

TASMANIA

POLICE POWERS (PUBLIC SAFETY) BILL 2005

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POLICE POWERS (PUBLIC SAFETY) BILL 2005

(Brought in by the Premier, the Honourable Paul Anthony Lennon)

A BILL FOR

An Act to authorise police officers to stop and search persons and vehicles, to question persons and to seize things for the purposes of public safety and for related matters

Be it enacted by His 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 *Police Powers (Public Safety) Act 2005*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

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

“authorisation” means an authorisation issued by the Commissioner of Police or the Supreme Court under Division 1 of Part 2;

“designated area” means an area described as such in an authorisation;

“designated person” means a person described as such in an authorisation;

“designated vehicle” means a vehicle described as such in an authorisation;

“essential service” means any of the following services:

- (a) transport;
- (b) fuel;
- (c) light;
- (d) power;
- (e) water;
- (f) sewerage;
- (g) any other prescribed service (whether or not of a type similar to the services included in paragraphs (a) to (f));

“premises” includes –

- (a) land and a structure, building, caravan, vehicle or vessel, whether temporary or not and whether under construction or not; and

- (b) a place, whether enclosed or built on or not and whether on, within, over or under land or water; and
- (c) a part of premises, including premises referred to in paragraph (a) or (b);

“record” means any record of information, irrespective of how the information is recorded or stored or able to be recovered, and includes –

- (a) any thing from which images, sounds or writings can be reproduced, with or without the aid of anything else; and
- (b) any thing on which information is recorded or stored, whether electronically, magnetically, mechanically or by some other means;

“serious indictable offence” means an indictable offence the penalty for which, specified by a written law, is or includes imprisonment for a term of 5 years or more or for life;

“special site or area” means –

- (a) the site of an airport, bus or coach station or interchange, train station or ship or ferry terminal; or
- (b) an area where persons gather in large numbers; or

- (c) part of an essential service located in a particular area;

“terrorist act” has the meaning given to that term by section 4;

“vehicle” means any thing capable of transporting people or things by air, road, rail or water, regardless of how the thing is moved or propelled.

- (2) A note in the text of this Act does not form part of this Act.

4. What is a terrorist act?

- (1) In this Act –

“terrorist act” means an action or threat of action where –

- (a) the action falls within subsection (2) and does not fall within subsection (3); and
- (b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and
- (c) the action is done or the threat is made 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; or
- (b) causes serious damage to property; or
- (c) causes a person's death; or
- (d) endangers a person's life, other than the life of the person taking the action; or
- (e) creates a serious risk to the health or safety of the public or a section of the public; or
- (f) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to –
 - (i) an information system; or
 - (ii) a telecommunications system; or
 - (iii) a financial system; or
 - (iv) a system used for the delivery of essential government services; or
 - (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) is not intended –
 - (i) to cause serious harm that is physical harm to a person; or
 - (ii) to cause a person's death; or
 - (iii) to endanger the life of a person, other than the person taking the action; or
 - (iv) to create a serious risk to the health or safety of the public or a section of the public.

Note: The above definition is in the same terms as that inserted into Part 5.3 of the Commonwealth Criminal Code by a Commonwealth Act based on the reference to the Parliament of the Commonwealth of certain matters relating to terrorist acts made by the *Terrorism (Commonwealth Powers) Act 2002*.

PART 2 – POLICE POWERS

Division 1 – Authorisation to exercise powers

5. Authorisation of powers to ensure the safety of persons attending events from a terrorist act

- (1) The Commissioner of Police may, with the written approval of the Premier, authorise the exercise of the powers under Division 2 if the Commissioner is satisfied –
 - (a) that an event is taking place in Tasmania or is likely to take place in Tasmania in the near future; and
 - (b) that the event involves, or is likely to involve, the attendance of prominent persons or of a large number of people; and
 - (c) on reasonable grounds that the event because of its nature might be at risk of a terrorist act; and
 - (d) that the giving of an authorisation designating –
 - (i) the area in which the event is taking place or is likely to take place; or
 - (ii) any other area in which an activity connected with the event is taking place or is likely to take place –

is necessary to ensure the safety of persons attending the event from a terrorist act.

