Criminal Code Act 1995

No. 12, 1995

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Volume 1:	**sections 1–5** **Schedule (sections 1.1–261.3)**
Volume 2:	Schedule (sections 268.1–490.7) Schedule (Dictionary) Endnotes

Each volume has its own contents

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About this compilation

This compilation

This is a compilation of the *Criminal Code Act 1995* that shows the text of the law as amended and in force on 21 October 2016 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to the criminal law

1 Short title

This Act may be cited as the *Criminal Code Act 1995*.

2 Commencement

(1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

(2) If this Act does not commence under subsection (1) within the period of 5 years beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 The Criminal Code

(1) The Schedule has effect as a law of the Commonwealth.

(2) The Schedule may be cited as the *Criminal Code*.

3A External Territories

The *Criminal Code* extends to every external Territory.

3B Offshore installations

Unless the contrary intention appears, an installation (within the meaning of the *Customs Act 1901*) that is deemed by section 5C of the *Customs Act 1901* to be part of Australia is also taken to be part of Australia for the purposes of the *Criminal Code*.

4 Definitions

(1) Expressions used in the Code (or in a particular provision of the Code) that are defined in the Dictionary at the end of the Code have the meanings given to them in the Dictionary.

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(2) Definitions in the Code of expressions used in the Code apply to its construction except insofar as the context or subject matter otherwise indicates or requires.

5 Regulations

The Governor-General may make regulations 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.

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Schedule—The Criminal Code

Section 3

Chapter 1—Codification

Division 1

1.1 Codification

The only offences against laws of the Commonwealth are those offences created by, or under the authority of, this Code or any other Act.

Note: Under subsection 38(1) of the *Acts Interpretation Act 1901*, ***Act*** means an Act passed by the Parliament of the Commonwealth.

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Chapter 2—General principles of criminal responsibility

Part 2.1—Purpose and application

Division 2

2.1 Purpose

The purpose of this Chapter is to codify the general principles of criminal responsibility under laws of the Commonwealth. It contains all the general principles of criminal responsibility that apply to any offence, irrespective of how the offence is created.

2.2 Application

(1) This Chapter applies to all offences against this Code.

(2) Subject to section 2.3, this Chapter applies on and after 15 December 2001 to all other offences.

(3) Section 11.6 applies to all offences.

2.3 Application of provisions relating to intoxication

Subsections 4.2(6) and (7) and Division 8 apply to all offences. For the purpose of interpreting those provisions in connection with an offence, the other provisions of this Chapter may be considered, whether or not those other provisions apply to the offence concerned.

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Part 2.2—The elements of an offence

Division 3—General

3.1 Elements

(1) An offence consists of physical elements and fault elements.

(2) However, the law that creates the offence may provide that there is no fault element for one or more physical elements.

(3) The law that creates the offence may provide different fault elements for different physical elements.

3.2 Establishing guilt in respect of offences

In order for a person to be found guilty of committing an offence the following must be proved:

(a) the existence of such physical elements as are, under the law creating the offence, relevant to establishing guilt;

(b) in respect of each such physical element for which a fault element is required, one of the fault elements for the physical element.

Note 1: See Part 2.6 on proof of criminal responsibility.

Note 2: See Part 2.7 on geographical jurisdiction.

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Division 4—Physical elements

4.1 Physical elements

(1) A physical element of an offence may be:

(a) conduct; or

(b) a result of conduct; or

(c) a circumstance in which conduct, or a result of conduct, occurs.

(2) In this Code:

conduct means an act, an omission to perform an act or a state of affairs.

engage in conduct means:

(a) do an act; or

(b) omit to perform an act.

4.2 Voluntariness

(1) Conduct can only be a physical element if it is voluntary.

(2) Conduct is only voluntary if it is a product of the will of the person whose conduct it is.

(3) The following are examples of conduct that is not voluntary:

(a) a spasm, convulsion or other unwilled bodily movement;

(b) an act performed during sleep or unconsciousness;

(c) an act performed during impaired consciousness depriving the person of the will to act.

(4) An omission to perform an act is only voluntary if the act omitted is one which the person is capable of performing.

(5) If the conduct constituting an offence consists only of a state of affairs, the state of affairs is only voluntary if it is one over which the person is capable of exercising control.

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(6) Evidence of self-induced intoxication cannot be considered in determining whether conduct is voluntary.

(7) Intoxication is self-induced unless it came about:
  (a) involuntarily; or
  (b) as a result of fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force.

4.3 Omissions

An omission to perform an act can only be a physical element if:
  (a) the law creating the offence makes it so; or
  (b) the law creating the offence impliedly provides that the offence is committed by an omission to perform an act that there is a duty to perform by a law of the Commonwealth, a State or a Territory, or at common law.

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Division 5—Fault elements

5.1 Fault elements

(1) A fault element for a particular physical element may be intention, knowledge, recklessness or negligence.

(2) Subsection (1) does not prevent a law that creates a particular offence from specifying other fault elements for a physical element of that offence.

5.2 Intention

(1) A person has intention with respect to conduct if he or she means to engage in that conduct.

(2) A person has intention with respect to a circumstance if he or she believes that it exists or will exist.

(3) A person has intention with respect to a result if he or she means to bring it about or is aware that it will occur in the ordinary course of events.

5.3 Knowledge

A person has knowledge of a circumstance or a result if he or she is aware that it exists or will exist in the ordinary course of events.

5.4 Recklessness

(1) A person is reckless with respect to a circumstance if:
  (a) he or she is aware of a substantial risk that the circumstance exists or will exist; and
  (b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

(2) A person is reckless with respect to a result if:
  (a) he or she is aware of a substantial risk that the result will occur; and

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(b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

(3) The question whether taking a risk is unjustifiable is one of fact.

(4) If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness will satisfy that fault element.

5.5 Negligence

A person is negligent with respect to a physical element of an offence if his or her conduct involves:

(a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and

(b) such a high risk that the physical element exists or will exist;

that the conduct merits criminal punishment for the offence.

5.6 Offences that do not specify fault elements

(1) If the law creating the offence does not specify a fault element for a physical element that consists only of conduct, intention is the fault element for that physical element.

(2) If the law creating the offence does not specify a fault element for a physical element that consists of a circumstance or a result, recklessness is the fault element for that physical element.

Note: Under subsection 5.4(4), recklessness can be established by proving intention, knowledge or recklessness.

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Division 6—Cases where fault elements are not required

6.1 Strict liability

(1) If a law that creates an offence provides that the offence is an offence of strict liability:

(a) there are no fault elements for any of the physical elements of the offence; and

(b) the defence of mistake of fact under section 9.2 is available.

(2) If a law that creates an offence provides that strict liability applies to a particular physical element of the offence:

(a) there are no fault elements for that physical element; and

(b) the defence of mistake of fact under section 9.2 is available in relation to that physical element.

(3) The existence of strict liability does not make any other defence unavailable.

6.2 Absolute liability

(1) If a law that creates an offence provides that the offence is an offence of absolute liability:

(a) there are no fault elements for any of the physical elements of the offence; and

(b) the defence of mistake of fact under section 9.2 is unavailable.

(2) If a law that creates an offence provides that absolute liability applies to a particular physical element of the offence:

(a) there are no fault elements for that physical element; and

(b) the defence of mistake of fact under section 9.2 is unavailable in relation to that physical element.

(3) The existence of absolute liability does not make any other defence unavailable.

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Part 2.3—Circumstances in which there is no criminal responsibility

Note: This Part sets out defences that are generally available. Defences that apply to a more limited class of offences are dealt with elsewhere in this Code and in other laws.

Division 7—Circumstances involving lack of capacity

7.1 Children under 10

A child under 10 years old is not criminally responsible for an offence.

7.2 Children over 10 but under 14

(1) A child aged 10 years or more but under 14 years old can only be criminally responsible for an offence if the child knows that his or her conduct is wrong.

(2) The question whether a child knows that his or her conduct is wrong is one of fact. The burden of proving this is on the prosecution.

7.3 Mental impairment

(1) A person is not criminally responsible for an offence if, at the time of carrying out the conduct constituting the offence, the person was suffering from a mental impairment that had the effect that:

(a) the person did not know the nature and quality of the conduct; or

(b) the person did not know that the conduct was wrong (that is, the person could not reason with a moderate degree of sense and composure about whether the conduct, as perceived by reasonable people, was wrong); or

(c) the person was unable to control the conduct.

(2) The question whether the person was suffering from a mental impairment is one of fact.

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Section 7.3

(3) A person is presumed not to have been suffering from such a mental impairment. The presumption is only displaced if it is proved on the balance of probabilities (by the prosecution or the defence) that the person was suffering from such a mental impairment.

(4) The prosecution can only rely on this section if the court gives leave.

(5) The tribunal of fact must return a special verdict that a person is not guilty of an offence because of mental impairment if and only if it is satisfied that the person is not criminally responsible for the offence only because of a mental impairment.

(6) A person cannot rely on a mental impairment to deny voluntariness or the existence of a fault element but may rely on this section to deny criminal responsibility.

(7) If the tribunal of fact is satisfied that a person carried out conduct as a result of a delusion caused by a mental impairment, the delusion cannot otherwise be relied on as a defence.

(8) In this Code:

mental impairment includes senility, intellectual disability, mental illness, brain damage and severe personality disorder.

(9) The reference in subsection (8) to **mental illness** is a reference to an underlying pathological infirmity of the mind, whether of long or short duration and whether permanent or temporary, but does not include a condition that results from the reaction of a healthy mind to extraordinary external stimuli. However, such a condition may be evidence of a mental illness if it involves some abnormality and is prone to recur.

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Division 8—Intoxication

8.1 Definition—self-induced intoxication

For the purposes of this Division, intoxication is self-induced unless it came about:

(a) involuntarily; or

(b) as a result of fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force.

8.2 Intoxication (offences involving basic intent)

(1) Evidence of self-induced intoxication cannot be considered in determining whether a fault element of basic intent existed.

(2) A fault element of basic intent is a fault element of intention for a physical element that consists only of conduct.

Note: A fault element of intention with respect to a circumstance or with respect to a result is not a fault element of basic intent.

(3) This section does not prevent evidence of self-induced intoxication being taken into consideration in determining whether conduct was accidental.

(4) This section does not prevent evidence of self-induced intoxication being taken into consideration in determining whether a person had a mistaken belief about facts if the person had considered whether or not the facts existed.

(5) A person may be regarded as having considered whether or not facts existed if:

(a) he or she had considered, on a previous occasion, whether those facts existed in circumstances surrounding that occasion; and

(b) he or she honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

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Section 8.3

8.3 Intoxication (negligence as fault element)

(1) If negligence is a fault element for a particular physical element of an offence, in determining whether that fault element existed in relation to a person who is intoxicated, regard must be had to the standard of a reasonable person who is not intoxicated.

(2) However, if intoxication is not self-induced, regard must be had to the standard of a reasonable person intoxicated to the same extent as the person concerned.

8.4 Intoxication (relevance to defences)

(1) If any part of a defence is based on actual knowledge or belief, evidence of intoxication may be considered in determining whether that knowledge or belief existed.

(2) If any part of a defence is based on reasonable belief, in determining whether that reasonable belief existed, regard must be had to the standard of a reasonable person who is not intoxicated.

(3) If a person's intoxication is not self-induced, in determining whether any part of a defence based on reasonable belief exists, regard must be had to the standard of a reasonable person intoxicated to the same extent as the person concerned.

(4) If, in relation to an offence:

(a) each physical element has a fault element of basic intent; and

(b) any part of a defence is based on actual knowledge or belief;

evidence of self-induced intoxication cannot be considered in determining whether that knowledge or belief existed.

(5) A fault element of basic intent is a fault element of intention for a physical element that consists only of conduct.

Note: A fault element of intention with respect to a circumstance or with respect to a result is not a fault element of basic intent.

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8.5 Involuntary intoxication

A person is not criminally responsible for an offence if the person's conduct constituting the offence was as a result of intoxication that was not self-induced.

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Division 9—Circumstances involving mistake or ignorance

9.1 Mistake or ignorance of fact (fault elements other than negligence)

(1) A person is not criminally responsible for an offence that has a physical element for which there is a fault element other than negligence if:

(a) at the time of the conduct constituting the physical element, the person is under a mistaken belief about, or is ignorant of, facts; and

(b) the existence of that mistaken belief or ignorance negates any fault element applying to that physical element.

(2) In determining whether a person was under a mistaken belief about, or was ignorant of, facts, the tribunal of fact may consider whether the mistaken belief or ignorance was reasonable in the circumstances.

9.2 Mistake of fact (strict liability)

(1) A person is not criminally responsible for an offence that has a physical element for which there is no fault element if:

(a) at or before the time of the conduct constituting the physical element, the person considered whether or not facts existed, and is under a mistaken but reasonable belief about those facts; and

(b) had those facts existed, the conduct would not have constituted an offence.

(2) A person may be regarded as having considered whether or not facts existed if:

(a) he or she had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and

(b) he or she honestly and reasonably believed that the circumstances surrounding the present occasion were the

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same, or substantially the same, as those surrounding the previous occasion.

Note: Section 6.2 prevents this section applying in situations of absolute liability.

9.3 Mistake or ignorance of statute law

(1) A person can be criminally responsible for an offence even if, at the time of the conduct constituting the offence, he or she is mistaken about, or ignorant of, the existence or content of an Act that directly or indirectly creates the offence or directly or indirectly affects the scope or operation of the offence.

(2) Subsection (1) does not apply, and the person is not criminally responsible for the offence in those circumstances, if the Act is expressly to the contrary effect.

9.4 Mistake or ignorance of subordinate legislation

(1) A person can be criminally responsible for an offence even if, at the time of the conduct constituting the offence, he or she is mistaken about, or ignorant of, the existence or content of the subordinate legislation that directly or indirectly creates the offence or directly or indirectly affects the scope or operation of the offence.

(2) Subsection (1) does not apply, and the person is not criminally responsible for the offence in those circumstances, if:

(a) the subordinate legislation is expressly to the contrary effect; or

(c) at the time of the conduct, the subordinate legislation:

(i) has not been made available to the public (by means of the Register under the *Legislation Act 2003* or otherwise); and

(ii) has not otherwise been made available to persons likely to be affected by it in such a way that the person would have become aware of its contents by exercising due diligence.

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(3) In this section:

available includes available by sale.

subordinate legislation means an instrument of a legislative character made directly or indirectly under an Act, or in force directly or indirectly under an Act.

9.5 Claim of right

(1) A person is not criminally responsible for an offence that has a physical element relating to property if:

(a) at the time of the conduct constituting the offence, the person is under a mistaken belief about a proprietary or possessory right; and

(b) the existence of that right would negate a fault element for any physical element of the offence.

(2) A person is not criminally responsible for any other offence arising necessarily out of the exercise of the proprietary or possessory right that he or she mistakenly believes to exist.

(3) This section does not negate criminal responsibility for an offence relating to the use of force against a person.

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Division 10—Circumstances involving external factors

10.1 Intervening conduct or event

A person is not criminally responsible for an offence that has a physical element to which absolute liability or strict liability applies if:

(a) the physical element is brought about by another person over whom the person has no control or by a non-human act or event over which the person has no control; and

(b) the person could not reasonably be expected to guard against the bringing about of that physical element.

10.2 Duress

(1) A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence under duress.

(2) A person carries out conduct under duress if and only if he or she reasonably believes that:

(a) a threat has been made that will be carried out unless an offence is committed; and

(b) there is no reasonable way that the threat can be rendered ineffective; and

(c) the conduct is a reasonable response to the threat.

(3) This section does not apply if the threat is made by or on behalf of a person with whom the person under duress is voluntarily associating for the purpose of carrying out conduct of the kind actually carried out.

10.3 Sudden or extraordinary emergency

(1) A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence in response to circumstances of sudden or extraordinary emergency.

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(2) This section applies if and only if the person carrying out the conduct reasonably believes that:
  (a) circumstances of sudden or extraordinary emergency exist; and
  (b) committing the offence is the only reasonable way to deal with the emergency; and
  (c) the conduct is a reasonable response to the emergency.

10.4 Self-defence

(1) A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence in self-defence.

(2) A person carries out conduct in self-defence if and only if he or she believes the conduct is necessary:
  (a) to defend himself or herself or another person; or
  (b) to prevent or terminate the unlawful imprisonment of himself or herself or another person; or
  (c) to protect property from unlawful appropriation, destruction, damage or interference; or
  (d) to prevent criminal trespass to any land or premises; or
  (e) to remove from any land or premises a person who is committing criminal trespass;

and the conduct is a reasonable response in the circumstances as he or she perceives them.

(3) This section does not apply if the person uses force that involves the intentional infliction of death or really serious injury:
  (a) to protect property; or
  (b) to prevent criminal trespass; or
  (c) to remove a person who is committing criminal trespass.

(4) This section does not apply if:
  (a) the person is responding to lawful conduct; and
  (b) he or she knew that the conduct was lawful.

However, conduct is not lawful merely because the person carrying it out is not criminally responsible for it.

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10.5 Lawful authority

A person is not criminally responsible for an offence if the conduct constituting the offence is justified or excused by or under a law.

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Part 2.4—Extensions of criminal responsibility

Division 11

11.1 Attempt

(1) A person who attempts to commit an offence commits the offence of attempting to commit that offence and is punishable as if the offence attempted had been committed.

(2) For the person to be guilty, the person's conduct must be more than merely preparatory to the commission of the offence. The question whether conduct is more than merely preparatory to the commission of the offence is one of fact.

(3) For the offence of attempting to commit an offence, intention and knowledge are fault elements in relation to each physical element of the offence attempted.

