the *Terrorism Legislation (Miscellaneous Amendments) Act 2015*.

### **2. Commencement**

This Act commences on the day on which this Act receives the Royal Assent.

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**PART 2 – TERRORISM (PREVENTATIVE  
DETENTION) ACT 2005 AMENDED**

**3. Principal Act**

In this Part, the *Terrorism (Preventative Detention) Act 2005\** is referred to as the Principal Act.

**4. Section 3 amended (Interpretation)**

Section 3(1) of the Principal Act is amended as follows:

- (a) by omitting “*Criminal Code Act 1995* of the Commonwealth” from the definition of *AFP member* and substituting “Commonwealth Criminal Code”;
- (b) by inserting the following definitions after the definition of *AFP member*:

*ASIO affiliate* has the same meaning as in the *Australian Security Intelligence Organisation Act 1979* of the Commonwealth;

*ASIO employee* has the same meaning as in the *Australian Security Intelligence Organisation Act 1979* of the Commonwealth;

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\*No. 71 of 2005

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- (c) by omitting “*Criminal Code Act 1995* of the Commonwealth” from the definition of *Commonwealth control order* and substituting “Commonwealth Criminal Code”;
  - (d) by inserting the following definition after the definition of *Commonwealth control order*:

***Commonwealth Criminal Code*** means the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth, or a law of the Commonwealth that replaces that Code;

- (e) by omitting “*Criminal Code Act 1995* of the Commonwealth” from paragraph (a) of the definition of *corresponding preventative detention law* and substituting “Commonwealth Criminal Code”;
- (f) by omitting the definition of *terrorist act* and substituting the following definition:

***terrorist act*** has the same meaning as in Part 5.3 of the Commonwealth Criminal Code;

**5. Section 4 repealed**

Section 4 of the Principal Act is repealed.

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**6. Section 5 amended (Application for preventative detention order)**

Section 5(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “is satisfied” and substituting “suspects on reasonable grounds”;
- (b) by omitting from paragraph (a)(i) “there are reasonable grounds to suspect that”;
- (c) by inserting in paragraph (b)(ii) “reasonably” after “is”.

**7. Section 6 amended (Form and content of application)**

Section 6 of the Principal Act is amended as follows:

- (a) by omitting paragraph (a) from subsection (1) and substituting the following paragraph:
  - (a) set out –
    - (i) the true name of the person in relation to whom the preventative detention order is sought (the *subject*); or
    - (ii) if, after reasonable inquiries have been made, the subject’s true name is

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not known but an alias is known for the subject, the subject's alias; or

- (iii) if, after reasonable inquiries have been made, the subject's true name is not known and no alias is known for the subject, a description sufficient to identify the subject; and
- (b) by omitting from subsection (1)(c) "person detained under the order" and substituting "subject detained under the preventative detention order";
- (c) by omitting from subsection (1)(c) "person" second occurring and substituting "subject";
- (d) by omitting from subsection (1)(d) "person's" and substituting "subject's";
- (e) by omitting from subsection (1)(e)(i) "person" and substituting "subject";
- (f) by omitting from subsection (1)(e)(ii)(A) "person" and substituting "subject";
- (g) by omitting from subsection (1)(e)(ii)(B) "person" and substituting "subject";
- (h) by omitting from subsection (1)(e)(ii)(C) "person" and substituting "subject";

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- (i) by omitting from subsection (1)(f) “person” and substituting “subject”;
- (j) by inserting the following subsections after subsection (1):
  - (1A) Subject to subsection (1B), an application under section 5 must be made in writing (other than writing by means of an electronic communication).
  - (1B) If the applicant considers it necessary to do so because of urgent circumstances, an application under section 5 may be made –
    - (a) orally, either in person or by telephone; or
    - (b) by fax, email or other means of electronic communication.
  - (1C) If subsection (1B) applies, the Supreme Court or relevant senior police officer must not make the preventative detention order unless satisfied that, because of urgent circumstances, it was necessary for the applicant to rely on that subsection.
- (k) by omitting from subsection (4) “The information in the application” and substituting “If the application is made in

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writing, or by fax, email or other means of electronic communication, it”;

(l) by inserting the following subsection after subsection (4):

(4A) If the application is made orally, the information given by the applicant to the Supreme Court or relevant senior police officer in connection with the application must be verified or given on oath or affirmation unless the Court or officer is satisfied that in the circumstances it is not practical to administer an oath or affirmation to the applicant.