(2) An authorisation must –

- (a) state that it is given under this Act; and
- (b) describe the general nature of the event to which it applies; and
- (c) describe any area, person or vehicle designated by the authorisation; and
- (d) specify the date on which and time at which it begins to have effect; and
- (e) specify the date on which and time at which it ceases to have effect, not being later than 24 hours after the scheduled completion time of the event.

Note: The period for which an authorisation has effect may be extended, or further extended, under section 11.

6. Authorisation of additional powers to ensure the safety of persons attending events from a terrorist act

- (1) The Commissioner of Police may, with the approval in writing of the Premier, apply to the Supreme Court for an order authorising the exercise of powers under Division 3 in relation to an event referred to in section 5.
- (2) An application under subsection (1) must –
 - (a) be made in writing; and

- (b) describe the event in respect of which the application is being made; and
 - (c) set out the facts and other grounds on which the Commissioner of Police considers that there are reasonable grounds for suspecting that the event might be the subject of a terrorist act; and
 - (d) explain why the giving of an authorisation to exercise powers under Division 3 in relation to the designated area is necessary to ensure the safety of persons attending the event from a terrorist act; and
 - (e) specify the powers under Division 3 that, in the opinion of the Commissioner of Police, are reasonably necessary to ensure the safety of any person or persons attending the event; and
 - (f) describe any area, person or vehicle that is to be designated by an authorisation.
- (3) The information in the application must be sworn by the Commissioner of Police.
- (4) The Supreme Court may require the Commissioner of Police to provide any additional information that the Court requires in relation to the application.
- (5) The Supreme Court may, by order, give an authorisation for the exercise of powers under Division 3 if satisfied, on reasonable grounds, that the granting of the authorisation is reasonably necessary to ensure the safety of persons attending the event.

- (6) An authorisation must –
- (a) state that it is given under this Act; and
 - (b) describe the general nature of the event to which it applies; and
 - (c) describe any area, person or vehicle designated by the authorisation; and
 - (d) specify which of the powers under Division 3 may be exercised; and
 - (e) specify the date on which and time at which it begins to have effect; and
 - (f) specify the date on which and time at which it ceases to have effect, not being later than 24 hours after the scheduled completion time of the event.

Note: The period for which an authorisation has effect may be extended, or further extended, under section 11.

- (7) If, on an application under subsection (1) the Supreme Court considers it desirable to do so, it may make an interim order giving an authorisation pending the hearing and final determination of the application.
- (8) If the Supreme Court makes an interim order, it must specify a day on which, and time at which, the hearing of the application is to be resumed.
- (9) On finally determining an application following the making of an interim order, the Supreme Court may –
- (a) confirm the order without variation or vary –

- (i) the additional powers that may be exercised; or
 - (ii) the time or date when the order ceases to have effect; or
- (b) revoke the order if not satisfied as mentioned in subsection (5).

7. Authorisation of powers to protect a special site or area from a terrorist act

- (1) The Commissioner of Police may, with the written approval of the Premier, authorise the exercise of the powers under Division 2 if the Commissioner is satisfied –
 - (a) on reasonable grounds that a special site or area might be at risk of a terrorist act; and
 - (b) that the giving of an authorisation designating the special site or area is necessary –
 - (i) to assist in protecting the site or area, or part of the site or area, or persons in the vicinity of the site or area from a terrorist act; or
 - (ii) to mitigate the effects of a terrorist act on the site or area, or part of the site or area, or on persons in the vicinity of the site or area; or

- (iii) for the recovery of the site or area, or part of the site or area, from the effects of a terrorist act.

(2) An authorisation must –

- (a) state that it is given under this Act; and
- (b) describe any special site or area, person or vehicle designated by the authorisation; and
- (c) specify the date on which and time at which it begins to have effect; and
- (d) specify the date on which and time at which it ceases to have effect.

8. Authorisation of additional powers to protect a special site or area from a terrorist act

(1) The Commissioner of Police may, with the written approval of the Premier, apply to the Supreme Court for an order authorising the exercise of powers under Division 3 in relation to a special site or area designated by an authorisation under section 7.