Note: Under section 3.2, only one of the fault elements of intention or knowledge would need to be established in respect of each physical element of the offence attempted.

(3A) Subsection (3) has effect subject to subsection (6A).

(4) A person may be found guilty even if:
(a) committing the offence attempted is impossible; or
(b) the person actually committed the offence attempted.

(5) A person who is found guilty of attempting to commit an offence cannot be subsequently charged with the completed offence.

(6) Any defences, procedures, limitations or qualifying provisions that apply to an offence apply also to the offence of attempting to commit that offence.

(6A) Any special liability provisions that apply to an offence apply also to the offence of attempting to commit that offence.

(7) It is not an offence to attempt to commit an offence against section 11.2 (complicity and common purpose), section 11.2A

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(joint commission), section 11.3 (commission by proxy), section 11.5 (conspiracy to commit an offence) or section 135.4 (conspiracy to defraud).

11.2 Complicity and common purpose

(1) A person who aids, abets, counsels or procures the commission of an offence by another person is taken to have committed that offence and is punishable accordingly.

(2) For the person to be guilty:

(a) the person's conduct must have in fact aided, abetted, counselled or procured the commission of the offence by the other person; and

(b) the offence must have been committed by the other person.

(3) For the person to be guilty, the person must have intended that:

(a) his or her conduct would aid, abet, counsel or procure the commission of any offence (including its fault elements) of the type the other person committed; or

(b) his or her conduct would aid, abet, counsel or procure the commission of an offence and have been reckless about the commission of the offence (including its fault elements) that the other person in fact committed.

(3A) Subsection (3) has effect subject to subsection (6).

(4) A person cannot be found guilty of aiding, abetting, counselling or procuring the commission of an offence if, before the offence was committed, the person:

(a) terminated his or her involvement; and

(b) took all reasonable steps to prevent the commission of the offence.

(5) A person may be found guilty of aiding, abetting, counselling or procuring the commission of an offence even if the other person has not been prosecuted or has not been found guilty.

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(6) Any special liability provisions that apply to an offence apply also for the purposes of determining whether a person is guilty of that offence because of the operation of subsection (1).

(7) If the trier of fact is satisfied beyond reasonable doubt that a person either:

(a) is guilty of a particular offence otherwise than because of the operation of subsection (1); or

(b) is guilty of that offence because of the operation of subsection (1);

but is not able to determine which, the trier of fact may nonetheless find the person guilty of that offence.

11.2A Joint commission

Joint commission

(1) If:

(a) a person and at least one other party enter into an agreement to commit an offence; and

(b) either:

(i) an offence is committed in accordance with the agreement (within the meaning of subsection (2)); or

(ii) an offence is committed in the course of carrying out the agreement (within the meaning of subsection (3));

the person is taken to have committed the joint offence referred to in whichever of subsection (2) or (3) applies and is punishable accordingly.

Offence committed in accordance with the agreement

(2) An offence is committed in accordance with the agreement if:

(a) the conduct of one or more parties in accordance with the agreement makes up the physical elements consisting of conduct of an offence (the ***joint offence***) of the same type as the offence agreed to; and

(b) to the extent that a physical element of the joint offence consists of a result of conduct—that result arises from the conduct engaged in; and

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(c) to the extent that a physical element of the joint offence consists of a circumstance—the conduct engaged in, or a result of the conduct engaged in, occurs in that circumstance.

Offence committed in the course of carrying out the agreement

(3) An offence is committed in the course of carrying out the agreement if the person is reckless about the commission of an offence (the ***joint offence***) that another party in fact commits in the course of carrying out the agreement.

Intention to commit an offence

(4) For a person to be guilty of an offence because of the operation of this section, the person and at least one other party to the agreement must have intended that an offence would be committed under the agreement.

Agreement may be non-verbal etc.

(5) The agreement:
(a) may consist of a non-verbal understanding; and
(b) may be entered into before, or at the same time as, the conduct constituting any of the physical elements of the joint offence was engaged in.

Termination of involvement etc.

(6) A person cannot be found guilty of an offence because of the operation of this section if, before the conduct constituting any of the physical elements of the joint offence concerned was engaged in, the person:
(a) terminated his or her involvement; and
(b) took all reasonable steps to prevent that conduct from being engaged in.

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Person may be found guilty even if another party not prosecuted etc.

(7) A person may be found guilty of an offence because of the operation of this section even if:

(a) another party to the agreement has not been prosecuted or has not been found guilty; or

(b) the person was not present when any of the conduct constituting the physical elements of the joint offence was engaged in.

Special liability provisions apply

(8) Any special liability provisions that apply to the joint offence apply also for the purposes of determining whether a person is guilty of that offence because of the operation of this section.

11.3 Commission by proxy

A person who:

(a) has, in relation to each physical element of an offence, a fault element applicable to that physical element; and

(b) procures conduct of another person that (whether or not together with conduct of the procurer) would have constituted an offence on the part of the procurer if the procurer had engaged in it;

is taken to have committed that offence and is punishable accordingly.

11.4 Incitement

(1) A person who urges the commission of an offence commits the offence of incitement.

(2) For the person to be guilty, the person must intend that the offence incited be committed.

(2A) Subsection (2) has effect subject to subsection (4A).

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(3) A person may be found guilty even if committing the offence incited is impossible.

(4) Any defences, procedures, limitations or qualifying provisions that apply to an offence apply also to the offence of incitement in respect of that offence.

(4A) Any special liability provisions that apply to an offence apply also to the offence of incitement in respect of that offence.

(5) It is not an offence to incite the commission of an offence against section 11.1 (attempt), this section or section 11.5 (conspiracy).

Penalty:

(a) if the offence incited is punishable by life imprisonment—imprisonment for 10 years; or

(b) if the offence incited is punishable by imprisonment for 14 years or more, but is not punishable by life imprisonment—imprisonment for 7 years; or

(c) if the offence incited is punishable by imprisonment for 10 years or more, but is not punishable by imprisonment for 14 years or more—imprisonment for 5 years; or

(d) if the offence is otherwise punishable by imprisonment—imprisonment for 3 years or for the maximum term of imprisonment for the offence incited, whichever is the lesser; or

(e) if the offence incited is not punishable by imprisonment—the number of penalty units equal to the maximum number of penalty units applicable to the offence incited.

Note: Under section 4D of the *Crimes Act 1914*, these penalties are only maximum penalties. Subsection 4B(2) of that Act allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount not greater than 5 times the maximum fine that the court could impose on an individual convicted of the same offence. Penalty units are defined in section 4AA of that Act.

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11.5 Conspiracy

(1) A person who conspires with another person to commit an offence punishable by imprisonment for more than 12 months, or by a fine of 200 penalty units or more, commits the offence of conspiracy to commit that offence and is punishable as if the offence to which the conspiracy relates had been committed.

Note: Penalty units are defined in section 4AA of the *Crimes Act 1914*.

(2) For the person to be guilty:

(a) the person must have entered into an agreement with one or more other persons; and

(b) the person and at least one other party to the agreement must have intended that an offence would be committed pursuant to the agreement; and

(c) the person or at least one other party to the agreement must have committed an overt act pursuant to the agreement.

(2A) Subsection (2) has effect subject to subsection (7A).

(3) A person may be found guilty of conspiracy to commit an offence even if:

(a) committing the offence is impossible; or

(b) the only other party to the agreement is a body corporate; or

(c) each other party to the agreement is at least one of the following:

(i) a person who is not criminally responsible;

(ii) a person for whose benefit or protection the offence exists; or

(d) subject to paragraph (4)(a), all other parties to the agreement have been acquitted of the conspiracy.

(4) A person cannot be found guilty of conspiracy to commit an offence if:

(a) all other parties to the agreement have been acquitted of the conspiracy and a finding of guilt would be inconsistent with their acquittal; or

(b) he or she is a person for whose benefit or protection the offence exists.

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(5) A person cannot be found guilty of conspiracy to commit an offence if, before the commission of an overt act pursuant to the agreement, the person:

(a) withdrew from the agreement; and

(b) took all reasonable steps to prevent the commission of the offence.

(6) A court may dismiss a charge of conspiracy if it thinks that the interests of justice require it to do so.

(7) Any defences, procedures, limitations or qualifying provisions that apply to an offence apply also to the offence of conspiracy to commit that offence.

(7A) Any special liability provisions that apply to an offence apply also to the offence of conspiracy to commit that offence.

(8) Proceedings for an offence of conspiracy must not be commenced without the consent of the Director of Public Prosecutions. However, a person may be arrested for, charged with, or remanded in custody or on bail in connection with, an offence of conspiracy before the necessary consent has been given.

11.6 References in Acts to offences

(1) A reference in a law of the Commonwealth to an offence against a law of the Commonwealth (including this Code) includes a reference to an offence against section 11.1 (attempt), 11.4 (incitement) or 11.5 (conspiracy) of this Code that relates to such an offence.

(2) A reference in a law of the Commonwealth (including this Code) to a particular offence includes a reference to an offence against section 11.1 (attempt), 11.4 (incitement) or 11.5 (conspiracy) of this Code that relates to that particular offence.

(3) Subsection (1) or (2) does not apply if a law of the Commonwealth is expressly or impliedly to the contrary effect.

(4) In particular, an express reference in a law of the Commonwealth to:

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(a) an offence against, under or created by the *Crimes Act 1914*; or

(b) an offence against, under or created by a particular provision of the *Crimes Act 1914*; or

(c) an offence arising out of the first-mentioned law or another law of the Commonwealth; or

(d) an offence arising out of a particular provision; or

(e) an offence against, under or created by the *Taxation Administration Act 1953*;

does not mean that the first-mentioned law is impliedly to the contrary effect.

Note: Sections 11.2 (complicity and common purpose), 11.2A (joint commission), and 11.3 (commission by proxy) of this Code operate as extensions of principal offences and are therefore not referred to in this section.

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Part 2.5—Corporate criminal responsibility

Division 12

12.1 General principles

(1) This Code applies to bodies corporate in the same way as it applies to individuals. It so applies with such modifications as are set out in this Part, and with such other modifications as are made necessary by the fact that criminal liability is being imposed on bodies corporate rather than individuals.

(2) A body corporate may be found guilty of any offence, including one punishable by imprisonment.

Note: Section 4B of the *Crimes Act 1914* enables a fine to be imposed for offences that only specify imprisonment as a penalty.

12.2 Physical elements

If a physical element of an offence is committed by an employee, agent or officer of a body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, the physical element must also be attributed to the body corporate.

12.3 Fault elements other than negligence

(1) If intention, knowledge or recklessness is a fault element in relation to a physical element of an offence, that fault element must be attributed to a body corporate that expressly, tacitly or impliedly authorised or permitted the commission of the offence.

(2) The means by which such an authorisation or permission may be established include:

(a) proving that the body corporate's board of directors intentionally, knowingly or recklessly carried out the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence; or

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(b) proving that a high managerial agent of the body corporate intentionally, knowingly or recklessly engaged in the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence; or

(c) proving that a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to non-compliance with the relevant provision; or

(d) proving that the body corporate failed to create and maintain a corporate culture that required compliance with the relevant provision.

(3) Paragraph (2)(b) does not apply if the body corporate proves that it exercised due diligence to prevent the conduct, or the authorisation or permission.

(4) Factors relevant to the application of paragraph (2)(c) or (d) include:

(a) whether authority to commit an offence of the same or a similar character had been given by a high managerial agent of the body corporate; and

(b) whether the employee, agent or officer of the body corporate who committed the offence believed on reasonable grounds, or entertained a reasonable expectation, that a high managerial agent of the body corporate would have authorised or permitted the commission of the offence.

(5) If recklessness is not a fault element in relation to a physical element of an offence, subsection (2) does not enable the fault element to be proved by proving that the board of directors, or a high managerial agent, of the body corporate recklessly engaged in the conduct or recklessly authorised or permitted the commission of the offence.

(6) In this section:

board of directors means the body (by whatever name called) exercising the executive authority of the body corporate.

corporate culture means an attitude, policy, rule, course of conduct or practice existing within the body corporate generally or in the

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part of the body corporate in which the relevant activities takes place.

high managerial agent means an employee, agent or officer of the body corporate with duties of such responsibility that his or her conduct may fairly be assumed to represent the body corporate's policy.

12.4 Negligence

(1) The test of negligence for a body corporate is that set out in section 5.5.

(2) If:

(a) negligence is a fault element in relation to a physical element of an offence; and

(b) no individual employee, agent or officer of the body corporate has that fault element;

that fault element may exist on the part of the body corporate if the body corporate's conduct is negligent when viewed as a whole (that is, by aggregating the conduct of any number of its employees, agents or officers).

(3) Negligence may be evidenced by the fact that the prohibited conduct was substantially attributable to:

(a) inadequate corporate management, control or supervision of the conduct of one or more of its employees, agents or officers; or

(b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

12.5 Mistake of fact (strict liability)

(1) A body corporate can only rely on section 9.2 (mistake of fact (strict liability)) in respect of conduct that would, apart from this section, constitute an offence on its part if:

(a) the employee, agent or officer of the body corporate who carried out the conduct was under a mistaken but reasonable

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belief about facts that, had they existed, would have meant that the conduct would not have constituted an offence; and

(b) the body corporate proves that it exercised due diligence to prevent the conduct.

(2) A failure to exercise due diligence may be evidenced by the fact that the prohibited conduct was substantially attributable to:

(a) inadequate corporate management, control or supervision of the conduct of one or more of its employees, agents or officers; or

(b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

12.6 Intervening conduct or event

A body corporate cannot rely on section 10.1 (intervening conduct or event) in respect of a physical element of an offence brought about by another person if the other person is an employee, agent or officer of the body corporate.

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Part 2.6—Proof of criminal responsibility

Division 13

13.1 Legal burden of proof—prosecution

(1) The prosecution bears a legal burden of proving every element of an offence relevant to the guilt of the person charged.

Note: See section 3.2 on what elements are relevant to a person's guilt.

(2) The prosecution also bears a legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof imposed on the defendant.

(3) In this Code:

legal burden, in relation to a matter, means the burden of proving the existence of the matter.

13.2 Standard of proof—prosecution

(1) A legal burden of proof on the prosecution must be discharged beyond reasonable doubt.

(2) Subsection (1) does not apply if the law creating the offence specifies a different standard of proof.

13.3 Evidential burden of proof—defence

(1) Subject to section 13.4, a burden of proof that a law imposes on a defendant is an evidential burden only.

(2) A defendant who wishes to deny criminal responsibility by relying on a provision of Part 2.3 (other than section 7.3) bears an evidential burden in relation to that matter.

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(3) A defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter. The exception, exemption, excuse, qualification or justification need not accompany the description of the offence.

(4) The defendant no longer bears the evidential burden in relation to a matter if evidence sufficient to discharge the burden is adduced by the prosecution or by the court.

(5) The question whether an evidential burden has been discharged is one of law.

(6) In this Code:

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

13.4 Legal burden of proof—defence

A burden of proof that a law imposes on the defendant is a legal burden if and only if the law expressly:

(a) specifies that the burden of proof in relation to the matter in question is a legal burden; or

(b) requires the defendant to prove the matter; or

(c) creates a presumption that the matter exists unless the contrary is proved.

13.5 Standard of proof—defence

A legal burden of proof on the defendant must be discharged on the balance of probabilities.

13.6 Use of averments

A law that allows the prosecution to make an averment is taken not to allow the prosecution:

(a) to aver any fault element of an offence; or

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(b) to make an averment in prosecuting for an offence that is directly punishable by imprisonment.

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Part 2.7—Geographical jurisdiction

Division 14—Standard geographical jurisdiction

14.1 Standard geographical jurisdiction

(1) This section may apply to a particular offence in either of the following ways:

(a) unless the contrary intention appears, this section applies to the following offences:

(i) a primary offence, where the provision creating the offence commences at or after the commencement of this section;

(ii) an ancillary offence, to the extent to which it relates to a primary offence covered by subparagraph (i);

(b) if a law of the Commonwealth provides that this section applies to a particular offence—this section applies to that offence.

Note: In the case of paragraph (b), the expression ***offence*** is given an extended meaning by subsections 11.2(1) and 11.2A(1), section 11.3 and subsection 11.6(1).

(2) If this section applies to a particular offence, a person does not commit the offence unless:

(a) the conduct constituting the alleged offence occurs:

(i) wholly or partly in Australia; or

(ii) wholly or partly on board an Australian aircraft or an Australian ship; or

(b) the conduct constituting the alleged offence occurs wholly outside Australia and a result of the conduct occurs:

(i) wholly or partly in Australia; or

(ii) wholly or partly on board an Australian aircraft or an Australian ship; or

(c) all of the following conditions are satisfied:

(i) the alleged offence is an ancillary offence;

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(ii) the conduct constituting the alleged offence occurs wholly outside Australia;

(iii) the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur, wholly or partly in Australia or wholly or partly on board an Australian aircraft or an Australian ship.

Defence—primary offence

(3) If this section applies to a particular offence, a person does not commit the offence if:

(aa) the alleged offence is a primary offence; and

(a) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(b) there is not in force in:

(i) the foreign country where the conduct constituting the alleged offence occurs; or

(ii) the part of the foreign country where the conduct constituting the alleged offence occurs;

a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the first-mentioned offence.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3). See subsection 13.3(3).

(4) For the purposes of the application of subsection 13.3(3) to an offence, subsection (3) of this section is taken to be an exception provided by the law creating the offence.

Defence—ancillary offence

(5) If this section applies to a particular offence, a person does not commit the offence if:

(a) the alleged offence is an ancillary offence; and

(b) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

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(c) the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur, wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(d) there is not in force in:

(i) the foreign country where the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur; or

(ii) the part of the foreign country where the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur;

a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the primary offence.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5). See subsection 13.3(3).