(m) by inserting the following subsection after subsection (6):

(7) If a preventative detention order is made pursuant to an application that is made orally, the Supreme Court or relevant senior police officer, as the case requires, must –

(a) ensure that there is an audio recording or audio-visual recording of the application; or

(b) as soon as practicable after the order is made, make a written record of the application, inclusive

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of the information given  
by the applicant in  
support of the application.

**8. Section 7 amended (Preventative detention orders)**

Section 7(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “on reasonable grounds” and substituting “that there are reasonable grounds to suspect”;
- (b) by inserting in paragraph (b)(ii) “reasonably” after “is”.

**9. Section 8 amended (Nature of preventative detention order)**

Section 8 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “(the *subject*)” after “is made”;
- (b) by omitting from subsection (1)(b)(i) “person” and substituting “subject”;
- (c) by omitting from subsection (4) “set out”;
- (d) by omitting paragraph (a) from subsection (4) and substituting the following paragraph:

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- (a) set out –
- (i) the subject’s true name; or
  - (ii) if, after reasonable inquiries have been made, the subject’s true name is not known but an alias is known for the subject, the subject’s alias; or
  - (iii) if, after reasonable inquiries have been made, the subject’s true name is not known and no alias is known for the subject, a description sufficient to identify the subject; and
- (e) by omitting from subsection (4)(b) “the period during which the person” and substituting “specify the period during which the subject”;
- (f) by omitting from subsection (4)(c) “the place” and substituting “specify the place”;
- (g) by omitting from subsection (4)(c) “person” and substituting “subject”;
- (h) by omitting from subsection (4)(d) “the date” and substituting “specify the date”;
- (i) by omitting from subsection (4)(e) “whether the person” and substituting “specify whether the subject”;

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- (j) by omitting from subsection (4)(f) “whether the person” first occurring and substituting “specify whether the subject”;
- (k) by omitting from subsection (4)(f)(iii) “person” first occurring and substituting “subject”;
- (l) by omitting from subsection (4)(g) “if applicable, particulars of the order for the person’s” and substituting “set out, if applicable, particulars of the order for the subject’s”;
- (m) by omitting from subsection (4)(h) “if applicable, the date and time after which the person” and substituting “specify, if applicable, the date and time after which the subject”;
- (n) by omitting from subsection (5) “person in relation to whom the order is made” and substituting “subject”;
- (o) by omitting from subsection (5) “person” second occurring and substituting “subject”.

**10. Section 11 amended (Extension of preventative detention order)**

Section 11 of the Principal Act is amended as follows:

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(a) by inserting the following paragraph after paragraph (a) in subsection (2):

(ab) set out –

(i) the true name of the person in relation to whom the extension is sought; or

(ii) if, after reasonable inquiries have been made, the true name of the person in relation to whom the extension is sought is not known but an alias is known for the person, the person's alias; or

(iii) if, after reasonable inquiries have been made, the true name of the person in relation to whom the extension is sought is not known and no alias is known for the person, a description sufficient to identify the person; and

(b) by omitting from subsection (3) “information in the”.

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**11. Section 14 amended (Prohibited contact order (person in relation to whom preventative detention order is being sought))**

Section 14 of the Principal Act is amended as follows:

(a) by inserting the following subsections after subsection (2):

(2A) Subject to subsection (2B), the application must be made in writing (other than writing by means of an electronic communication).

(2B) If the applicant considers it necessary to do so because of urgent circumstances, the application may be made –

(a) orally, either in person or by telephone; or

(b) by fax, email or other means of electronic communication.

(2C) If subsection (2B) applies, the Supreme Court or relevant senior police officer must not make the prohibited contact order unless satisfied that, because of urgent circumstances, it was necessary for the applicant to rely on that subsection.