(2) An application under subsection (1) must –

- (a) be made in writing; and
- (b) describe the special site or area, person or vehicle and define the boundaries of the special site or area in respect of which the application is being made; and
- (c) set out the facts and other grounds on which the Commissioner of Police

considers that there are reasonable grounds for suspecting that the special site or area might be the subject of a terrorist act; and

- (d) explain why the giving of an authorisation to exercise powers under Division 3 in relation to the special site or area is necessary to protect the special site or area from a terrorist act; and
 - (e) specify the powers under Division 3 that, in the opinion of the Commissioner of Police, are reasonably necessary –
 - (i) to assist in protecting the special site or area, or part of the site or area, or persons in the vicinity of the site or area from a terrorist act; or
 - (ii) to mitigate the effects of a terrorist act on the special site or area, or part of the site or area, or on persons in the vicinity of the site or area; or
 - (iii) for the recovery of the special site or area, or part of the site or area from the effects of a terrorist act.
- (3) The information in the application must be sworn by the Commissioner of Police.
- (4) The Supreme Court may require the Commissioner of Police to provide any additional information that the Court requires in relation to the application.

- (5) The Supreme Court may, by order, give an authorisation for the exercise of powers under Division 3 if satisfied on reasonable grounds, that the granting of the authorisation is reasonably necessary –
- (a) to assist in protecting the special site or area, or part of the site or area, or on persons in the vicinity of the site or area from a terrorist act; or
 - (b) to mitigate the effects of a terrorist act on the special site or area, or part of the site or area, or on persons in the vicinity of the site or area; or
 - (c) for the recovery of the special site or area, or part of the site or area from the effects of a terrorist act.
- (6) An authorisation must –
- (a) state that it is given under this Act; and
 - (b) describe any special site or area, person or vehicle designated by the authorisation; and
 - (c) specify which of the powers under Division 3 may be exercised; and
 - (d) specify the date on which and time at which it begins to have effect; and
 - (e) specify the date on which and time at which it ceases to have effect.
- (7) If on an application under subsection (1) the Supreme Court considers it desirable to do so, it may make an interim order giving an

authorisation pending the hearing and final determination of the application.

- (8) If the Supreme Court makes an interim order, it must specify a day on which, and time at which, the hearing of the application is to be resumed.
- (9) On finally determining an application following the making of an interim order, the Supreme Court may –
 - (a) confirm the order without variation or vary –
 - (i) the powers that may be exercised; or
 - (ii) the time or date when the order ceases to have effect; or
 - (b) revoke the order if not satisfied as mentioned in subsection (5).

9. Authorisation of powers to prevent, or reduce the impact of, a terrorist act

- (1) An interim authorisation for the exercise of powers under Divisions 2 and 3 may be given by the Commissioner of Police, with the written approval of the Premier, if the Commissioner of Police –
 - (a) is satisfied on reasonable grounds that a terrorist act is occurring or that there is a threat of a terrorist act occurring within the next 14 days; and
 - (b) is satisfied that the exercise of those powers will substantially assist in –

- (i) preventing the terrorist act; or
 - (ii) reducing the impact of the terrorist act, or of the threat of a terrorist act, on the health or safety of the public or on property.
- (2) The Commissioner of Police must, if he or she considers that an authorisation to exercise powers under Division 3 should have effect for a period in excess of 72 hours, make an application to the Supreme Court for an authorisation under this section.
- (3) Without an interim authorisation having been given, the Commissioner of Police may make an application to the Supreme Court for an authorisation to exercise powers under Division 3 in relation to a terrorist act that is occurring or the threat of a terrorist act.
- (4) An application under subsection (2) or (3) must –
 - (a) be made in writing; and
 - (b) set out the facts and other grounds on which the Commissioner of Police considers that a terrorist act is occurring or that there is a threat of a terrorist act occurring within the next 14 days; and
 - (c) explain how the exercise of powers under Division 3 will substantially assist in –
 - (i) preventing the terrorist act; or
 - (ii) reducing the impact of the terrorist act, or of the threat of a

terrorist act, on the health or safety of the public or on property.