(6) For the purposes of the application of subsection 13.3(3) to an offence, subsection (5) of this section is taken to be an exception provided by the law creating the offence.

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Division 15—Extended geographical jurisdiction

15.1 Extended geographical jurisdiction—category A

(1) If a law of the Commonwealth provides that this section applies to a particular offence, a person does not commit the offence unless:

(a) the conduct constituting the alleged offence occurs:

(i) wholly or partly in Australia; or

(ii) wholly or partly on board an Australian aircraft or an Australian ship; or

(b) the conduct constituting the alleged offence occurs wholly outside Australia and a result of the conduct occurs:

(i) wholly or partly in Australia; or

(ii) wholly or partly on board an Australian aircraft or an Australian ship; or

(c) the conduct constituting the alleged offence occurs wholly outside Australia and:

(i) at the time of the alleged offence, the person is an Australian citizen; or

(ii) at the time of the alleged offence, the person is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or

(d) all of the following conditions are satisfied:

(i) the alleged offence is an ancillary offence;

(ii) the conduct constituting the alleged offence occurs wholly outside Australia;

(iii) the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur, wholly or partly in Australia or wholly or partly on board an Australian aircraft or an Australian ship.

Note: The expression ***offence*** is given an extended meaning by subsections 11.2(1) and 11.2A(1), section 11.3 and subsection 11.6(1).

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Defence—primary offence

(2) If a law of the Commonwealth provides that this section applies to a particular offence, a person does not commit the offence if:

(aa) the alleged offence is a primary offence; and

(a) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(b) the person is neither:

(i) an Australian citizen; nor

(ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and

(c) there is not in force in:

(i) the foreign country where the conduct constituting the alleged offence occurs; or

(ii) the part of the foreign country where the conduct constituting the alleged offence occurs;

a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the first-mentioned offence.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3).

(3) For the purposes of the application of subsection 13.3(3) to an offence, subsection (2) of this section is taken to be an exception provided by the law creating the offence.

Defence—ancillary offence

(4) If a law of the Commonwealth provides that this section applies to a particular offence, a person does not commit the offence if:

(a) the alleged offence is an ancillary offence; and

(b) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(c) the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur, wholly in a foreign

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country, but not on board an Australian aircraft or an Australian ship; and

(d) the person is neither:

(i) an Australian citizen; nor

(ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and

(e) there is not in force in:

(i) the foreign country where the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur; or

(ii) the part of the foreign country where the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur;

a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the primary offence.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3).

(5) For the purposes of the application of subsection 13.3(3) to an offence, subsection (4) of this section is taken to be an exception provided by the law creating the offence.

15.2 Extended geographical jurisdiction—category B

(1) If a law of the Commonwealth provides that this section applies to a particular offence, a person does not commit the offence unless:

(a) the conduct constituting the alleged offence occurs:

(i) wholly or partly in Australia; or

(ii) wholly or partly on board an Australian aircraft or an Australian ship; or

(b) the conduct constituting the alleged offence occurs wholly outside Australia and a result of the conduct occurs:

(i) wholly or partly in Australia; or

(ii) wholly or partly on board an Australian aircraft or an Australian ship; or

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(c) the conduct constituting the alleged offence occurs wholly outside Australia and:

(i) at the time of the alleged offence, the person is an Australian citizen; or

(ii) at the time of the alleged offence, the person is a resident of Australia; or

(iii) at the time of the alleged offence, the person is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or

(d) all of the following conditions are satisfied:

(i) the alleged offence is an ancillary offence;

(ii) the conduct constituting the alleged offence occurs wholly outside Australia;

(iii) the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur, wholly or partly in Australia or wholly or partly on board an Australian aircraft or an Australian ship.

Note: The expression ***offence*** is given an extended meaning by subsections 11.2(1) and 11.2A(1), section 11.3 and subsection 11.6(1).

Defence—primary offence

(2) If a law of the Commonwealth provides that this section applies to a particular offence, a person does not commit the offence if:

(aa) the alleged offence is a primary offence; and

(a) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(b) the person is neither:

(i) an Australian citizen; nor

(ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and

(c) there is not in force in:

(i) the foreign country where the conduct constituting the alleged offence occurs; or

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(ii) the part of the foreign country where the conduct constituting the alleged offence occurs;

a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the first-mentioned offence.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3).

(3) For the purposes of the application of subsection 13.3(3) to an offence, subsection (2) of this section is taken to be an exception provided by the law creating the offence.

Defence—ancillary offence

(4) If a law of the Commonwealth provides that this section applies to a particular offence, a person does not commit the offence if:

(a) the alleged offence is an ancillary offence; and

(b) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(c) the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur, wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(d) the person is neither:

(i) an Australian citizen; nor

(ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and

(e) there is not in force in:

(i) the foreign country where the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur; or

(ii) the part of the foreign country where the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur;

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a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the primary offence.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3).

(5) For the purposes of the application of subsection 13.3(3) to an offence, subsection (4) of this section is taken to be an exception provided by the law creating the offence.

15.3 Extended geographical jurisdiction—category C

(1) If a law of the Commonwealth provides that this section applies to a particular offence, the offence applies:

(a) whether or not the conduct constituting the alleged offence occurs in Australia; and

(b) whether or not a result of the conduct constituting the alleged offence occurs in Australia.

Note: The expression ***offence*** is given an extended meaning by subsections 11.2(1) and 11.2A(1), section 11.3 and subsection 11.6(1).

Defence—primary offence

(2) If a law of the Commonwealth provides that this section applies to a particular offence, a person is not guilty of the offence if:

(aa) the alleged offence is a primary offence; and

(a) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(b) the person is neither:

(i) an Australian citizen; nor

(ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and

(c) there is not in force in:

(i) the foreign country where the conduct constituting the alleged offence occurs; or

(ii) the part of the foreign country where the conduct constituting the alleged offence occurs;

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a law of that foreign country, or that part of that foreign country, that creates an offence that corresponds to the first-mentioned offence.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3).

(3) For the purposes of the application of subsection 13.3(3) to an offence, subsection (2) of this section is taken to be an exception provided by the law creating the offence.

Defence—ancillary offence

(4) If a law of the Commonwealth provides that this section applies to a particular offence, a person is not guilty of the offence if:

(a) the alleged offence is an ancillary offence; and

(b) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(c) the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur, wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(d) the person is neither:

(i) an Australian citizen; nor

(ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and

(e) there is not in force in:

(i) the foreign country where the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur; or

(ii) the part of the foreign country where the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur;

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a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the primary offence.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3).

(5) For the purposes of the application of subsection 13.3(3) to an offence, subsection (4) of this section is taken to be an exception provided by the law creating the offence.

15.4 Extended geographical jurisdiction—category D

If a law of the Commonwealth provides that this section applies to a particular offence, the offence applies:

(a) whether or not the conduct constituting the alleged offence occurs in Australia; and

(b) whether or not a result of the conduct constituting the alleged offence occurs in Australia.

Note: The expression ***offence*** is given an extended meaning by subsections 11.2(1) and 11.2A(1), section 11.3 and subsection 11.6(1).

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Division 16—Miscellaneous

16.1 Attorney-General's consent required for prosecution if alleged conduct occurs wholly in a foreign country in certain circumstances

(1) Proceedings for an offence must not be commenced without the Attorney-General's written consent if:

(a) section 14.1, 15.1, 15.2, 15.3 or 15.4 applies to the offence; and

(b) the conduct constituting the alleged offence occurs wholly in a foreign country; and

(c) at the time of the alleged offence, the person alleged to have committed the offence is neither:

(i) an Australian citizen; nor

(ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

(2) However, a person may be arrested for, charged with, or remanded in custody or released on bail in connection with an offence before the necessary consent has been given.

16.2 When conduct taken to occur partly in Australia

Sending things

(1) For the purposes of this Part, if a person sends a thing, or causes a thing to be sent:

(a) from a point outside Australia to a point in Australia; or

(b) from a point in Australia to a point outside Australia;

that conduct is taken to have occurred partly in Australia.

Sending electronic communications

(2) For the purposes of this Part, if a person sends, or causes to be sent, an electronic communication:

(a) from a point outside Australia to a point in Australia; or

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(b) from a point in Australia to a point outside Australia;

that conduct is taken to have occurred partly in Australia.

Point

(3) For the purposes of this section, ***point*** includes a mobile or potentially mobile point, whether on land, underground, in the atmosphere, underwater, at sea or anywhere else.

16.3 Meaning of *Australia*

(1) For the purposes of the application of this Part to a particular primary offence, ***Australia*** has the same meaning it would have if it were used in a geographical sense in the provision creating the primary offence.

(2) For the purposes of the application of this Part to a particular ancillary offence, ***Australia*** has the same meaning it would have if it were used in a geographical sense in the provision creating the primary offence to which the ancillary offence relates.

(3) For the purposes of this Part, if a provision creating an offence extends to an external Territory, it is to be assumed that if the expression ***Australia*** were used in a geographical sense in that provision, that expression would include that external Territory.

(4) This section does not affect the meaning of the expressions ***Australian aircraft***, ***Australian citizen*** or ***Australian ship***.

16.4 Result of conduct

A reference in this Part to a ***result of conduct*** constituting an offence is a reference to a result that is a physical element of the offence (within the meaning of subsection 4.1(1)).

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Chapter 4—The integrity and security of the international community and foreign governments

Division 70—Bribery of foreign public officials

70.1 Definitions

In this Division:

benefit includes any advantage and is not limited to property.

business advantage means an advantage in the conduct of business.

control, in relation to a company, body or association, includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

duty, in relation to a foreign public official, means any authority, duty, function or power that:

(a) is conferred on the official; or

(b) that the official holds himself or herself out as having.

foreign government body means:

(a) the government of a foreign country or of part of a foreign country; or

(b) an authority of the government of a foreign country; or

(c) an authority of the government of part of a foreign country; or

(d) a foreign local government body or foreign regional government body; or

(e) a foreign public enterprise.

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foreign public enterprise means a company or any other body or association where:

(a) in the case of a company—one of the following applies:

(i) the government of a foreign country or of part of a foreign country holds more than 50% of the issued share capital of the company;

(ii) the government of a foreign country or of part of a foreign country holds more than 50% of the voting power in the company;

(iii) the government of a foreign country or of part of a foreign country is in a position to appoint more than 50% of the company's board of directors;

(iv) the directors (however described) of the company are accustomed or under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of the government of a foreign country or of part of a foreign country;

(v) the government of a foreign country or of part of a foreign country is in a position to exercise control over the company; and

(b) in the case of any other body or association—either of the following applies:

(i) the members of the executive committee (however described) of the body or association are accustomed or under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of the government of a foreign country or of part of a foreign country;

(ii) the government of a foreign country or of part of a foreign country is in a position to exercise control over the body or association; and

(c) the company, body or association:

(i) enjoys special legal rights or a special legal status under a law of a foreign country or of part of a foreign country; or

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(ii) enjoys special benefits or privileges under a law of a foreign country or of part of a foreign country;

because of the relationship of the company, body or association with the government of the foreign country or of the part of the foreign country, as the case may be.

foreign public official means:

(a) an employee or official of a foreign government body; or

(b) an individual who performs work for a foreign government body under a contract; or

(c) an individual who holds or performs the duties of an appointment, office or position under a law of a foreign country or of part of a foreign country; or

(d) an individual who holds or performs the duties of an appointment, office or position created by custom or convention of a foreign country or of part of a foreign country; or

(e) an individual who is otherwise in the service of a foreign government body (including service as a member of a military force or police force); or

(f) a member of the executive, judiciary or magistracy of a foreign country or of part of a foreign country; or

(g) an employee of a public international organisation; or

(h) an individual who performs work for a public international organisation under a contract; or

(i) an individual who holds or performs the duties of an office or position in a public international organisation; or

(j) an individual who is otherwise in the service of a public international organisation; or

(k) a member or officer of the legislature of a foreign country or of part of a foreign country; or

(l) an individual who:

(i) is an authorised intermediary of a foreign public official covered by any of the above paragraphs; or

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(ii) holds himself or herself out to be the authorised intermediary of a foreign public official covered by any of the above paragraphs.

public international organisation means:

(a) an organisation:

(i) of which 2 or more countries, or the governments of 2 or more countries, are members; or

(ii) that is constituted by persons representing 2 or more countries, or representing the governments of 2 or more countries; or

(b) an organisation established by, or a group of organisations constituted by:

(i) organisations of which 2 or more countries, or the governments of 2 or more countries, are members; or

(ii) organisations that are constituted by the representatives of 2 or more countries, or the governments of 2 or more countries; or

(c) an organisation that is:

(i) an organ of, or office within, an organisation described in paragraph (a) or (b); or

(ii) a commission, council or other body established by an organisation so described or such an organ; or

(iii) a committee, or subcommittee of a committee, of an organisation described in paragraph (a) or (b), or of such an organ, council or body.

share includes stock.

70.2 Bribing a foreign public official

(1) A person commits an offence if:

(a) the person:

(i) provides a benefit to another person; or

(ii) causes a benefit to be provided to another person; or

(iii) offers to provide, or promises to provide, a benefit to another person; or

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(iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and

(b) the benefit is not legitimately due to the other person; and

(c) the first-mentioned person does so with the intention of influencing a foreign public official (who may be the other person) in the exercise of the official's duties as a foreign public official in order to:

(i) obtain or retain business; or

(ii) obtain or retain a business advantage that is not legitimately due to the recipient, or intended recipient, of the business advantage (who may be the first-mentioned person).

Note: For defences see sections 70.3 and 70.4.

(1A) For the purposes of paragraph (1)(c):

(a) the first-mentioned person does not need to intend to influence a particular foreign public official; and

(b) business, or a business advantage, does not need to be actually obtained or retained.

Benefit that is not legitimately due

(2) For the purposes of this section, in working out if a benefit is ***not legitimately due*** to a person in a particular situation, disregard the following:

(a) the fact that the benefit may be, or be perceived to be, customary, necessary or required in the situation;

(b) the value of the benefit;

(c) any official tolerance of the benefit.

Business advantage that is not legitimately due

(3) For the purposes of this section, in working out if a business advantage is ***not legitimately due*** to a person in a particular situation, disregard the following:

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(a) the fact that the business advantage may be customary, or perceived to be customary, in the situation;
(b) the value of the business advantage;
(c) any official tolerance of the business advantage.

Penalty for individual

(4) An offence against subsection (1) committed by an individual is punishable on conviction by imprisonment for not more than 10 years, a fine not more than 10,000 penalty units, or both.

Penalty for body corporate

(5) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine not more than the greatest of the following:
(a) 100,000 penalty units;
(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the conduct constituting the offence—3 times the value of that benefit;
(c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the period (the ***turnover period***) of 12 months ending at the end of the month in which the conduct constituting the offence occurred.

(6) For the purposes of this section, the ***annual turnover*** of a body corporate, during the turnover period, is the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during that period, other than the following supplies:
(a) supplies made from any of those bodies corporate to any other of those bodies corporate;
(b) supplies that are input taxed;

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(c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*);

(d) supplies that are not made in connection with an enterprise that the body corporate carries on.

(7) Expressions used in subsection (6) that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning in that subsection as they have in that Act.

(8) The question whether 2 bodies corporate are related to each other is to be determined for the purposes of this section in the same way as for the purposes of the *Corporations Act 2001*.

70.3 Defence—conduct lawful in foreign public official's country

(1) A person does not commit an offence against section 70.2 in the cases set out in the following table:

Defence of lawful conduct

Item	In a case where the person's conduct occurred in relation to this kind of foreign public official...	and if it were assumed that the person's conduct had occurred wholly...	this written law requires or permits the provision of the benefit ...
1	an employee or official of a foreign government body	in the place where the central administration of the body is located	a written law in force in that place
2	an individual who performs work for a foreign government body under a contract	in the place where the central administration of the body is located	a written law in force in that place

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Defence of lawful conduct			
Item	**In a case where the person's conduct occurred in relation to this kind of foreign public official...**	**and if it were assumed that the person's conduct had occurred wholly...**	**this written law requires or permits the provision of the benefit ...**
3	an individual who holds or performs the duties of an appointment, office or position under a law of a foreign country or of part of a foreign country	in the foreign country or in the part of the foreign country, as the case may be	a written law in force in the foreign country or in the part of the foreign country, as the case may be
4	an individual who holds or performs the duties of an appointment, office or position created by custom or convention of a foreign country or of part of a foreign country	in the foreign country or in the part of the foreign country, as the case may be	a written law in force in the foreign country or in the part of the foreign country, as the case may be
5	an individual who is otherwise in the service of a foreign government body (including service as a member of a military force or police force)	in the place where the central administration of the body is located	a written law in force in that place
6	a member of the executive, judiciary or magistracy of a foreign country or of part of a foreign country	in the foreign country or in the part of the foreign country, as the case may be	a written law in force in the foreign country or in the part of the foreign country, as the case may be
7	an employee of a public international organisation	in the place where the headquarters of the organisation is located	a written law in force in that place

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Defence of lawful conduct			
Item	**In a case where the person's conduct occurred in relation to this kind of foreign public official...**	**and if it were assumed that the person's conduct had occurred wholly...**	**this written law requires or permits the provision of the benefit ...**
8	an individual who performs work for a public international organisation under a contract	in the place where the headquarters of the organisation is located	a written law in force in that place
9	an individual who holds or performs the duties of a public office or position in a public international organisation	in the place where the headquarters of the organisation is located	a written law in force in that place
10	an individual who is otherwise in the service of a public international organisation	in the place where the headquarters of the organisation is located	a written law in force in that place
11	a member or officer of the legislature of a foreign country or of part of a foreign country	in the foreign country or in the part of the foreign country, as the case may be	a written law in force in the foreign country or in the part of the foreign country, as the case may be

Note: A defendant bears an evidential burden in relation to the matter in subsection (1). See subsection 13.3(3).