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- (b) by omitting from subsection (3) “The information in the application” and substituting “If the application is made in writing, or by fax, email or other means of electronic communication, it”;
- (c) by inserting the following subsection after subsection (3):
  - (3A) If the application is made orally, the information given by the applicant to the Supreme Court or relevant senior police officer in connection with the application must be verified or given on oath or affirmation unless the Court or officer is satisfied that in the circumstances it is not practical to administer an oath or affirmation to the applicant.
- (d) by inserting the following subsection after subsection (8):
  - (9) If the prohibited contact order is made pursuant to an application that is made orally, the Supreme Court or relevant senior police officer, as the case requires, must –
    - (a) ensure that there is an audio recording or audio-visual recording of the application; or

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- (b) as soon as practicable after the order is made, make a written record of the application, inclusive of the information given by the applicant in support of the application.

**12. Section 15 amended (Prohibited contact order (person in relation to whom preventative detention order is already in force))**

Section 15 of the Principal Act is amended as follows:

- (a) by inserting the following subsections after subsection (2):

- (2A) Subject to subsection (2B), the application must be made in writing (other than writing by means of an electronic communication).

- (2B) If the applicant considers it necessary to do so because of urgent circumstances, the application may be made –

- (a) orally, either in person or by telephone; or

- (b) by fax, email or other means of electronic communication.

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- (2C) If subsection (2B) applies, the Supreme Court or relevant senior police officer must not make the prohibited contact order unless satisfied that, because of urgent circumstances, it was necessary for the applicant to rely on that subsection.
- (b) by omitting from subsection (3) “The information in the application” and substituting “If the application is made in writing, or by fax, email or other means of electronic communication, it”;
- (c) by inserting the following subsection after subsection (3):
- (3A) If the application is made orally, the information given by the applicant to the Supreme Court or relevant senior police officer in connection with the application must be verified or given on oath or affirmation unless the Court or officer is satisfied that in the circumstances it is not practical to administer an oath or affirmation to the applicant.
- (d) by inserting the following subsection after subsection (6):
- (7) If the prohibited contact order is made pursuant to an application that is made orally, the Supreme

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Court or relevant senior police officer, as the case requires, must –

- (a) ensure that there is an audio recording or audio-visual recording of the application; or
- (b) as soon as practicable after the order is made, make a written record of the application, inclusive of the information given by the applicant in support of the application.

**13. Section 36 amended (Special contact rules for person under 18 or incapable of managing own affairs)**

Section 36(2)(b) of the Principal Act is amended by omitting subparagraph (vi) and substituting the following subparagraph:

- (vi) is not an ASIO employee or an ASIO affiliate.

**14. Section 40 amended (Taking identification material)**

Section 40(10)(c) of the Principal Act is amended by omitting subparagraph (iv) and substituting the following subparagraph:

- (iv) an ASIO employee or an ASIO affiliate.

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**15. Section 54 amended (Sunset provision)**

Section 54 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “the tenth anniversary of the day on which this Act commences ceases to be in force at that time” and substituting “31 December 2025 ceases to be in force at the end of that day”;
- (b) by omitting from subsection (2) “the tenth anniversary of the day on which this Act commences” and substituting “31 December 2025”.

**PART 3 – POLICE POWERS (PUBLIC SAFETY) ACT  
2005 AMENDED**

**16. Principal Act**

In this Part, the *Police Powers (Public Safety) Act 2005\** is referred to as the Principal Act.

**17. Section 3 amended (Interpretation)**

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *authorisation*:

***Commonwealth Criminal Code*** means the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth, or a law of the Commonwealth that replaces that Code;

- (b) by omitting the definition of *terrorist act* and substituting the following definition:

***terrorist act*** has the same meaning as in Part 5.3 of the Commonwealth Criminal Code;

**18. Section 4 repealed**

Section 4 of the Principal Act is repealed.

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**19. Section 34 substituted**

Section 34 of the Principal Act is repealed and the following section is substituted:

**34. Expiry of Act**

- (1) This Act expires on 31 December 2025.
- (2) Any authorisation given or order made under Division 1 of Part 2 that is in force on the day referred to in subsection (1) ceases to be in force at the end of that day.

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**PART 4 – REPEAL OF ACT**

**20. Repeal of Act**

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.