- (5) The information in an application under subsection (2) or (3) must be sworn by the Commissioner of Police.
- (6) The Supreme Court may require the Commissioner of Police to provide any additional information that the Court requires in relation to the application.
- (7) On an application under subsection (2) or (3), the Supreme Court may, by order –
 - (a) if satisfied, on reasonable grounds, as mentioned in subsection (1)(a) and (b), give an authorisation for the exercise of powers under Division 3 and revoke any interim authorisation given by the Commissioner of Police that has effect; or
 - (b) revoke any interim authorisation which authorises the exercise of powers under Division 3 that has effect if not so satisfied.
- (8) The terms of an authorisation given by the Supreme Court may be the same as, or different from, the terms of any interim authorisation given by the Commissioner of Police.
- (9) If on an application under subsection (3) the Supreme Court considers it desirable to do so, it may make an interim order giving an authorisation pending the hearing and final determination of the application.

- (10) If the Supreme Court makes an interim order, it must specify a day on which, and time at which, the hearing of the application is to be resumed.
- (11) On finally determining an application following the making of an interim order, the Supreme Court may –
 - (a) confirm the order with or without variation; or
 - (b) revoke the order if not satisfied as mentioned in subsection (7)(a).

10. Authorisation of powers relating to the investigation of, or recovery from, a terrorist act

- (1) An interim authorisation for the exercise of powers under Divisions 2 and 3 may be given by the Commissioner of Police, with the written approval of the Premier, if the Commissioner of Police –
 - (a) is satisfied that there are reasonable grounds for believing that a terrorist act has occurred or is occurring; and
 - (b) is satisfied that the exercise of those powers will substantially assist in –
 - (i) apprehending persons responsible for the terrorist act; or
 - (ii) the investigation of the terrorist act, including the preservation of evidence of, or relating to, the terrorist act; or

- (iii) the necessary recovery process for the community in the aftermath of the terrorist act.
- (2) The Commissioner of Police must, if he or she considers that an authorisation to exercise powers under Division 3 should have effect for a period in excess of 72 hours, make an application to the Supreme Court for an authorisation under this section.
- (3) Without an interim authorisation having been given, the Commissioner of Police may, with the written approval of the Premier, make an application to the Supreme Court for an authorisation to exercise powers under Division 3 in relation to a terrorist act that has occurred or is occurring.
- (4) An application under subsection (2) or (3) must –
 - (a) be made in writing; and
 - (b) set out the facts and other grounds on which the Commissioner of Police considers that a terrorist act has occurred, or is occurring; and
 - (c) explain how the exercise of powers under Division 3 will substantially assist in –
 - (i) apprehending the persons responsible for the terrorist act; or
 - (ii) the investigation of the terrorist act, including the preservation of evidence of, or relating to, the terrorist act; or

- (iii) the necessary recovery process for the community in the aftermath of the terrorist act.
- (5) The information in an application under subsection (2) or (3) must be sworn by the Commissioner of Police.
- (6) The Supreme Court may require the Commissioner of Police to provide any additional information that the Court requires in relation to the application.
- (7) On an application under subsection (2) or (3), the Supreme Court may, by order –
 - (a) if satisfied, on reasonable grounds, as mentioned in subsection (1)(a) and (b), give an authorisation for the exercise of powers under Division 3 and revoke any interim authorisation given by the Commissioner of Police that has effect; or
 - (b) revoke any interim authorisation which authorises the exercise of powers under Division 3 that has effect if not so satisfied.
- (8) The terms of an authorisation given by the Supreme Court may be the same as, or different from, the terms of any interim authorisation given by the Commissioner of Police.
- (9) If on an application under subsection (3) the Supreme Court considers it desirable to do so, it may make an interim order giving an authorisation pending the hearing and final determination of the application.

- (10) If the Supreme Court makes an interim order, it must specify a day on which, and time at which, the hearing of the application is to be resumed.
- (11) On finally determining an application following the making of an interim order, the Supreme Court may –
 - (a) confirm the order with or without variation; or
 - (b) revoke the order if not satisfied as mentioned in subsection (7)(a).