(2) A person does not commit an offence against section 70.2 if:

(a) the person's conduct occurred in relation to a foreign public official covered by paragraph (l) of the definition of ***foreign public official*** in section 70.1 (which deals with intermediaries of foreign public officials covered by other paragraphs of that definition); and

(b) assuming that the first-mentioned person's conduct had occurred instead in relation to:

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(i) the other foreign public official of whom the first-mentioned foreign public official was an authorised intermediary; or

(ii) the other foreign public official in relation to whom the first-mentioned foreign public official held himself or herself out to be an authorised intermediary;

subsection (1) would have applied in relation to the first-mentioned person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

(3) To avoid doubt, if:

(a) a person's conduct occurred in relation to a foreign public official covered by 2 or more paragraphs of the definition of ***foreign public official*** in section 70.1; and

(b) at least one of the corresponding items in subsection (1) is applicable to the conduct of the first-mentioned person;

subsection (1) applies to the conduct of the first-mentioned person.

70.4 Defence—facilitation payments

(1) A person does not commit an offence against section 70.2 if:

(a) the value of the benefit was of a minor nature; and

(b) the person's conduct was engaged in for the sole or dominant purpose of expediting or securing the performance of a routine government action of a minor nature; and

(c) as soon as practicable after the conduct occurred, the person made a record of the conduct that complies with subsection (3); and

(d) any of the following subparagraphs applies:

(i) the person has retained that record at all relevant times;

(ii) that record has been lost or destroyed because of the actions of another person over whom the first-mentioned person had no control, or because of a non-human act or event over which the first-mentioned person had no control, and the first-mentioned person could not reasonably be expected to have guarded

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against the bringing about of that loss or that destruction;

(iii) a prosecution for the offence is instituted more than 7 years after the conduct occurred.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1). See subsection 13.3(3).

Routine government action

(2) For the purposes of this section, a ***routine government action*** is an action of a foreign public official that:

(a) is ordinarily and commonly performed by the official; and

(b) is covered by any of the following subparagraphs:

(i) granting a permit, licence or other official document that qualifies a person to do business in a foreign country or in a part of a foreign country;

(ii) processing government papers such as a visa or work permit;

(iii) providing police protection or mail collection or delivery;

(iv) scheduling inspections associated with contract performance or related to the transit of goods;

(v) providing telecommunications services, power or water;

(vi) loading and unloading cargo;

(vii) protecting perishable products, or commodities, from deterioration;

(viii) any other action of a similar nature; and

(c) does not involve a decision about:

(i) whether to award new business; or

(ii) whether to continue existing business with a particular person; or

(iii) the terms of new business or existing business; and

(d) does not involve encouraging a decision about:

(i) whether to award new business; or

(ii) whether to continue existing business with a particular person; or

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(iii) the terms of new business or existing business.

Content of records

(3) A record of particular conduct engaged in by a person complies with this subsection if the record sets out:
(a) the value of the benefit concerned; and
(b) the date on which the conduct occurred; and
(c) the identity of the foreign public official in relation to whom the conduct occurred; and
(d) if that foreign public official is not the other person mentioned in paragraph 70.2(1)(a)—the identity of that other person; and
(e) particulars of the routine government action that was sought to be expedited or secured by the conduct; and
(f) the person's signature or some other means of verifying the person's identity.

70.5 Territorial and nationality requirements

(1) A person does not commit an offence against section 70.2 unless:
(a) the conduct constituting the alleged offence occurs:
(i) wholly or partly in Australia; or
(ii) wholly or partly on board an Australian aircraft or an Australian ship; or
(b) the conduct constituting the alleged offence occurs wholly outside Australia and:
(i) at the time of the alleged offence, the person is an Australian citizen; or
(ii) at the time of the alleged offence, the person is a resident of Australia; or
(iii) at the time of the alleged offence, the person is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Note: The expression ***offence against section 70.2*** is given an extended meaning by subsections 11.2(1), 11.2A(1) and 11.6(2).

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(2) Proceedings for an offence against section 70.2 must not be commenced without the Attorney-General's written consent if:

(a) the conduct constituting the alleged offence occurs wholly outside Australia; and

(b) at the time of the alleged offence, the person alleged to have committed the offence is:

(i) a resident of Australia; and

(ii) not an Australian citizen.

(3) However, a person may be arrested for, charged with, or remanded in custody or released on bail in connection with an offence against section 70.2 before the necessary consent has been given.

70.6 Saving of other laws

This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

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Division 71—Offences against United Nations and associated personnel

71.1 Purpose

The purpose of this Division is to protect United Nations and associated personnel and give effect to the Convention on the Safety of United Nations and Associated Personnel.

71.2 Murder of a UN or associated person

(1) A person commits an offence if:
  (a) the person's conduct causes the death of another person; and
  (b) that other person is a UN or associated person; and
  (c) the UN or associated person is engaged in a UN operation that is not a UN enforcement action; and
  (d) the first-mentioned person intends to cause, or is reckless as to causing, the death of the UN or associated person or any other person by the conduct.

Penalty: Imprisonment for life.

Note: Section 71.23 defines ***UN enforcement action***, ***UN operation*** and ***UN or associated person***.

(2) Strict liability applies to paragraphs (1)(b) and (c).

71.3 Manslaughter of a UN or associated person

(1) A person commits an offence if:
  (a) the person's conduct causes the death of another person; and
  (b) that other person is a UN or associated person; and
  (c) the UN or associated person is engaged in a UN operation that is not a UN enforcement action; and
  (d) the first-mentioned person intends to cause, or is reckless as to causing, serious harm to the UN or associated person or any other person by the conduct.

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Penalty: Imprisonment for 25 years.

Note: Section 71.23 defines ***UN enforcement action***, ***UN operation*** and ***UN or associated person***.

(2) Strict liability applies to paragraphs (1)(b) and (c).

71.4 Intentionally causing serious harm to a UN or associated person

(1) A person commits an offence if:

(a) the person's conduct causes serious harm to another person; and

(b) that other person is a UN or associated person; and

(c) the UN or associated person is engaged in a UN operation that is not a UN enforcement action; and

(d) the first-mentioned person intends to cause serious harm to the UN or associated person or any other person by the conduct.

Penalty: Imprisonment for 20 years.

Penalty (aggravated offence): Imprisonment for 25 years.

Note 1: Section 71.23 defines ***UN enforcement action***, ***UN operation*** and ***UN or associated person***.

Note 2: Section 71.13 defines ***aggravated offence***.

(2) Strict liability applies to paragraphs (1)(b) and (c).

71.5 Recklessly causing serious harm to a UN or associated person

(1) A person commits an offence if:

(a) the person's conduct causes serious harm to another person; and

(b) that other person is a UN or associated person; and

(c) the UN or associated person is engaged in a UN operation that is not a UN enforcement action; and

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(d) the first-mentioned person is reckless as to causing serious harm to the UN or associated person or any other person by the conduct.

Penalty: Imprisonment for 15 years.

Penalty (aggravated offence): Imprisonment for 19 years.

Note 1: Section 71.23 defines ***UN enforcement action***, ***UN operation*** and ***UN or associated person***.

Note 2: Section 71.13 defines ***aggravated offence***.

(2) Strict liability applies to paragraphs (1)(b) and (c).

71.6 Intentionally causing harm to a UN or associated person

(1) A person commits an offence if:

(a) the person's conduct causes harm to another person without the consent of that person; and

(b) that other person is a UN or associated person; and

(c) the UN or associated person is engaged in a UN operation that is not a UN enforcement action; and

(d) the first-mentioned person intends to cause harm to the UN or associated person or any other person by the conduct.

Penalty: Imprisonment for 10 years.

Penalty (aggravated offence): Imprisonment for 13 years.

Note 1: Section 71.23 defines ***UN enforcement action***, ***UN operation*** and ***UN or associated person***.

Note 2: Section 71.13 defines ***aggravated offence***.

(2) Strict liability applies to paragraphs (1)(b) and (c).

71.7 Recklessly causing harm to a UN or associated person

(1) A person commits an offence if:

(a) the person's conduct causes harm to another person without the consent of that person; and

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(b) that other person is a UN or associated person; and
(c) the UN or associated person is engaged in a UN operation that is not a UN enforcement action; and
(d) the first-mentioned person is reckless as to causing harm to the UN or associated person or any other person by the conduct.

Penalty: Imprisonment for 7 years.

Penalty (aggravated offence): Imprisonment for 9 years.

Note 1: Section 71.23 defines ***UN enforcement action***, ***UN operation*** and ***UN or associated person***.

Note 2: Section 71.13 defines ***aggravated offence***.

(2) Strict liability applies to paragraphs (1)(b) and (c).

71.8 Unlawful sexual penetration

(1) A person commits an offence if:
(a) the person sexually penetrates another person without the consent of that person; and
(b) that other person is a UN or associated person; and
(c) the UN or associated person is engaged in a UN operation that is not a UN enforcement action; and
(d) the first-mentioned person knows about, or is reckless as to, the lack of consent.

Penalty: Imprisonment for 15 years.

Penalty (aggravated offence): Imprisonment for 20 years.

Note 1: Section 71.23 defines ***UN enforcement action***, ***UN operation*** and ***UN or associated person***.

Note 2: Section 71.13 defines ***aggravated offence***.

(2) Strict liability applies to paragraphs (1)(b) and (c).

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(3) In this section:

sexually penetrate means:

(a) penetrate (to any extent) the genitalia or anus of a person by any part of the body of another person or by any object manipulated by that other person; or

(b) penetrate (to any extent) the mouth of a person by the penis of another person; or

(c) continue to sexually penetrate as defined in paragraph (a) or (b).

(4) In this section, being ***reckless*** as to a lack of consent to sexual penetration includes not giving any thought to whether or not the person is consenting to sexual penetration.

(5) In this section, the genitalia or others parts of the body of a person include surgically constructed genitalia or other parts of the body of the person.

71.9 Kidnapping a UN or associated person

(1) A person commits an offence if:

(a) the person takes or detains another person without his or her consent; and

(b) that other person is a UN or associated person; and

(c) the UN or associated person is engaged in a UN operation that is not a UN enforcement action; and

(d) the first-mentioned person takes or detains the UN or associated person with the intention of:

(i) holding him or her to ransom or as a hostage; or

(ii) taking or sending him or her out of the country; or

(iii) committing a serious offence against him or her or another person.

Penalty: Imprisonment for 15 years.

Penalty (aggravated offence): Imprisonment for 19 years.

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Note 1: Section 71.23 defines ***UN enforcement action***, ***UN operation*** and ***UN or associated person***.

Note 2: Section 71.13 defines ***aggravated offence***.

(2) Strict liability applies to paragraphs (1)(b) and (c).

(3) In this section, ***serious offence*** means an offence under a law of the Commonwealth, a State or Territory or a foreign law the maximum penalty for which is death, or imprisonment for not less than 12 months.

71.10 Unlawful detention of UN or associated person

(1) A person commits an offence if:

(a) the person takes or detains another person without that other person's consent; and

(b) that other person is a UN or associated person; and

(c) the UN or associated person is engaged in a UN operation that is not a UN enforcement action.

Penalty: Imprisonment for 5 years.

Penalty (aggravated offence): Imprisonment for 6 years.

Note 1: Section 71.23 defines ***UN enforcement action***, ***UN operation*** and ***UN or associated person***.

Note 2: Section 71.13 defines ***aggravated offence***.

(2) Strict liability applies to paragraphs (1)(b) and (c).

71.11 Intentionally causing damage to UN or associated person's property etc.

(1) A person commits an offence if:

(a) the person's conduct causes damage to official premises, private accommodation or a means of transportation (the ***property***); and

(b) the property is occupied or used by a UN or associated person; and

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(c) the conduct gives rise to a danger of serious harm to a person; and
(d) that person is the UN or associated person referred to in paragraph (b); and
(e) the UN or associated person is engaged in a UN operation that is not a UN enforcement action; and
(f) the first-mentioned person intends to cause the damage to the property; and
(g) the first-mentioned person is reckless as to the danger to the person referred to in paragraph (c).

Penalty: Imprisonment for 10 years.

Note: Section 71.23 defines ***UN enforcement action***, ***UN operation*** and ***UN or associated person***.

(2) Strict liability applies to paragraphs (1)(b), (d) and (e).

71.12 Threatening to commit other offences

A person commits an offence if the person:
(a) threatens to commit an offence (the ***threatened offence***) under any of sections 71.2 to 71.11; and
(b) intends to compel any other person to do or omit to do an act by making the threat.

Penalty:
(a) if the threatened offence is the offence under section 71.2 (murder of a UN or associated person)—imprisonment for 10 years; or
(b) if the threatened offence is the offence under section 71.3, 71.4, 71.5, 71.8 or 71.9 (manslaughter of, causing serious harm to, kidnapping, or sexually penetrating, a UN or associated person)—imprisonment for 7 years; or
(c) if the threatened offence is the offence under section 71.6 or 71.11 (causing harm to, or damaging the property etc. of, a UN or associated person)—imprisonment for 5 years; or

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(d) if the threatened offence is the offence under section 71.7 or 71.10 (recklessly causing harm to, or unlawful detention of, a UN or associated person)—imprisonment for 3 years.

Note: Section 71.23 defines ***UN or associated person***.

71.13 Aggravated offences

(1) For the purposes of this Division, an offence against section 71.4, 71.5, 71.6, 71.7, 71.8, 71.9 or 71.10 is an ***aggravated offence*** if:

(a) the offence was committed during the deliberate and systematic infliction of severe pain over a period of time; or

(b) the offence was committed by the use or threatened use of an offensive weapon; or

(c) the offence was committed against a person in an abuse of authority.

(2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.

(3) In order to prove an aggravated offence, the prosecution must prove that the defendant intended to commit, or was reckless as to committing, the matters referred to in paragraph (1)(a), (b) or (c).

(4) In this section:

offensive weapon includes:

(a) an article made or adapted for use for causing injury to, or incapacitating, a person; or

(b) an article where the person who has the article intends, or threatens to use, the article to cause injury to, or to incapacitate, another person.

71.14 Defence—activities involving serious harm

A person is not criminally responsible for an offence against section 71.4 or 71.5 if the conduct causing serious harm to another person is engaged in by the first-mentioned person:

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(a) for the purpose of benefiting the other person or in pursuance of a socially acceptable function or activity; and

(b) having regard to the purpose, function or activity, the conduct was reasonable.

Note 1: If a person causes less than serious harm to another person, the prosecution is obliged to prove that the harm was caused without the consent of the person harmed (see for example section 71.6).

Note 2: A defendant bears an evidential burden in relation to the matter in this section, see subsection 13.3(3).

71.15 Defence—medical or hygienic procedures

A person is not criminally responsible for an offence against section 71.8 in respect of any sexual penetration carried out in the course of a procedure in good faith for medical or hygienic purposes.

Note: A defendant bears an evidential burden in relation to the matter in this section, see subsection 13.3(3).

71.16 Jurisdictional requirement

A person commits an offence under this Division only if:

(a) the conduct constituting the alleged offence occurs:

(i) wholly or partly in Australia; or

(ii) wholly or partly on board an Australian aircraft or an Australian ship; or

(b) the conduct constituting the alleged offence occurs wholly outside Australia and:

(i) at the time of the alleged offence, the person is an Australian citizen; or

(ii) at the time of the alleged offence, the person is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or

(iii) at the time of the alleged offence, the person is a stateless person whose habitual residence is in Australia; or

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(iv) the conduct is subject to the jurisdiction of another State Party to the Convention established in accordance with paragraph 1 or 2 of article 10 and the person enters Australia; or

(c) the alleged offence is committed against an Australian citizen; or

(d) by engaging in the conduct constituting the alleged offence, the person intends to compel a legislative, executive or judicial institution of the Commonwealth, a State or a Territory to do or omit to do an act.

71.17 Exclusion of this Division if State/Territory laws provide for corresponding offences

(1) A State or Territory court does not have jurisdiction to determine a charge of an offence under this Division if the conduct constituting the offence also constitutes an offence (the ***State offence***) against the law of that State or Territory.

(2) If:

(a) a prosecution is brought against a person under this Division; and

(b) a court finds that there is a corresponding State offence;

then this section does not prevent the person from being prosecuted for the State offence.

71.18 Double jeopardy

If a person has been convicted or acquitted of an offence in respect of conduct under the law of a foreign country, the person cannot be convicted of an offence under this Division in respect of that conduct.

71.19 Saving of other laws

This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or of a State or Territory.

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71.20 Bringing proceedings under this Division

(1) Proceedings for an offence under this Division must not be commenced without the Attorney-General's written consent.

(2) However, a person may be arrested, charged, remanded in custody, or released on bail, in connection with an offence under this Division before the necessary consent has been given.

71.21 Ministerial certificates relating to proceedings

(1) The Foreign Affairs Minister may issue a certificate stating any of the following matters:
   (a) the Convention entered into force for Australia on a specified day;
   (b) the Convention remains in force for Australia or any other State Party on a specified day;
   (c) a matter relevant to the establishment of jurisdiction by a State Party under paragraph 1 or 2 of article 10 of the Convention;
   (d) a matter relevant to whether a person is or was a UN or associated person;
   (e) a matter relevant to whether an operation is or was a UN operation.

(2) The Immigration Minister may issue a certificate stating that:
   (a) a person is or was an Australian citizen at a particular time; or
   (b) a person is or was a stateless person whose habitual residence is or was in Australia.