11. Extension of authorisations under section 6, 8, 9 or 10

- (1) If –
 - (a) an authorisation is given by the Supreme Court under section 6, 8, 9 or 10; and
 - (b) the authorisation has effect –

the Commissioner of Police may, with the written approval of the Premier, apply to the Supreme Court –

 - (c) for an extension, or a further extension, of the period for which the authorisation has effect; or
 - (d) for an order authorising the exercise of powers under Division 3 which were not authorised under an order or a previous extension of an order made under section 6, 8, 9 or 10.
- (2) The application must –

- (a) be made in writing; and
 - (b) set out the facts and other grounds on which the Commissioner of Police considers that the extension, or further extension, is, or powers sought are, reasonably necessary to ensure the achievement of the objective of the authorisation.
- (3) The information in the application must be sworn by the Commissioner of Police.
- (4) The Supreme Court may, by order, extend or further extend the period for which the authorisation has effect or authorise the powers sought if it is satisfied that the extension, further extension, or authorisation of the powers sought is reasonably necessary to ensure the achievement of the objective of the authorisation.

12. Persons, vehicles or areas designated by authorisation

- (1) Except as otherwise provided by this Act, an authorisation may authorise the exercise of powers under Division 2 or 3 in relation to any or all of the following:
 - (a) particular persons named or described in the authorisation;
 - (b) particular vehicles, or vehicles of a particular kind, described in the authorisation;

- (c) particular areas described in the authorisation.
- (2) Without limiting subsection (1)(a), a person may be described by the use of a photograph or drawing.

13. How interim authorisation may be given

- (1) This section applies to an interim authorisation given by the Commissioner of Police in accordance with this Part.
- (2) An authorisation may be given orally or by instrument in writing.
- (3) If the authorisation is given orally, it must be confirmed by instrument in writing as soon as it is reasonably practicable to do so and, in any event, before an application is made to the Supreme Court in respect of the matter.
- (4) An authorisation must –
 - (a) state that it is given under this Act; and
 - (b) describe the general nature of the terrorist act or threat of terrorist act to which it applies; and
 - (c) name or describe the persons, vehicles or areas designated by the authorisation; and
 - (d) specify the powers under Division 2 or 3 that may be exercised under the authorisation; and

- (e) specify the date on which and time at which it begins to have effect; and
- (f) specify the date on which and time at which it ceases to have effect.

14. Duration of authorisation

- (1) An authorisation has effect, unless sooner revoked, during the period beginning when it is given (or at such later time or date as is specified in the authorisation) and ending at the time and on the date specified in the authorisation.
- (2) The period for which an authorisation has effect must not exceed –
 - (a) in the case of an interim authorisation for the exercise of powers under Division 3 given by the Commissioner of Police under section 9 or 10, 72 hours; or
 - (b) in the case of an authorisation for the exercise of powers under Division 3 given by the Supreme Court under section 9 or 10, 14 days; or
 - (c) in the case of an authorisation given by the Commissioner under section 7 or the Supreme Court under section 8, 12 months.
- (3) The Commissioner of Police may at any time revoke an interim authorisation given by him or her.
- (4) 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.

- (5) The cessation of an authorisation does not prevent a further authorisation being given.

15. Interim authorisation not open to challenge

- (1) An interim authorisation or purported interim authorisation given by the Commissioner of Police (and any decision or purported decision of the Premier or the Commissioner of Police with respect to such an interim authorisation or purported interim authorisation) is not liable to be challenged, appealed against, reviewed, quashed or called in question in any court or tribunal on any account or before any person acting judicially.
- (2) Without limiting subsection (1), no proceedings seeking the grant of any relief or remedy may be brought against the Premier or the Commissioner of Police in respect of an interim authorisation or purported interim authorisation given by the Commissioner of Police or any decision or purported decision of the Premier or the Commissioner of Police with respect to such an interim authorisation or purported interim authorisation.

16. Exercise of powers by police officers, &c.

- (1) The powers under Divisions 2 and 3 that are specified in an authorisation may be exercised by any police officer or, subject to subsection (3), by any other person assisting the

police officer in that exercise and acting under the direction and control of the police officer.

- (2) A police officer may exercise those powers whether or not he or she has been provided with a copy of the authorisation.
- (3) A person assisting a police officer is not authorised to conduct a strip search of a person.
- (4) It is lawful for a police officer exercising a power under this Act in relation to a person or a thing, and anyone assisting the police officer, to use such force as is reasonably necessary to exercise the power.

Division 2 – Police powers

17. Power to obtain disclosure of identity

- (1) A police officer may request a person whose identity is unknown to the police officer to disclose his or her identity if –
 - (a) the police officer suspects on reasonable grounds that the person is a designated person (or the person is found in the company of a designated person); or
 - (b) the person is in or on a vehicle that the police officer suspects on reasonable grounds is a designated vehicle; or
 - (c) the person is in an area that is a designated area.
- (2) A person who is so requested to disclose his or her identity must not, without reasonable excuse, fail or refuse to comply with the request.

Penalty: Fine not exceeding 20 penalty units.

- (3) A person who is so requested to disclose his or her identity must not, without reasonable excuse, in response to any such request –
- (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.

Penalty: Fine not exceeding 20 penalty units.

- (4) A police officer making a request under subsection (1) may arrest, without warrant, a person who fails or refuses to comply with that request or who, in response to the request, gives a name or address that the police officer has reason to believe is false.
- (5) A police officer may request a person who is requested under this section to disclose his or her identity to provide proof of his or her identity.
- (6) A police officer may detain a person for so long as is reasonably necessary for the purposes of this section.

18. Power to conduct ordinary search

- (1) In this section –

“electronic metal detention device” means an electronic device that is capable of detecting the presence of metallic objects;

“ordinary search” means –

- (a) a search of a person conducted by –
 - (i) running hands over the person's outer clothing; or
 - (ii) passing an electronic metal detection device over or in close proximity to the person's outer clothing; or
 - (iii) requiring the person to pass through such a device; or
 - (iv) requiring the person to turn out his or her pockets; and
- (b) the examination of any thing worn or carried by, or in the control or possession of, the person that is conveniently removed including –
 - (i) an examination conducted by passing an electronic metal detection device over or in close proximity to that thing; or
 - (ii) passing the thing through such a device; or
 - (iii) searching through any bag, basket or other receptacle; or

- (iv) moving, and if it is considered necessary, removing and searching through the contents of any pocket, bag, basket or other receptacle.
- (2) A police officer may, without warrant, stop and conduct an ordinary search of a person or any thing in the possession of or under the control of the person, if –
 - (a) the police officer suspects on reasonable grounds that the person is a designated person or the person is in the company of a designated person; or
 - (b) the person is in or on a vehicle that the police officer suspects on reasonable grounds is a designated vehicle; or
 - (c) the person is in an area that is a designated area.

19. Power to search vehicles

- (1) A police officer may, without a warrant, stop and search a vehicle, and anything in or on the vehicle, if –
 - (a) the police officer suspects on reasonable grounds that the vehicle is a designated vehicle; or
 - (b) the police officer suspects on reasonable grounds that a person in or on the vehicle is a designated person; or

- (c) the vehicle is in an area that is a designated area.
- (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 direct the person driving or in charge of a vehicle searched under this section not to take the vehicle into, to remove the vehicle from, or keep the vehicle in, an area that is a designated area.

20. Power to move vehicles

- (1) A police officer may move or cause to be moved a vehicle which is parked or left standing in an area that is a designated area if, in the opinion of the police officer, the vehicle is –
 - (a) a danger to other vehicles or persons in that area; or
 - (b) causing or likely to cause traffic congestion in that area; or
 - (c) hindering the exercise of powers under this Act in that area.
- (2) A police officer acting in accordance with this section may –
 - (a) enter a vehicle using, if necessary, reasonable force, for the purpose of conveniently or expeditiously moving it; and
 - (b) move the vehicle, or cause it to be moved, to the nearest convenient place.

21. Power to cordon around designated area

- (1) A police officer may direct a person or group of persons not to enter, or to leave or to remain in, an area that is a designated area whether or not a cordon has been placed around the area.
- (2) A police officer may, for the purposes of stopping and searching under this Part persons, vehicles or premises in a designated area, place a cordon around the designated area or any part of it.
- (3) A cordon may include any form of physical barrier, including a roadblock on any road that is in or in the vicinity of the designated area.
- (4) In order to cordon off an area, the police officer must take reasonable steps to notify people of the existence and boundaries of the area.
- (5) The area cordoned off must not be greater than is reasonably necessary for the purposes for which it is established.
- (6) While an area is cordoned off, a police officer must remain near the area and may take reasonable measures, including giving orders –
 - (a) to preserve the evidentiary value of the area or any thing in the area; and
 - (b) to secure the area against unauthorised disturbance; and
 - (c) to prevent an unauthorised person, animal or vehicle from disturbing the area; and