(3) In any proceedings, a certificate under this section is prima facie evidence of the matters in the certificate.

71.22 Jurisdiction of State courts preserved

For the purposes of section 38 of the *Judiciary Act 1903*, a matter arising under this Act, including a question of interpretation of the

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Convention, is taken not to be a matter arising directly under a treaty.

71.23 Definitions

(1) In this Division:

associated personnel means:

(a) persons assigned by a government, or an intergovernmental organisation, with the agreement of the competent organ of the United Nations; or

(b) persons engaged by the Secretary-General of the United Nations, a specialised agency or the International Atomic Energy Agency; or

(c) persons deployed by a humanitarian non-governmental organisation or agency under an agreement with the Secretary-General of the United Nations, a specialised agency or the International Atomic Energy Agency;

to carry out activities in support of the fulfilment of the mandate of a UN operation.

Convention means the Convention on the Safety of United Nations and Associated Personnel, done at New York on 9 December 1994.

Note: The text of the Convention is set out in Australian Treaty Series 1995 No. 1. In 2000 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible through that Department's website.

Foreign Affairs Minister means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

Immigration Minister means the Minister administering the *Migration Act 1958*.

UN enforcement action means a UN operation:

(a) that is authorised by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations; and

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(b) in which any of the UN or associated personnel are engaged as combatants against organised armed forces; and

(c) to which the law of international armed conflict applies.

UN operation means an operation established by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control if:

(a) the operation is for the purpose of maintaining or restoring international peace and security; or

(b) the Security Council or the General Assembly has declared, for the purposes of the Convention, that there exists an exceptional risk to the safety of the personnel engaged in the operation.

UN or associated person means a person who is a member of any UN personnel or associated personnel.

UN personnel means:

(a) persons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a UN operation; or

(b) any other officials or experts on mission of the United Nations, its specialised agencies or the International Atomic Energy Agency who are present in an official capacity in the area where a UN operation is being conducted.

(2) In this Division, a person's conduct ***causes*** death or harm if it substantially contributes to the death or harm.

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Division 72—Explosives and lethal devices

Subdivision A—International terrorist activities using explosive or lethal devices

72.1 Purpose

The purpose of this Subdivision is to create offences relating to international terrorist activities using explosive or lethal devices and give effect to the International Convention for the Suppression of Terrorist Bombings, done at New York on 15 December 1997.

Note: The text of the Convention is available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible through that Department's website.

72.2 ADF members not liable for prosecution

Nothing in this Subdivision makes a member of the Australian Defence Force acting in connection with the defence or security of Australia liable to be prosecuted for an offence.

72.3 Offences

(1) A person commits an offence if:

(a) the person intentionally delivers, places, discharges or detonates a device; and

(b) the device is an explosive or other lethal device and the person is reckless as to that fact; and

(c) the device is delivered, placed, discharged, or detonated, to, in, into or against:

(i) a place of public use; or

(ii) a government facility; or

(iii) a public transportation system; or

(iv) an infrastructure facility; and

(d) the person intends to cause death or serious harm.

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Penalty: Imprisonment for life.

(2) A person commits an offence if:
  (a) the person intentionally delivers, places, discharges or detonates a device; and
  (b) the device is an explosive or other lethal device and the person is reckless as to that fact; and
  (c) the device is delivered, placed, discharged, or detonated, to, in, into or against:
    (i) a place of public use; or
    (ii) a government facility; or
    (iii) a public transportation system; or
    (iv) an infrastructure facility; and
  (d) the person intends to cause extensive destruction to the place, facility or system; and
  (e) the person is reckless as to whether that intended destruction results or is likely to result in major economic loss.

Penalty: Imprisonment for life.

(3) Strict liability applies to paragraphs (1)(c) and (2)(c).

72.4 Jurisdictional requirement

(1) A person commits an offence under this Subdivision only if one or more of the following paragraphs applies and the circumstances relating to the alleged offence are not exclusively internal (see subsection (2)):
  (a) the conduct constituting the alleged offence occurs:
    (i) wholly or partly in Australia; or
    (ii) wholly or partly on board an Australian ship or an Australian aircraft;
  (b) at the time of the alleged offence, the person is an Australian citizen;
  (c) at the time of the alleged offence, the person is a stateless person whose habitual residence is in Australia;

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(d) the conduct is subject to the jurisdiction of another State Party to the Convention established in accordance with paragraph 1 or 2 of Article 6 of the Convention and the person is in Australia;

(e) the alleged offence is committed against a government facility of the Commonwealth, or of a State or Territory, that is located outside Australia;

(f) the alleged offence is committed against:

(i) an Australian citizen; or

(ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory;

(g) by engaging in the conduct constituting the alleged offence, the person intends to compel a legislative, executive or judicial institution of the Commonwealth, a State or a Territory to do or omit to do an act.

(2) The circumstances relating to the alleged offence are exclusively internal if:

(a) the conduct constituting the alleged offence occurs wholly within Australia; and

(b) the alleged offender is an Australian citizen; and

(c) all of the persons against whom the offence is committed are Australian citizens or bodies corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and

(d) the alleged offender is in Australia; and

(e) no other State Party to the Convention has a basis under paragraph 1 or 2 of Article 6 of the Convention for exercising jurisdiction in relation to the conduct.

72.5 Saving of other laws

This Subdivision is not intended to exclude or limit the operation of any other law of the Commonwealth or of a State or Territory.

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72.6 Double jeopardy and foreign offences

If a person has been convicted or acquitted of an offence in respect of conduct under the law of a foreign country, the person cannot be convicted of an offence under this Subdivision in respect of that conduct.

72.7 Bringing proceedings under this Subdivision

(1) Proceedings for an offence under this Subdivision must not be commenced without the Attorney-General's written consent.

(2) However, a person may be arrested, charged, remanded in custody, or released on bail, in connection with an offence under this Subdivision before the necessary consent has been given.

(3) In determining whether to bring proceedings for an offence under this Subdivision, the Attorney-General must have regard to the terms of the Convention, including paragraph 2 of Article 19.

(4) In determining whether to bring proceedings for an offence under this Subdivision, the Attorney-General must also have regard to:
  (a) whether the conduct constituting the offence also gives rise to an offence under a law of a State or Territory; and
  (b) whether a prosecution relating to the conduct under the State or Territory law has been or will be commenced.

72.8 Ministerial certificates relating to proceedings

(1) The Minister administering the *Charter of the United Nations Act 1945* may issue a certificate stating any of the following matters:
  (a) that the Convention entered into force for Australia on a specified day;
  (b) that the Convention remains in force for Australia or any other State Party on a specified day;
  (c) a matter relevant to the establishment of jurisdiction by a State Party under paragraph 1 or 2 of Article 6 of the Convention.

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(2) The Minister administering the *Australian Citizenship Act 2007* may issue a certificate stating that:

(a) a person is or was an Australian citizen at a particular time; or

(b) a person is or was a stateless person whose habitual residence is or was in Australia at a particular time.

(3) In any proceedings, a certificate under this section is prima facie evidence of the matters in the certificate.

72.9 Jurisdiction of State courts preserved

For the purposes of section 38 of the *Judiciary Act 1903*, a matter arising under this Subdivision, including a question of interpretation of the Convention, is taken not to be a matter arising directly under a treaty.

72.10 Definitions

In this Subdivision:

Convention means the Convention referred to in section 72.1.

explosive or other lethal device has the same meaning as in the Convention.

government facility has the same meaning as ***State or government facility*** has in the Convention.

infrastructure facility has the same meaning as in the Convention.

place of public use has the same meaning as in the Convention.

public transportation system has the same meaning as in the Convention.

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Subdivision B—Plastic explosives

72.11 Purpose

The purpose of this Subdivision is to create offences relating to plastic explosives and give effect to the Convention on the Marking of Plastic Explosives.

Note: The Convention requires the introduction of detection agents into plastic explosives so as to render the explosives detectable by vapour detection means. This is known as the marking of the explosives.

72.12 Trafficking in unmarked plastic explosives etc.

(1) A person commits an offence if:
  (a) the person traffics in a substance; and
  (b) the substance is a plastic explosive; and
  (c) the plastic explosive breaches a marking requirement; and
  (d) the trafficking is not authorised under section 72.18, 72.19, 72.22 or 72.23.

Penalty: Imprisonment for 10 years.

(2) The fault element for paragraph (1)(b) is recklessness.

(3) Strict liability applies to paragraphs (1)(c) and (d).

Note 1: For the marking requirements, see section 72.33.

Note 2: For defences, see section 72.16.

72.13 Importing or exporting unmarked plastic explosives etc.

(1) A person commits an offence if:
  (a) the person imports or exports a substance; and
  (b) the substance is a plastic explosive; and
  (c) the plastic explosive breaches a marking requirement; and
  (d) the import or export is not authorised under section 72.18, 72.19, 72.22 or 72.23.

Penalty: Imprisonment for 10 years.

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(2) The fault element for paragraph (1)(b) is recklessness.

(3) Strict liability applies to paragraphs (1)(c) and (d).

Note 1: For the marking requirements, see section 72.33.

Note 2: For defences, see section 72.16.

72.14 Manufacturing unmarked plastic explosives etc.

(1) A person commits an offence if:

(a) the person:

(i) engages in the manufacture of a substance; or

(ii) exercises control or direction over the manufacture of a substance; and

(b) the substance is a plastic explosive; and

(c) the plastic explosive breaches the first marking requirement; and

(d) the manufacture is not authorised under section 72.18.

Penalty: Imprisonment for 10 years.

(2) The fault element for paragraph (1)(b) is recklessness.

(3) Strict liability applies to paragraphs (1)(c) and (d).

Note 1: For the marking requirements, see section 72.33.

Note 2: For defences, see section 72.16.

72.15 Possessing unmarked plastic explosives etc.

(1) A person commits an offence if:

(a) the person possesses a substance; and

(b) the substance is a plastic explosive; and

(c) the plastic explosive breaches a marking requirement; and

(d) the possession is not authorised under section 72.18, 72.19, 72.22 or 72.23.

Penalty: Imprisonment for 2 years.

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(2) The fault element for paragraph (1)(b) is recklessness.

(3) Strict liability applies to paragraphs (1)(c) and (d).

Note 1: For the marking requirements, see section 72.33.

Note 2: For defences, see section 72.16.

72.16 Defences

(1) If:

(a) a person is charged with an offence against section 72.12, 72.13, 72.14 or 72.15; and

(b) the prosecution alleges that the plastic explosive breached a particular marking requirement;

it is a defence if the defendant proves that he or she had no reasonable grounds for suspecting that the plastic explosive breached that marking requirement.

Note 1: A defendant bears a legal burden in relation to the matter in subsection (1) (see section 13.4).

Note 2: For the marking requirements, see section 72.33.

(2) If:

(a) a person is charged with an offence against section 72.12, 72.13 or 72.15; and

(b) the prosecution alleges that the plastic explosive breached the second marking requirement;

it is a defence if the defendant proves that, at the time of the alleged offence:

(c) the plastic explosive contained a detection agent; and

(d) the concentration of the detection agent in the plastic explosive was not less than the minimum manufacture concentration for the detection agent; and

(e) the detection agent was homogenously distributed throughout the plastic explosive.

Note 1: A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4).

Note 2: For the marking requirements, see section 72.33.

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Note 3: For ***minimum manufacture concentration***, see section 72.34.

72.17 Packaging requirements for plastic explosives

(1) A person commits an offence if:

(a) the person manufactures a substance; and

(b) the substance is a plastic explosive; and

(c) within 24 hours after the manufacture of the plastic explosive, the person does not cause the plastic explosive to be contained, enclosed or packaged in a wrapper with:

(i) the expression "PLASTIC EXPLOSIVE" (in upper-case lettering); and

(ii) the date of manufacture of the plastic explosive; and

(iii) if the plastic explosive is of a prescribed type—that type; and

(iv) if the plastic explosive contains a detection agent for the purpose of meeting the first marking requirement—the name of the detection agent; and

(v) if the plastic explosive contains a detection agent for the purpose of meeting the first marking requirement—the concentration of the detection agent in the plastic explosive at the time of manufacture, expressed as a percentage by mass;

legibly displayed on the outer surface of the wrapper.

Penalty: Imprisonment for 2 years.

(2) The fault element for paragraphs (1)(b) and (c) is recklessness.

72.18 Authorisation for research etc.

Authorisation

(1) A responsible Minister may, by writing, authorise:

(a) the trafficking in; or

(b) the import, export, manufacture or possession of;

an unmarked plastic explosive.

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(2) A responsible Minister must not give an authorisation under subsection (1) in relation to an unmarked plastic explosive unless the responsible Minister is satisfied that:

(a) the plastic explosive is for use exclusively for one or more of the following:

(i) research, development or testing of new or modified explosives;

(ii) development or testing of explosives detection equipment;

(iii) training in explosives detection;

(iv) forensic science; or

(b) both:

(i) the plastic explosive is an integral part of an explosive device that was manufactured exclusively for defence purposes; and

(ii) the explosive device is for use exclusively for defence purposes; or

(c) the plastic explosive will, within 3 years after the commencement of this section, become an integral part of an explosive device manufactured exclusively for defence purposes.

(3) An authorisation under subsection (1) must specify the grounds on which it was given.

Conditions and restrictions

(4) An authorisation under subsection (1) is subject to such conditions and restrictions as are specified in the authorisation.

(5) A responsible Minister must not give an authorisation under subsection (1) in relation to an unmarked plastic explosive on grounds covered by paragraph (2)(a) unless the authorisation is subject to a condition imposing a limit as to the quantity of the plastic explosive.

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Criteria

(6) In exercising a power conferred by this section in relation to:
  (a) the trafficking in; or
  (b) the import, export, manufacture or possession of;
an unmarked plastic explosive, a responsible Minister must have regard to:
  (c) the Convention on the Marking of Plastic Explosives; and
  (d) whether the trafficking, import, export, manufacture or possession is reasonable; and
  (e) such other matters (if any) as the responsible Minister considers relevant.

72.19 Authorisation for defence and police purposes—15 year limit

Authorisation

(1) A responsible Minister may, by writing, authorise:
  (a) the trafficking in; or
  (b) the import, export or possession of;
an unmarked plastic explosive that was manufactured before the commencement of this section.

(2) A responsible Minister must not give an authorisation under subsection (1) in relation to an unmarked plastic explosive unless the responsible Minister is satisfied that the plastic explosive is exclusively for use in connection with:
  (a) the operation of the Australian Defence Force; or
  (b) the operation in Australia of a visiting force (within the meaning of the *Defence (Visiting Forces) Act 1963*); or
  (c) the operation of:
    (i) the Australian Federal Police; or
    (ii) the police force or police service of a State or Territory.

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Conditions and restrictions

(3) An authorisation under subsection (1) is subject to such conditions and restrictions as are specified in the authorisation.

Criteria

(4) In exercising a power conferred by this section in relation to:
  (a) the trafficking in; or
  (b) the import, export or possession of;

an unmarked plastic explosive, a responsible Minister must have regard to:
  (c) the Convention on the Marking of Plastic Explosives; and
  (d) whether the trafficking, import, export or possession is reasonable; and
  (e) such other matters (if any) as the responsible Minister considers relevant.

Sunset

(5) This section ceases to have effect at the end of 15 years after its commencement.

72.22 Authorisation for overseas defence purposes—7 day limit

(1) A member of the Australian Defence Force is authorised to possess, import or traffic in an unmarked plastic explosive if:
  (a) the plastic explosive was obtained in the course of the operation outside Australia of the Australian Defence Force; and
  (b) the member believes on reasonable grounds that there is insufficient time to obtain an authorisation under this Subdivision because of:
    (i) an emergency; or
    (ii) any other sudden or unexpected circumstances.

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(2) An authorisation under subsection (1) ceases to have effect at the end of the seventh day after the day on which the plastic explosive was obtained.

72.23 Authorisation for overseas Australian Federal Police purposes—7 day limit

(1) A member of the Australian Federal Police is authorised to possess, import or traffic in an unmarked plastic explosive if:

(a) the plastic explosive was obtained in the course of the operation outside Australia of the Australian Federal Police; and

(b) the member believes on reasonable grounds that there is insufficient time to obtain an authorisation under this Subdivision because of:

(i) an emergency; or

(ii) any other sudden or unexpected circumstances.

(2) An authorisation under subsection (1) ceases to have effect at the end of the seventh day after the day on which the plastic explosive was obtained.

72.24 Forfeited plastic explosives

(1) If a court:

(a) convicts a person of an offence against this Subdivision in relation to a plastic explosive; or

(b) makes an order under section 19B of the *Crimes Act 1914* in respect of a person charged with an offence against this Subdivision in relation to a plastic explosive;

the court may order the forfeiture to the Commonwealth of the plastic explosive.

(2) A plastic explosive forfeited to the Commonwealth under subsection (1) becomes the property of the Commonwealth.

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(3) A plastic explosive forfeited to the Commonwealth under subsection (1) is to be dealt with in such manner as a responsible Minister directs.

(4) Without limiting subsection (3), a responsible Minister may direct that a plastic explosive forfeited to the Commonwealth under subsection (1) be:

(a) destroyed; or

(b) used exclusively for one or more of the purposes covered by paragraph 72.18(2)(a).

Note 1: See also section 10.5 (lawful authority).

Note 2: See also section 229 of the *Customs Act 1901* (forfeiture of goods that have been unlawfully imported or exported).

72.25 Surrendered plastic explosives

(1) A person may surrender a plastic explosive to the Commonwealth at a place, and in a manner, prescribed for the purposes of this subsection.