- (d) to restrict entry to the area to people, animals, and vehicles, that are authorised; and
 - (e) to remove an unauthorised person, animal or vehicle from the area; and
 - (f) if the area is established in or around a vehicle, to prevent the vehicle from being moved.
- (7) An unauthorised person who, without reasonable excuse (the onus of proving which is on the person), enters a cordoned-off area is guilty of an offence.
- Penalty: Fine not exceeding 100 penalty units and imprisonment for a term not exceeding 12 months.
- (8) An unauthorised person who, without reasonable excuse (the onus of proving which is on the person), disturbs any thing in a cordoned-off area is guilty of an offence.
- Penalty: Fine not exceeding 100 penalty units and imprisonment for a term not exceeding 12 months.
- (9) A police officer may arrest without warrant an unauthorised person who enters a cordoned-off area or disturbs any thing in a cordoned-off area.
- (10) In this section –
- “authorised”**, in relation to a cordoned-off area, means authorised by a police officer in attendance at the area;

“disturb” includes damage, destroy, interfere with and remove.

Division 3 – Additional police powers

22. Power to conduct additional search

(1) In this section –

“body cavity” means rectum or vagina;

“strip search” means a search, other than a body cavity search, in which the person searched is required to remove most or all of his or her clothes.

(2) A police officer may without warrant conduct a strip search of the person if –

(a) the person is suspected of being a designated person; and

(b) the police officer believes on reasonable grounds that it is necessary to conduct a strip search of that person for the purposes of the search and that the seriousness and urgency of the circumstances require a strip search to be conducted.

(3) A police officer may detain a person for so long as is reasonably necessary to conduct a search under this section.

(4) Where a police officer detains a person for the purpose of a search under this section, the following provisions apply:

- (a) if it is proposed to conduct a strip search, the search is to be conducted by an officer of the same sex as the person searched or by a person of the same sex under the direction of a police officer;
- (b) if the search involves the application of force to the person, the police officer must give the Commissioner of Police a written report about the search within 7 days, including particulars of the circumstances that gave rise to the application of force.

23. Power to enter and search premises

- (1) A police officer may, without a warrant, enter and search any premises if –
 - (a) the police officer suspects on reasonable grounds that a person who is a designated person may be on the premises; or
 - (b) the police officer suspects on reasonable grounds that a vehicle that is a designated vehicle may be on the premises; or
 - (c) the premises are in an area that is a designated area.
- (2) The police officer must do as little damage as possible.
- (3) A police officer may direct a person to leave, or not to leave, any premises entered and searched under this Act.

24. Power to give directions to public bodies

- (1) The Commissioner of Police may, for the purposes of facilitating the exercise of the powers conferred by this Act, give a public body directions with respect to the exercise of the powers or performance of functions of the public body.
- (2) The public body is authorised and required to comply with this direction.
- (3) In this section –

“public body” means –

- (a) a State Service Agency; or
- (b) a body, whether corporate or unincorporate, that is established by or under an Act for a public purpose; or
- (c) a body whose members or a majority of whose members are appointed by the Governor or a Minister of the Crown; or
- (d) a Government Business Enterprise within the meaning of the *Government Business Enterprises Act 1995*; or
- (e) a State-owned company; or
- (f) a prescribed body;

“State-owned company” means a company incorporated under the Corporations Act that is controlled by the Crown, a

Government Business Enterprise or a statutory authority, or any company that is so controlled;

“statutory authority” means a body or authority, whether incorporated or not, that is established or constituted by or under an Act or under the Royal Prerogative, being a body or authority which, or of which, the governing authority wholly or partly comprises a person or persons appointed by the Governor, a Minister or another statutory authority, but does not include a State Service Agency.