(2) A plastic explosive surrendered to the Commonwealth under subsection (1) becomes the property of the Commonwealth.

(3) A plastic explosive surrendered to the Commonwealth under subsection (1) is to be dealt with in such manner as a responsible Minister directs.

(4) Without limiting subsection (3), a responsible Minister may direct that a plastic explosive surrendered to the Commonwealth under subsection (1) be:

(a) destroyed; or

(b) used exclusively for one or more of the purposes covered by paragraph 72.18(2)(a).

Note: See also section 10.5 (lawful authority).

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72.26 Destruction of plastic explosives obtained overseas for defence purposes

A member of the Australian Defence Force may destroy an unmarked plastic explosive if the plastic explosive was obtained in the course of the operation outside Australia of the Australian Defence Force.

72.27 Destruction of plastic explosives obtained overseas for Australian Federal Police purposes

A member of the Australian Federal Police may destroy an unmarked plastic explosive if the plastic explosive was obtained in the course of the operation outside Australia of the Australian Federal Police.

72.28 Delegation by Minister

(1) The Minister may, by writing, delegate to:

(a) the Secretary of the Department; or

(b) an SES employee, or an acting SES employee, in the Department, where the employee occupies or acts in a position with a classification of Senior Executive Band 3;

all or any of the Minister's powers under sections 72.18, 72.19, 72.24 and 72.25.

(2) A delegate is, in the exercise of a power delegated under subsection (1), subject to the written directions of the Minister.

72.29 Delegation by Minister for Defence

(1) The Minister for Defence may, by writing, delegate to:

(a) an SES employee, or an acting SES employee, in the Department of Defence, where the employee occupies or acts in a position with a classification of Senior Executive Band 3; or

(b) an officer of the Australian Navy who holds the rank of Vice-Admiral or a higher rank; or

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(c) an officer of the Australian Army who holds the rank of Lieutenant-General or a higher rank; or

(d) an officer of the Australian Air Force who holds the rank of Air Marshal or a higher rank; or

(e) an officer of the Australian Defence Force who is on deployment as the Commander of an Australian Task Force, contingent or force element that is operating outside Australia;

all or any of the powers of the Minister for Defence under sections 72.18, 72.19, 72.24 and 72.25.

(2) A delegate must not exercise a power delegated under subsection (1) unless the exercise of the power relates to:

(a) the operation of the Australian Defence Force; or

(b) the operation in Australia of a visiting force (within the meaning of the *Defence (Visiting Forces) Act 1963*); or

(c) the operation outside Australia of a person who, under a contract, performs services for the Australian Defence Force.

(3) A delegate is, in the exercise of a power delegated under subsection (1), subject to the written directions of the Minister for Defence.

72.30 Review by Administrative Appeals Tribunal of authorisation decisions

(1) An application may be made to the Administrative Appeals Tribunal for review of a decision refusing to give an authorisation under subsection 72.18(1) or 72.19(1).

(2) An application may be made to the Administrative Appeals Tribunal for review of a decision to specify a condition or restriction in an authorisation under subsection 72.18(1) or 72.19(1), but such an application may only be made by a person to whom the authorisation applies.

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72.31 Geographical jurisdiction

Section 15.2 (extended geographical jurisdiction—category B) applies to each offence against this Subdivision.

72.32 Saving of other laws

This Subdivision is not intended to exclude or limit the operation of any other law of the Commonwealth or of a State or Territory.

72.33 Marking requirements

(1) This section sets out the 2 ***marking requirements*** for a plastic explosive.

Concentration of detection agent at time of manufacture

(2) The ***first marking requirement*** is that, at the time of the manufacture of the plastic explosive, all of the following conditions were satisfied:

(a) the plastic explosive contained a detection agent;

(b) the concentration of the detection agent in the plastic explosive was not less than the minimum manufacture concentration for the detection agent;

(c) the detection agent was homogenously distributed throughout the plastic explosive.

Note: For ***minimum manufacture concentration***, see section 72.34.

Freshness

(3) The ***second marking requirement*** is that less than 10 years have elapsed since the manufacture of the plastic explosive.

Interpretation

(4) In determining whether a plastic explosive manufactured before the commencement of this section breached the first marking requirement, assume that this section and sections 72.34 and 72.36 had been in force at the time of manufacture.

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72.34 Detection agents and minimum manufacture concentrations

For the purposes of this Subdivision, the following table defines:

(a) ***detection agent***; and

(b) the ***minimum manufacture concentration*** for each detection agent.

Detection agents and minimum manufacture concentrations

Item	Detection agent	Minimum manufacture concentration
1	Ethylene glycol dinitrate (EGDN) (molecular formula: $C_2H_4(NO_3)_2$) (molecular weight: 152)	0.2% by mass
2	2,3-Dimethyl-2,3-dinitrobutane (DMNB) (molecular formula: $C_6H_{12}(NO_2)_2$) (molecular weight: 176)	1% by mass
3	para-Mononitrotoluene (p-MNT) (molecular formula: $C_7H_7NO_2$) (molecular weight: 137)	0.5% by mass
4	a substance prescribed for the purposes of this table item	the concentration prescribed for the purposes of this table item in relation to the substance

72.35 Presumption as to concentration of detection agent

(1) This section applies in relation to a prosecution for an offence against this Subdivision.

(2) If no detection agent can be detected in a sample of a plastic explosive when tested using:

(a) a method generally accepted in the scientific community as a reliable means of measuring the concentration of detection agents in plastic explosives; or

(b) a method prescribed for the purposes of this paragraph;

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it is presumed, unless the contrary is proved, that the plastic explosive breaches the first marking requirement.

Note: A defendant bears a legal burden in relation to proving the contrary (see section 13.4).

72.36 Definitions

In this Subdivision:

Convention on the Marking of Plastic Explosives means:

(a) the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991; or

(b) if:

(i) the Convention is amended; and

(ii) the amendment binds Australia;

the Convention as so amended.

Note: In 2006, the text of the Convention was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Department of Defence means the Department that deals with matters relating to defence.

detection agent has the meaning given by section 72.34.

explosive device includes the following:

(a) a bomb;
(b) a grenade;
(c) a mine;
(d) a missile;
(e) a perforator;
(f) a projectile;
(g) a rocket;
(h) a shaped charge;
(i) a shell.

export includes take from Australia.

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first marking requirement has the meaning given by subsection 72.33(2).

high explosive means an explosive with a velocity of detonation that is greater than the velocity of sound in the explosive (typically greater than 340 metres per second), and includes the following:

(a) cyclotetramethylenetetranitramine (HMX);

(b) pentaerythritol tetranitrate (PETN);

(c) cyclotrimethylenetrinitramine (RDX).

import includes bring into Australia.

manufacture a substance means any process by which a substance is produced, and includes the following:

(a) the process of transforming a substance into a different substance;

(b) the reprocessing of a substance.

marking requirement has the meaning given by section 72.33.

minimum manufacture concentration has the meaning given by section 72.34.

Minister for Defence means the Minister administering the *Defence Act 1903*.

plastic explosive means an explosive product (including an explosive product in flexible or elastic sheet form) that is:

(a) formulated with:

(i) one or more high explosives which in their pure form have a vapour pressure less than 10^{-4} Pa at a temperature of 25°C; and

(ii) a binder material; and

(b) as a mixture, malleable or flexible at normal room temperature.

possess a substance includes the following:

(a) receive or obtain possession of the substance;

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(b) have control over the disposition of the substance (whether or not the substance is in the custody of the person);

(c) have joint possession of the substance.

responsible Minister means:

(a) the Minister; or

(b) the Minister for Defence.

second marking requirement has the meaning given by subsection 72.33(3).

traffic in a substance means:

(a) transfer the substance; or

(b) offer the substance for sale; or

(c) invite the making of offers to buy the substance; or

(d) prepare the substance for transfer with the intention of transferring any of it or believing that another person intends to transfer any of it; or

(e) transport or deliver the substance with the intention of transferring any of it or believing that another person intends to transfer any of it; or

(f) guard or conceal the substance with the intention of transferring any of it or the intention of assisting another person to transfer any of it; or

(g) possess the substance with the intention of transferring any of it.

For the purposes of paragraph (d), preparing a substance for transfer includes packaging the substance or separating the substance into discrete units.

transfer means transfer ownership or possession.

unmarked plastic explosive means a plastic explosive that breaches a marking requirement.

wrapper, in relation to a plastic explosive, means a wrapper the inner surface of which is in contact with the plastic explosive.

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Subdivision C—Cluster munitions and explosive bomblets

72.37 Purpose

The purpose of this Subdivision is to create offences relating to cluster munitions and explosive bomblets and give effect to the Convention on Cluster Munitions.

72.38 Offences relating to cluster munitions

Doing acts with a cluster munition

(1) A person commits an offence if the person does any of the following with a cluster munition:
  (a) uses it;
  (b) develops, produces or otherwise acquires it;
  (c) stockpiles or retains it;
  (d) transfers it to anyone.

Penalty: Imprisonment for 10 years.

Promoting acts with a cluster munition

(2) A person (the ***first person***) commits an offence if:
  (a) the first person assists, encourages or induces another person to do any of the following acts with a cluster munition:
    (i) use it;
    (ii) develop, produce or otherwise acquire it;
    (iii) stockpile or retain it;
    (iv) transfer it to anyone; and
  (b) the other person does the act; and
  (c) the first person intends that the act be done.

Penalty: Imprisonment for 10 years.

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Geographical jurisdiction

(3) Section 15.2 (extended geographical jurisdiction—category B) applies to an offence against this section.

Relationship with other provisions

(4) Division 11 does not apply in relation to an offence against subsection (2).

Note 1: Later sections of this Subdivision set out defences.

Note 2: This section relates to Articles 1 and 9 of the Convention on Cluster Munitions.

72.39 Defence—acquisition or retention authorised by Defence Minister

(1) Section 72.38 does not apply to the acquisition or retention of a cluster munition authorised under subsection (2).

Note: A defendant bears an evidential burden in relation to the matter in subsection (1): see subsection 13.3(3).

(2) The Minister administering the *Explosives Act 1961* may authorise, in writing, specified members of the Australian Defence Force or other specified Commonwealth public officials to acquire or retain specified cluster munitions for one or more of the following purposes:

(a) the development of, and training in, cluster munition and explosive submunition detection, clearance or destruction techniques;

(b) the development of cluster munition counter-measures;

(c) the destruction of the munitions.

Note 1: For specification by class see the *Acts Interpretation Act 1901*.

Note 2: This section relates to paragraphs 6 and 7 of Article 3 of the Convention on Cluster Munitions.

(3) The regulations may prescribe requirements relating to authorisations under subsection (2).

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(4) An authorisation made under subsection (2) is not a legislative instrument.

(5) The Minister described in subsection (2) may delegate his or her power under that subsection to:

(a) the Secretary of the Department administered by that Minister; or

(b) an SES employee in that Department.

Note: For the definition of ***SES employee*** see the *Acts Interpretation Act 1901*.

72.40 Defence—transfer for destruction etc.

Transfer to foreign party to Convention on Cluster Munitions

(1) Section 72.38 does not apply to the transfer of a cluster munition to a party to the Convention on Cluster Munitions for one or more of the following purposes:

(a) the development of, and training in, cluster munition and explosive submunition detection, clearance or destruction techniques;

(b) the development of cluster munition counter-measures;

(c) the destruction of the munition.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (1): see subsection 13.3(3).

Note 2: This subsection relates to paragraph 7 of Article 3 of the Convention on Cluster Munitions.

Intended transfer to Australian Defence Force

(2) Subsections (3) and (4) have effect if:

(a) a person has a cluster munition; and

(b) the person gives notice to a police officer or member of the Australian Defence Force that the person wishes to transfer the munition to a member of the Australian Defence Force or other Commonwealth public official; and

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(c) the person gives notice without delay after the first time the person has the cluster munition after the commencement of this subsection.

(3) Subsection 72.38(1) does not apply to the person stockpiling or retaining the cluster munition at any time before the person transfers it to a member of the Australian Defence Force or other Commonwealth public official.

(4) Subsection 72.38(1) does not apply to the person transferring the cluster munition to a member of the Australian Defence Force or other Commonwealth public official.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) and whichever of subsections (3) and (4) is relevant: see subsection 13.3(3).

72.41 Defence—acts by Australians in military cooperation with countries not party to Convention on Cluster Munitions

A person who is an Australian citizen, is a member of the Australian Defence Force or is performing services under a Commonwealth contract does not commit an offence against section 72.38 by doing an act if:

(a) the act is done in the course of military cooperation or operations with a foreign country that is not a party to the Convention on Cluster Munitions; and

(b) the act is not connected with the Commonwealth:

(i) using a cluster munition; or

(ii) developing, producing or otherwise acquiring a cluster munition; or

(iii) stockpiling or retaining a cluster munition; or

(iv) transferring a cluster munition; and

(c) the act does not consist of expressly requesting the use of a cluster munition in a case where the choice of munitions used is within the Commonwealth's exclusive control.

Note 1: A defendant bears an evidential burden in relation to the matter in this section: see subsection 13.3(3).

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Note 2: The expression ***offence against section 72.38*** is given an extended meaning by subsections 11.2(1) and 11.2A(1), section 11.3 and subsection 11.6(2).

Note 3: This section relates to paragraphs 3 and 4 of Article 21 of the Convention on Cluster Munitions.

72.42 Defence—acts by military personnel of countries not party to Convention on Cluster Munitions

(1) Section 72.38 does not apply to the stockpiling, retention or transfer of a cluster munition that:

(a) is done by:

(i) a member of the armed forces of a foreign country that is not a party to the Convention on Cluster Munitions; or

(ii) a person who is connected with such forces as described in subsection (2) and is neither an Australian citizen nor a resident of Australia; and

(b) is done in connection with the use by those forces of any of the following in Australia in the course of military cooperation or operations with the Australian Defence Force:

(i) a base;

(ii) an aircraft of any part of those forces or an aircraft being commanded or piloted by a member of those forces in the course of his or her duties as such a member;

(iii) a ship of any part of those forces or a ship being operated or commanded by a member of those forces in the course of his or her duties as such a member.

Note: A defendant bears an evidential burden in relation to the matter in this section: see subsection 13.3(3).

(2) This subsection covers a person with any of the following connections with the armed forces of a foreign country that is not a party to the Convention on Cluster Munitions:

(a) the person is employed by, or in the service of, any of those forces;

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(b) the person is serving with an organisation accompanying any of those forces;

(c) the person is attached to or accompanying those forces and is subject to the law of that country governing any of the armed forces of that country.

72.43 Forfeiture of cluster munition

(1) This section applies if a court:

(a) convicts someone of an offence against subsection 72.38(1); or

(b) makes an order under section 19B of the *Crimes Act 1914* relating to an offence against subsection 72.38(1).

Note: The expression ***offence against subsection 72.38(1)*** is given an extended meaning by subsections 11.2(1) and 11.2A(1), section 11.3 and subsection 11.6(2).

(2) The court may order forfeiture to the Commonwealth of any cluster munition involved in the offence.

(3) A cluster munition ordered to be forfeited to the Commonwealth becomes the Commonwealth's property.

72.44 Application of this Subdivision to explosive bomblets

This Subdivision applies in relation to explosive bomblets in the same way as it applies in relation to cluster munitions.

72.45 Definitions

In this Subdivision:

cluster munition has the meaning given by paragraph 2 of Article 2 of the Convention on Cluster Munitions.

Convention on Cluster Munitions means the Convention on Cluster Munitions done at Dublin on 30 May 2008.

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Note: In 2012, the text of the Convention was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

explosive bomblet has the meaning given by paragraph 13 of Article 2 of the Convention on Cluster Munitions.

explosive submunition has the meaning given by paragraph 3 of Article 2 of the Convention on Cluster Munitions.

police officer means:

(a) a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or

(b) a special member of the Australian Federal Police (within the meaning of that Act); or

(c) a member (however described) of a police force of a State or Territory.

transfer has the meaning given by paragraph 8 of Article 2 of the Convention on Cluster Munitions.

Note: Imports and exports are some examples of transfers.

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Division 73—People smuggling and related offences

Subdivision A—People smuggling offences

73.1 Offence of people smuggling

(1) A person (the ***first person***) is guilty of an offence if:

(a) the first person organises or facilitates the entry of another person (the ***other person***) into a foreign country (whether or not via Australia); and

(b) the entry of the other person into the foreign country does not comply with the requirements under that country's law for entry into the country; and

(c) the other person is not a citizen or permanent resident of the foreign country.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

(2) Absolute liability applies to the paragraph (1)(c) element of the offence.

(3) For the purposes of this Code, an offence against subsection (1) is to be known as the offence of people smuggling.

73.2 Aggravated offence of people smuggling (danger of death or serious harm etc.)

(1) A person (the ***first person***) commits an offence against this section if the first person commits the offence of people smuggling (the ***underlying offence***) in relation to another person (the ***victim***) and either or both of the following apply:

(b) in committing the underlying offence, the first person subjects the victim to cruel, inhuman or degrading treatment;

(c) in committing the underlying offence:

(i) the first person's conduct gives rise to a danger of death or serious harm to the victim; and

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(ii) the first person is reckless as to the danger of death or serious harm to the victim that arises from the conduct.

Penalty: Imprisonment for 20 years or 2,000 penalty units, or both.

(2) There is no fault element for the physical element of conduct described in subsection (1), that the first person commits the underlying offence, other than the fault elements (however described), if any, for the underlying offence.

(2A) To avoid doubt, the first person may be convicted of an offence against this section even if the first person has not been convicted of the underlying offence.

73.3 Aggravated offence of people smuggling (at least 5 people)

(1) A person (the ***first person***) is guilty of an offence if:

(a) the first person organises or facilitates the entry of a group of at least 5 persons (the ***other persons***) into a foreign country (whether or not via Australia); and

(b) the entry of at least 5 of the other persons into the foreign country does not comply with the requirements under that country's law for entry into that country; and

(c) at least 5 of the other persons whose entry into the foreign country is covered by paragraph (b) are not citizens or permanent residents of the foreign country.

Penalty: Imprisonment for 20 years or 2,000 penalty units, or both.

(2) Absolute liability applies to the paragraph (1)(c) element of the offence.

(3) If, on a trial for an offence against subsection (1), the trier of fact is not satisfied that the defendant is guilty of that offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against subsection 73.1(1), the trier of fact may find the defendant not guilty of an offence against subsection (1) but guilty of an offence against subsection 73.1(1), so long as the defendant

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has been accorded procedural fairness in relation to that finding of guilt.

73.3A Supporting the offence of people smuggling

(1) A person (the ***first person***) commits an offence if:

(a) the first person provides material support or resources to another person or an organisation (the ***receiver***); and

(b) the support or resources aids the receiver, or a person or organisation other than the receiver, to engage in conduct constituting the offence of people smuggling.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

(2) Subsection (1) does not apply if the conduct constituting the offence of people smuggling relates, or would relate, to:

(a) the first person; or

(b) a group of persons that includes the first person.

(3) To avoid doubt, the first person commits an offence against subsection (1) even if the offence of people smuggling is not committed.

73.4 Jurisdictional requirement

A person commits an offence against this Subdivision only if:

(a) both:

(i) the person is an Australian citizen or a resident of Australia; and

(ii) the conduct constituting the alleged offence occurs wholly outside Australia; or

(b) both:

(i) the conduct constituting the alleged offence occurs wholly or partly in Australia; and

(ii) a result of the conduct occurs, or is intended by the person to occur, outside Australia.

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73.5 Attorney-General's consent required

(1) Proceedings for an offence against this Subdivision must not be commenced without the Attorney-General's written consent.

(2) However, a person may be arrested, charged, remanded in custody or released on bail in connection with an offence against this Subdivision before the necessary consent has been given.

Subdivision B—Document offences related to people smuggling and unlawful entry into foreign countries

73.6 Meaning of *travel or identity document*

(1) For the purposes of this Subdivision, a document is a ***travel or identity document*** if it is:
  (a) a travel document; or
  (b) an identity document.

73.7 Meaning of *false travel or identity document*

(1) For the purposes of this Subdivision, a travel or identity document is a ***false travel or identity document*** if, and only if:
  (a) the document, or any part of the document:
    (i) purports to have been made in the form in which it is made by a person who did not make it in that form; or
    (ii) purports to have been made in the form in which it is made on the authority of a person who did not authorise its making in that form; or
  (b) the document, or any part of the document:
    (i) purports to have been made in the terms in which it is made by a person who did not make it in those terms; or
    (ii) purports to have been made in the terms in which it is made on the authority of a person who did not authorise its making in those terms; or
  (c) the document, or any part of the document:

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(i) purports to have been altered in any respect by a person who did not alter it in that respect; or

(ii) purports to have been altered in any respect on the authority of a person who did not authorise its alteration in that respect; or

(d) the document, or any part of the document:

(i) purports to have been made or altered by a person who did not exist; or

(ii) purports to have been made or altered on the authority of a person who did not exist; or

(e) the document, or any part of the document, purports to have been made or altered on a date on which, at a time at which, at a place at which, or otherwise in circumstances in which, it was not made or altered.

(2) For the purposes of this Subdivision, a person is taken to ***make*** a false travel or identity document if the person alters a document so as to make it a false travel or identity document (whether or not it was already a false travel or identity document before the alteration).

(3) This section has effect as if a document that purports to be a true copy of another document were the original document.

73.8 Making, providing or possessing a false travel or identity document

A person (the ***first person***) commits an offence if:

(a) the first person makes, provides or possesses a false travel or identity document; and

(b) the first person intends that the document will be used to facilitate the entry of another person (the ***other person***) into a foreign country, where the entry of the other person into the foreign country would not comply with the requirements under that country's law for entry into the country; and

(c) the first person made, provided or possessed the document:

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(i) having obtained (whether directly or indirectly) a benefit to do so; or

(ii) with the intention of obtaining (whether directly or indirectly) a benefit.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

73.9 Providing or possessing a travel or identity document issued or altered dishonestly or as a result of threats

(1) A person (the ***first person***) commits an offence if:

(a) the first person provides or possesses a travel or identity document; and

(b) the first person knows that:

(i) the issue of the travel or identity document; or

(ii) an alteration of the travel or identity document;

has been obtained dishonestly or by threats; and

(c) the first person intends that the document will be used to facilitate the entry of another person (the ***other person***) into a foreign country, where the entry of the other person into the foreign country would not comply with the requirements under that country's law for entry into the country; and

(d) the first person provided or possessed the document:

(i) having obtained (whether directly or indirectly) a benefit to do so; or

(ii) with the intention of obtaining (whether directly or indirectly) a benefit.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

(2) For the purposes of subsection (1), a ***threat*** may be:

(a) express or implied; or

(b) conditional or unconditional.

(3) For the purposes of subsection (1), ***dishonest*** means:

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(a) dishonest according to the standards of ordinary people; and
(b) known by the defendant to be dishonest according to the standards of ordinary people.

(4) In a prosecution for an offence against this section, the determination of dishonesty is a matter for the trier of fact.

73.10 Providing or possessing a travel or identity document to be used by a person who is not the rightful user

A person (the ***first person***) commits an offence if:

(a) the first person provides or possesses a travel or identity document; and
(b) the first person intends that the document will be used to facilitate the entry of another person (the ***other person***) into a foreign country, where the entry of the other person into the foreign country would not comply with the requirements under that country's law for entry into the country; and
(c) the first person knows that the other person is not the person to whom the document applies; and
(d) the first person provided or possessed the document:
  (i) having obtained (whether directly or indirectly) a benefit to do so; or
  (ii) with the intention of obtaining (whether directly or indirectly) a benefit.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

73.11 Taking possession of or destroying another person's travel or identity document

A person (the ***first person***) commits an offence if:

(a) the first person takes possession of, or destroys, a travel or identity document that applies to another person (the ***other person***); and

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(b) the first person does so intending to conceal the other person's identity or nationality; and

(c) at the time of doing so, the first person intends to organise or facilitate the entry of the other person into a foreign country:

(i) having obtained, or with the intention of obtaining, whether directly or indirectly, a benefit to organise or facilitate that entry; and

(ii) where the entry of the other person into the foreign country would not comply with the requirements under that country's law for entry into the country.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

73.12 Jurisdictional requirement

Section 15.2 (extended geographical jurisdiction—category B) applies to an offence against this Subdivision.

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Chapter 5—The security of the Commonwealth

Part 5.1—Treason, urging violence and advocating terrorism

Division 80—Treason, urging violence and advocating terrorism

Subdivision A—Preliminary

80.1A Definition of *organisation*

In this Division:

organisation means:

(a) a body corporate; or

(b) an unincorporated body;

whether or not the body is based outside Australia, consists of persons who are not Australian citizens, or is part of a larger organisation.

Subdivision B—Treason

80.1 Treason

(1) A person commits an offence if the person:

(a) causes the death of the Sovereign, the heir apparent of the Sovereign, the consort of the Sovereign, the Governor-General or the Prime Minister; or

(b) causes harm to the Sovereign, the Governor-General or the Prime Minister resulting in the death of the Sovereign, the Governor-General or the Prime Minister; or

(c) causes harm to the Sovereign, the Governor-General or the Prime Minister, or imprisons or restrains the Sovereign, the Governor-General or the Prime Minister; or

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(d) levies war, or does any act preparatory to levying war, against the Commonwealth; or

(g) instigates a person who is not an Australian citizen to make an armed invasion of the Commonwealth or a Territory of the Commonwealth.

Penalty: Imprisonment for life.

(2) A person commits an offence if the person:

(a) receives or assists another person who, to his or her knowledge, has committed an offence against this Subdivision (other than this subsection) with the intention of allowing him or her to escape punishment or apprehension; or

(b) knowing that another person intends to commit an offence against this Subdivision (other than this subsection), does not inform a constable of it within a reasonable time or use other reasonable endeavours to prevent the commission of the offence.

Penalty: Imprisonment for life.

(8) In this section:

constable means a member or special member of the Australian Federal Police or a member of the police force or police service of a State or Territory.

80.1AA Treason—materially assisting enemies etc.

Assisting enemies at war with the Commonwealth

(1) A person commits an offence if:

(a) the Commonwealth is at war with an enemy (whether or not the existence of a state of war has been declared); and

(b) the enemy is specified, by Proclamation made for the purpose of this paragraph, to be an enemy at war with the Commonwealth; and

(c) the person engages in conduct; and

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(d) the person intends that the conduct will materially assist the enemy to engage in war with the Commonwealth; and

(e) the conduct assists the enemy to engage in war with the Commonwealth; and

(f) when the person engages in the conduct, the person:

(i) is an Australian citizen; or

(ii) is a resident of Australia; or

(iii) has voluntarily put himself or herself under the protection of the Commonwealth; or

(iv) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

Note: If a body corporate is convicted of an offence against subsection (1), subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 10,000 penalty units.

(2) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to a Proclamation made for the purpose of paragraph (1)(b).

(2A) Despite subsection 12(3) of the *Legislation Act 2003*, a Proclamation made for the purpose of paragraph (1)(b) of this section must not commence before the day on which the Proclamation is made.

(3) The fault element for paragraph (1)(f) is intention.

Note: For intention, see subsection 5.2(2).

Assisting countries etc. engaged in armed hostilities against the ADF

(4) A person commits an offence if:

(a) a country or organisation is engaged in armed hostilities against the Australian Defence Force; and

(b) the person engages in conduct; and

(c) the person intends that the conduct will materially assist the country or organisation to engage in armed hostilities against the Australian Defence Force; and

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(d) the conduct assists the country or organisation to engage in armed hostilities against the Australian Defence Force; and

(e) when the person engages in the conduct, the person:

(i) is an Australian citizen; or

(ii) is a resident of Australia; or

(iii) has voluntarily put himself or herself under the protection of the Commonwealth; or

(iv) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

Note: If a body corporate is convicted of an offence against subsection (4), subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 10,000 penalty units.

(5) The fault element for paragraph (4)(e) is intention.

Note: For intention, see subsection 5.2(2).

Humanitarian aid

(6) Subsections (1) and (4) do not apply to engagement in conduct solely by way of, or for the purposes of, the provision of aid of a humanitarian nature.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (6). See subsection 13.3(3).

Note 2: There is a defence in section 80.3 for acts done in good faith.

Subdivision C—Urging violence and advocating terrorism

80.2 Urging violence against the Constitution etc.

Urging the overthrow of the Constitution or Government by force or violence

(1) A person (the ***first person***) commits an offence if:

(a) the first person intentionally urges another person to overthrow by force or violence:

(i) the Constitution; or

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(ii) the Government of the Commonwealth, of a State or of a Territory; or

(iii) the lawful authority of the Government of the Commonwealth; and

(b) the first person does so intending that force or violence will occur.

Penalty: Imprisonment for 7 years.

Note: For intention, see section 5.2.

(2) Recklessness applies to the element of the offence under subsection (1) that it is:

(a) the Constitution; or

(b) the Government of the Commonwealth, a State or a Territory; or

(c) the lawful authority of the Government of the Commonwealth;

that the first person urges the other person to overthrow.

Urging interference in Parliamentary elections or constitutional referenda by force or violence

(3) A person (the ***first person***) commits an offence if:

(a) the first person intentionally urges another person to interfere, by force or violence, with lawful processes for:

(i) an election of a member or members of a House of the Parliament; or

(ii) a referendum; and

(b) the first person does so intending that force or violence will occur.

Penalty: Imprisonment for 7 years.

Note: For intention, see section 5.2.

(4) Recklessness applies to the element of the offence under subsection (3) that it is lawful processes for an election of a member or members of a House of the Parliament, or for a referendum, that the first person urges the other person to interfere with.

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Note: There is a defence in section 80.3 for acts done in good faith.

80.2A Urging violence against groups

Offences

(1) A person (the ***first person***) commits an offence if:

(a) the first person intentionally urges another person, or a group, to use force or violence against a group (the ***targeted group***); and

(b) the first person does so intending that force or violence will occur; and

(c) the targeted group is distinguished by race, religion, nationality, national or ethnic origin or political opinion; and

(d) the use of the force or violence would threaten the peace, order and good government of the Commonwealth.

Penalty: Imprisonment for 7 years.

Note: For intention, see section 5.2.

(2) A person (the ***first person***) commits an offence if:

(a) the first person intentionally urges another person, or a group, to use force or violence against a group (the ***targeted group***); and

(b) the first person does so intending that force or violence will occur; and

(c) the targeted group is distinguished by race, religion, nationality, national or ethnic origin or political opinion.

Penalty: Imprisonment for 5 years.

Note: For intention, see section 5.2.

(3) The fault element for paragraphs (1)(c) and (2)(c) is recklessness.

Note: For recklessness, see section 5.4.

Alternative verdict

(4) Subsection (5) applies if, in a prosecution for an offence (the ***prosecuted offence***) against subsection (1), the trier of fact:

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(a) is not satisfied that the defendant is guilty of the offence; but

(b) is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the ***alternative offence***) against subsection (2).

(5) The trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Note: There is a defence in section 80.3 for acts done in good faith.

80.2B Urging violence against members of groups

Offences

(1) A person (the ***first person***) commits an offence if:

(a) the first person intentionally urges another person, or a group, to use force or violence against a person (the ***targeted person***); and

(b) the first person does so intending that force or violence will occur; and

(c) the first person does so because of his or her belief that the targeted person is a member of a group (the ***targeted group***); and

(d) the targeted group is distinguished by race, religion, nationality, national or ethnic origin or political opinion; and

(e) the use of the force or violence would threaten the peace, order and good government of the Commonwealth.

Penalty: Imprisonment for 7 years.

Note: For intention, see section 5.2.

(2) A person (the ***first person***) commits an offence if:

(a) the first person intentionally urges another person, or a group, to use force or violence against a person (the ***targeted person***); and

(b) the first person does so intending that force or violence will occur; and

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(c) the first person does so because of his or her belief that the targeted person is a member of a group (the ***targeted group***); and

(d) the targeted group is distinguished by race, religion, nationality, national or ethnic origin or political opinion.

Penalty: Imprisonment for 5 years.

Note: For intention, see section 5.2.

(3) For the purposes of paragraphs (1)(c) and (2)(c), it is immaterial whether the targeted person actually is a member of the targeted group.

(4) The fault element for paragraphs (1)(d) and (2)(d) is recklessness.

Note: For recklessness, see section 5.4.

Alternative verdict

(5) Subsection (6) applies if, in a prosecution for an offence (the ***prosecuted offence***) against subsection (1), the trier of fact:

(a) is not satisfied that the defendant is guilty of the offence; but

(b) is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the ***alternative offence***) against subsection (2).

(6) The trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Note: There is a defence in section 80.3 for acts done in good faith.

80.2C Advocating terrorism

(1) A person commits an offence if:

(a) the person advocates:

(i) the doing of a terrorist act; or

(ii) the commission of a terrorism offence referred to in subsection (2); and

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(b) the person engages in that conduct reckless as to whether another person will:
(i) engage in a terrorist act; or
(ii) commit a terrorism offence referred to in subsection (2).

Note: There is a defence in section 80.3 for acts done in good faith.

Penalty: Imprisonment for 5 years.

(2) A terrorism offence is referred to in this subsection if:
(a) the offence is punishable on conviction by imprisonment for 5 years or more; and
(b) the offence is not:
(i) an offence against section 11.1 (attempt), 11.4 (incitement) or 11.5 (conspiracy) to the extent that it relates to a terrorism offence; or
(ii) a terrorism offence that a person is taken to have committed because of section 11.2 (complicity and common purpose), 11.2A (joint commission) or 11.3 (commission by proxy).

Definitions

(3) In this section:

advocates: a person ***advocates*** the doing of a terrorist act or the commission of a terrorism offence if the person counsels, promotes, encourages or urges the doing of a terrorist act or the commission of a terrorism offence.

terrorism offence has the same meaning as in subsection 3(1) of the *Crimes Act 1914*.

terrorist act has the same meaning as in section 100.1.

(4) A reference in this section to advocating the doing of a terrorist act or the commission of a terrorism offence includes a reference to:
(a) advocating the doing of a terrorist act or the commission of a terrorism offence, even if a terrorist act or terrorism offence does not occur; and

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(b) advocating the doing of a specific terrorist act or the commission of a specific terrorism offence; and

(c) advocating the doing of more than one terrorist act or the commission of more than one terrorism offence.

Subdivision D—Common provisions

80.3 Defence for acts done in good faith

(1) Subdivisions B and C do not apply to a person who:

(a) tries in good faith to show that any of the following persons are mistaken in any of his or her counsels, policies or actions:

(i) the Sovereign;

(ii) the Governor-General;

(iii) the Governor of a State;

(iv) the Administrator of a Territory;

(v) an adviser of any of the above;

(vi) a person responsible for the government of another country; or

(b) points out in good faith errors or defects in the following, with a view to reforming those errors or defects:

(i) the Government of the Commonwealth, a State or a Territory;

(ii) the Constitution;

(iii) legislation of the Commonwealth, a State, a Territory or another country;

(iv) the administration of justice of or in the Commonwealth, a State, a Territory or another country; or

(c) urges in good faith another person to attempt to lawfully procure a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country; or

(d) points out in good faith any matters that are producing, or have a tendency to produce, feelings of ill-will or hostility between different groups, in order to bring about the removal of those matters; or

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(e) does anything in good faith in connection with an industrial dispute or an industrial matter; or

(f) publishes in good faith a report or commentary about a matter of public interest.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1). See subsection 13.3(3).