PART 3 – MISCELLANEOUS**25. Seizing and detaining 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 police officer suspects on reasonable grounds may be used, or may have been used, to commit a terrorist act; or
 - (b) all or part of a thing (including a vehicle) that the police officer suspects on reasonable grounds may provide evidence of the commission of a serious indictable offence (whether or not related to a terrorist act).
- (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.
- (3) A police officer who has seized and detained a thing under this section must take reasonable steps to return the thing to the person from whom it was seized if –
 - (a) that person may lawfully possess the thing; and

- (b) the thing is no longer required for investigative or evidentiary purposes in relation to an offence.
- (4) A thing seized or detained under this section that is –
 - (a) no longer required for investigative or evidentiary purposes in relation to an offence; and
 - (b) not required under subsection (3) to be returned to the person from whom it was seized –

is forfeited to the Crown and may be disposed of in any manner that the Commissioner of Police thinks fit.

26. Offence to obstruct or hinder search or other powers

A person must not, without reasonable excuse –

- (a) obstruct or hinder a police officer in the exercise of a power under this Act to stop and search a person or vehicle, to enter and search premises or to seize and detain a thing; or
- (b) fail to comply with a direction given by a police officer in the exercise of a power under this Act to give that direction.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 12 months, or both.

27. 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, provide the person subject to the exercise of the power with the following if requested to do so:
 - (a) evidence that he or she is a police officer (unless the police officer is in uniform);
 - (b) the name of the police officer and his or her place of duty;
 - (c) the reason for the exercise of the power.
- (2) The Commissioner of Police is to arrange for a written statement to be provided, on request made within 12 months after the search, to a person who was searched, or whose vehicle or premises were searched, under this Act stating that the search was conducted in pursuance of this Act.

28. Assistance to exercise powers

- (1) A police officer who may exercise a power under this Act may authorise as many other persons to assist in exercising the power as are reasonably necessary in the circumstances.
- (2) A person so authorised may exercise the power or assist the police officer or other person to exercise the power, as the case requires.

- (3) Whether requested to do so or not, a person may assist a police officer to exercise a power in this Act if the person reasonably suspects that the officer –
 - (a) is lawfully entitled to exercise the power; and
 - (b) needs assistance for the purpose of doing so.
- (4) A person who under this clause is authorised by a police officer to exercise a power, or is assisting a police officer to exercise a power, must obey any lawful and reasonable directions of the officer when exercising, or assisting to exercise, the power.

29. Offence to not obey orders by police officer

- (1) A person who, without reasonable excuse (the onus of proving which is on the person), does not comply with an order given by a police officer under this Act is guilty of an offence.

Penalty: Fine not exceeding 100 penalty units and imprisonment for a term not exceeding 12 months.

- (2) A police officer who gives an order under this Act may arrest, without warrant, a person who fails or refuses to comply with that order.

30. Closure of Supreme Court and restriction on publication of proceedings

- (1) This section applies to proceedings before the Supreme Court in connection with applications for and the making of orders authorising the exercise of powers under this Act.
- (2) Any such proceedings must be heard in the absence of the public.
- (3) The Supreme Court may, in connection with any such proceedings, do anything necessary or convenient to suppress the publication of the whole or any part of the proceedings or of the evidence given in the proceedings as it considers necessary to secure the suppression of the publication of the proceedings or evidence given in the proceedings.

31. Annual report

- (1) The Minister must, as soon as practicable after each 30 June, cause to be prepared a report about the operation of this Act during the year ended on that 30 June.
- (2) Without limiting subsection (1), a report relating to a year must include the following matters in relation to each authorisation given under this Act during the year:
 - (a) the terms of the authorisation and the period during which it had effect;
 - (b) a summary of the grounds that were relied on for giving the authorisation;

- (c) a general description of the powers exercised pursuant to the authorisation and the manner in which they were exercised;
 - (d) the result of the exercise of those powers.
- (3) The Minister must cause a copy of the report to be laid before each House of Parliament not later than 31 October after the year to which it relates.
- (4) The report may be included in the annual report of the Department.

32. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.
- (3) The regulations may authorise any matter to be from time to time determined, applied or regulated by any person specified in the regulations.

33. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice and Industrial Relations; and

- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

34. Expiry of Act

- (1) This Act expires on the tenth anniversary of the day on which it commences.
- (2) Any authorisation given or order made under Division 1 of Part 2 that is in force on the tenth anniversary of the day on which this Act commences ceases to be in force at that time.