(2) In considering a defence under subsection (1), the Court may have regard to any relevant matter, including whether the acts were done:

(a) for a purpose intended to be prejudicial to the safety or defence of the Commonwealth; or

(b) with the intention of assisting an enemy:

(i) at war with the Commonwealth; and

(ii) specified by Proclamation made for the purpose of paragraph 80.1AA(1)(b) to be an enemy at war with the Commonwealth; or

(c) with the intention of assisting another country, or an organisation, that is engaged in armed hostilities against the Australian Defence Force; or

(d) with the intention of assisting a proclaimed enemy of a proclaimed country (within the meaning of subsection 24AA(4) of the *Crimes Act 1914*); or

(e) with the intention of assisting persons specified in paragraphs 24AA(2)(a) and (b) of the *Crimes Act 1914*; or

(f) with the intention of causing violence or creating public disorder or a public disturbance.

(3) Without limiting subsection (2), in considering a defence under subsection (1) in respect of an offence against Subdivision C, the Court may have regard to any relevant matter, including whether the acts were done:

(a) in the development, performance, exhibition or distribution of an artistic work; or

(b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or

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(c) in the dissemination of news or current affairs.

80.4 Extended geographical jurisdiction for offences

(1) Subject to subsection (2), section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this Division.

(2) Section 15.2 (extended geographical jurisdiction—category B) applies to an offence against subsection 80.2A(2), 80.2B(2) or 80.2C(1).

80.6 Division not intended to exclude State or Territory law

It is the intention of the Parliament that this Division is not to apply to the exclusion of a law of a State or a Territory to the extent that the law is capable of operating concurrently with this Division.

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Part 5.2—Offences relating to espionage and similar activities

Division 90—Preliminary

90.1 Definitions

(1) In this Part:

article includes any thing, substance or material.

information means information of any kind, whether true or false and whether in a material form or not, and includes:

(a) an opinion; and

(b) a report of a conversation.

intelligence or security agency has the meaning given by section 85ZL of the *Crimes Act 1914*.

record, in relation to information, means a record of information in any form, including but not limited to, a document, paper, database, software system or other article or system containing information or from which information can be derived.

security or defence of a country includes the operations, capabilities and technologies of, and methods and sources used by, the country's intelligence or security agencies.

sketch includes a representation of a place or thing.

the Commonwealth includes the Territories.

(2) In this Part, unless the contrary intention appears:

(a) expressions referring to obtaining, recording, using, having in possession, communicating or retaining include obtaining, recording, using, having in possession, communicating or retaining in whole or in part, and whether the thing or information itself, or only the substance, effect or description of the thing or information, is obtained, recorded, used, possessed, communicated or retained; and

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(b) a reference to a sketch, document or article or to information is to be read as including a reference to a copy of, a part of or a copy of a part of a sketch, document or article or information.

(3) For the purposes of this Part, a place that is occupied by, or a thing that is under the control of, the Commonwealth is taken to belong to the Commonwealth.

(4) This Part applies to and in relation to a document or article regardless of who made it and what information it contains.

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Division 91—Offences relating to espionage and similar activities

91.1 Espionage and similar activities

(1) A person commits an offence if:

(a) the person communicates, or makes available:

(i) information concerning the Commonwealth's security or defence; or

(ii) information concerning the security or defence of another country, being information that the person acquired (whether directly or indirectly) from the Commonwealth; and

(b) the person does so intending to prejudice the Commonwealth's security or defence; and

(c) the person's act results in, or is likely to result in, the information being communicated or made available to another country or a foreign organisation, or to a person acting on behalf of such a country or organisation.

Penalty: Imprisonment for 25 years.

(2) A person commits an offence if:

(a) the person communicates, or makes available:

(i) information concerning the Commonwealth's security or defence; or

(ii) information concerning the security or defence of another country, being information that the person acquired (whether directly or indirectly) from the Commonwealth; and

(b) the person does so:

(i) without lawful authority; and

(ii) intending to give an advantage to another country's security or defence; and

(c) the person's act results in, or is likely to result in, the information being communicated or made available to

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another country or a foreign organisation, or to a person acting on behalf of such a country or organisation.

Penalty: Imprisonment for 25 years.

(3) A person commits an offence if:

(a) the person makes, obtains or copies a record (in any form) of:

(i) information concerning the Commonwealth's security or defence; or

(ii) information concerning the security or defence of another country, being information that the person acquired (whether directly or indirectly) from the Commonwealth; and

(b) the person does so:

(i) intending that the record will, or may, be delivered to another country or a foreign organisation, or to a person acting on behalf of such a country or organisation; and

(ii) intending to prejudice the Commonwealth's security or defence.

Penalty: Imprisonment for 25 years.

(4) A person commits an offence if:

(a) the person makes, obtains or copies a record (in any form) of:

(i) information concerning the Commonwealth's security or defence; or

(ii) information concerning the security or defence of another country, being information that the person acquired (whether directly or indirectly) from the Commonwealth; and

(b) the person does so:

(i) without lawful authority; and

(ii) intending that the record will, or may, be delivered to another country or a foreign organisation, or to a person acting on behalf of such a country or organisation; and

(iii) intending to give an advantage to another country's security or defence.

Penalty: Imprisonment for 25 years.

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(5) For the purposes of subparagraphs (3)(b)(i) and (4)(b)(ii), the person concerned does not need to have a particular country, foreign organisation or person in mind at the time when the person makes, obtains or copies the record.

(6) A person charged with an offence under this section may only be remanded on bail by a judge of the Supreme Court of a State or Territory. This subsection has effect despite anything in section 93.1.

Note: Section 93.1 deals with how a prosecution is instituted.

(7) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to offences under this section.

91.2 Defence—information lawfully available

(1) It is a defence to a prosecution of an offence against subsection 91.1(1) or (2) that the information the person communicates or makes available is information that has already been communicated or made available to the public with the authority of the Commonwealth.

(2) It is a defence to a prosecution of an offence against subsection 91.1(3) or (4) that the record of information the person makes, obtains or copies is a record of information that has already been communicated or made available to the public with the authority of the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matters in subsections (1) and (2). See subsection 13.3(3).

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Division 93—Prosecutions and hearings

93.1 Institution of prosecution

(1) A prosecution under this Part may be instituted only by, or with the consent of, the Attorney-General or a person acting under the Attorney-General's direction.

(2) However:

(a) a person charged with an offence against this Part may be arrested, or a warrant for his or her arrest may be issued and executed; and

(b) such a person may be remanded in custody or on bail;

even if the consent of the Attorney-General or a person acting under his or her direction has not been obtained, but no further proceedings are to be taken until that consent has been obtained.

(3) Nothing in this section prevents the discharging of the accused if proceedings are not continued within a reasonable time.

93.2 Hearing in camera etc.

(1) This section applies to a hearing of an application or other proceedings before a federal court, a court exercising federal jurisdiction or a court of a Territory, whether under this Act or otherwise.

(2) At any time before or during the hearing, the judge or magistrate, or other person presiding or competent to preside over the proceedings, may, if satisfied that it is in the interest of the security or defence of the Commonwealth:

(a) order that some or all of the members of the public be excluded during the whole or a part of the hearing; or

(b) order that no report of the whole or a specified part of, or relating to, the application or proceedings be published; or

(c) make such order and give such directions as he or she thinks necessary for ensuring that no person, without the approval of the court, has access (whether before, during or after the

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hearing) to any affidavit, exhibit, information or other document used in the application or the proceedings that is on the file in the court or in the records of the court.

(3) A person commits an offence if the person contravenes an order made or direction given under this section.

Penalty: Imprisonment for 5 years.

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Division 94—Forfeiture

94.1 Forfeiture of articles etc.

A sketch, article, record or document which is made, obtained, recorded, retained, forged, possessed or otherwise dealt with in contravention of this Part is forfeited to the Commonwealth.

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Part 5.3—Terrorism

Division 100—Preliminary

100.1 Definitions

(1) In this Part:

AFP member means:

(a) a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or

(b) a special member of the Australian Federal Police (within the meaning of that Act).

ASIO affiliate has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

ASIO employee has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

Commonwealth place has the same meaning as in the *Commonwealth Places (Application of Laws) Act 1970*.

confirmed control order means an order made under section 104.16.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

continued preventative detention order means an order made under section 105.12.

control order means an interim control order or a confirmed control order.

corresponding State preventative detention law means a law of a State or Territory that is, or particular provisions of a law of a State or Territory that are, declared by the regulations to correspond to Division 105 of this Act.

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engage in a hostile activity has the meaning given by subsection 117.1(1).

express amendment of the provisions of this Part or Chapter 2 means the direct amendment of the provisions (whether by the insertion, omission, repeal, substitution or relocation of words or matter).

frisk search means:

(a) a search of a person conducted by quickly running the hands over the person's outer garments; and

(b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

funds means:

(a) property and assets of every kind, whether tangible or intangible, movable or immovable, however acquired; and

(b) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such property or assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, debt instruments, drafts and letters of credit.

identification material, in relation to a person, means prints of the person's hands, fingers, feet or toes, recordings of the person's voice, samples of the person's handwriting or photographs (including video recordings) of the person, but does not include tape recordings made for the purposes of section 23U or 23V of the *Crimes Act 1914*.

initial preventative detention order means an order made under section 105.8.

interim control order means an order made under section 104.4, 104.7 or 104.9.

issuing authority:

(a) for initial preventative detention orders—means a senior AFP member; and

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(b) for continued preventative detention orders—means a person appointed under section 105.2.

issuing court means:

(a) the Federal Court of Australia; or

(b) the Family Court of Australia; or

(c) the Federal Circuit Court of Australia.

Judge means a Judge of a court created by the Parliament.

lawyer means a person enrolled as a legal practitioner of a federal court or the Supreme Court of a State or Territory.

listed terrorist organisation means an organisation that is specified by the regulations for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in section 102.1.

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

(a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes or hat; and

(b) an examination of those items.

organisation means a body corporate or an unincorporated body, whether or not the body:

(a) is based outside Australia; or

(b) consists of persons who are not Australian citizens; or

(c) is part of a larger organisation.

police officer means:

(a) an AFP member; or

(b) a member (however described) of a police force of a State or Territory.

prescribed authority has the same meaning as in Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*.

preventative detention order means an order under section 105.8 or 105.12.

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prohibited contact order means an order made under section 105.15 or 105.16.

referring State has the meaning given by section 100.2.

seizable item means anything that:

(a) would present a danger to a person; or

(b) could be used to assist a person to escape from lawful custody; or

(c) could be used to contact another person or to operate a device remotely.

senior AFP member means:

(a) the Commissioner of the Australian Federal Police; or

(b) a Deputy Commissioner of the Australian Federal Police; or

(c) an AFP member of, or above, the rank of Superintendent.

superior court means:

(a) the High Court; or

(b) the Federal Court of Australia; or

(c) the Family Court of Australia or of a State; or

(d) the Supreme Court of a State or Territory; or

(e) the District Court (or equivalent) of a State or Territory.

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.

tracking device means any electronic device capable of being used to determine or monitor the location of a person or an object or the status of an object.

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(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.

(4) In this Division:

(a) a reference to any person or property is a reference to any person or property wherever situated, within or outside Australia; and

(b) a reference to the public includes a reference to the public of a country other than Australia.

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100.2 Referring States

(1) A State is a ***referring State*** if the Parliament of the State has referred the matters covered by subsections (2) and (3) to the Parliament of the Commonwealth for the purposes of paragraph 51(xxxvii) of the Constitution:

(a) if and to the extent that the matters are not otherwise included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference under paragraph 51(xxxvii) of the Constitution); and

(b) if and to the extent that the matters are included in the legislative powers of the Parliament of the State.

This subsection has effect subject to subsection (5).

(2) This subsection covers the matters to which the referred provisions relate to the extent of making laws with respect to those matters by including the referred provisions in this Code.

(3) This subsection covers the matter of terrorist acts, and of actions relating to terrorist acts, to the extent of making laws with respect to that matter by making express amendment of this Part or Chapter 2.

(4) A State is a ***referring State*** even if a law of the State provides that the reference to the Commonwealth Parliament of either or both of the matters covered by subsections (2) and (3) is to terminate in particular circumstances.

(5) A State ceases to be a referring State if a reference by the State of either or both of the matters covered by subsections (2) and (3) terminate.

(6) In this section:

referred provisions means the provisions of Part 5.3 of this Code as inserted by the *Criminal Code Amendment (Terrorism) Act 2002*, to the extent to which they deal with matters that are included in the legislative powers of the Parliaments of the States.

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100.3 Constitutional basis for the operation of this Part

Operation in a referring State

(1) The operation of this Part in a referring State is based on:

(a) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)); and

(b) the legislative powers that the Commonwealth Parliament has in respect of matters to which this Part relates because those matters are referred to it by the Parliament of the referring State under paragraph 51(xxxvii) of the Constitution.

Note: The State reference fully supplements the Commonwealth Parliament's other powers by referring the matters to the Commonwealth Parliament to the extent to which they are not otherwise included in the legislative powers of the Commonwealth Parliament.

Operation in a non-referring State

(2) The operation of this Part in a State that is not a referring State is based on the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).

Note: Subsection 100.4(5) identifies particular powers that are being relied on.

Operation in a Territory

(3) The operation of this Part in the Northern Territory, the Australian Capital Territory or an external Territory is based on:

(a) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of that Territory; and

(b) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).

Despite subsection 22(3) of the *Acts Interpretation Act 1901*, this Part as applying in those Territories is a law of the Commonwealth.

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Operation outside Australia

(4) The operation of this Part outside Australia and the external Territories is based on:
  (a) the legislative powers that the Commonwealth Parliament has under paragraph 51(xxix) of the Constitution; and
  (b) the other legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).

100.4 Application of provisions

Part generally applies to all terrorist acts and preliminary acts

(1) Subject to subsection (4), this Part applies to the following conduct:
  (a) all actions or threats of action that constitute terrorist acts (no matter where the action occurs, the threat is made or the action, if carried out, would occur);
  (b) all actions (***preliminary acts***) that relate to terrorist acts but do not themselves constitute terrorist acts (no matter where the preliminary acts occur and no matter where the terrorist acts to which they relate occur or would occur).

Note: See the following provisions:
(a) subsection 101.1(2);
(b) subsection 101.2(4);
(c) subsection 101.4(4);
(d) subsection 101.5(4);
(e) subsection 101.6(3);
(f) section 102.9.

Operation in relation to terrorist acts and preliminary acts occurring in a State that is not a referring State

(2) Subsections (4) and (5) apply to conduct if the conduct is itself a terrorist act and:
  (a) the terrorist act consists of an action and the action occurs in a State that is not a referring State; or

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(b) the terrorist act consists of a threat of action and the threat is made in a State that is not a referring State.

(3) Subsections (4) and (5) also apply to conduct if the conduct is a preliminary act that occurs in a State that is not a referring State and:

(a) the terrorist act to which the preliminary act relates consists of an action and the action occurs, or would occur, in a State that is not a referring State; or

(b) the terrorist act to which the preliminary act relates consists of a threat of action and the threat is made, or would be made, in a State that is not a referring State.

(4) Notwithstanding any other provision in this Part, this Part applies to the conduct only to the extent to which the Parliament has power to legislate in relation to:

(a) if the conduct is itself a terrorist act—the action or threat of action that constitutes the terrorist act; or

(b) if the conduct is a preliminary act—the action or threat of action that constitutes the terrorist act to which the preliminary act relates.

(5) Without limiting the generality of subsection (4), this Part applies to the action or threat of action if:

(a) the action affects, or if carried out would affect, the interests of:

(i) the Commonwealth; or

(ii) an authority of the Commonwealth; or

(iii) a constitutional corporation; or

(b) the threat is made to:

(i) the Commonwealth; or

(ii) an authority of the Commonwealth; or

(iii) a constitutional corporation; or

(c) the action is carried out by, or the threat is made by, a constitutional corporation; or

(d) the action takes place, or if carried out would take place, in a Commonwealth place; or

(e) the threat is made in a Commonwealth place; or

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(f) the action involves, or if carried out would involve, the use of a postal service or other like service; or

(g) the threat is made using a postal or other like service; or

(h) the action involves, or if carried out would involve, the use of an electronic communication; or

(i) the threat is made using an electronic communication; or

(j) the action disrupts, or if carried out would disrupt, trade or commerce:

(i) between Australia and places outside Australia; or

(ii) among the States; or

(iii) within a Territory, between a State and a Territory or between 2 Territories; or

(k) the action disrupts, or if carried out would disrupt:

(i) banking (other than State banking not extending beyond the limits of the State concerned); or

(ii) insurance (other than State insurance not extending beyond the limits of the State concerned); or

(l) the action is, or if carried out would be, an action in relation to which the Commonwealth is obliged to create an offence under international law; or

(m) the threat is one in relation to which the Commonwealth is obliged to create an offence under international law.

(6) To avoid doubt, subsections (2) and (3) apply to a State that is not a referring State at a particular time even if no State is a referring State at that time.

100.5 Application of *Acts Interpretation Act 1901*

(1) The *Acts Interpretation Act 1901*, as in force on the day on which Schedule 1 to the *Criminal Code Amendment (Terrorism) Act 2003* commences, applies to this Part.

(2) Amendments of the *Acts Interpretation Act 1901* made after that day do not apply to this Part.

(3) Despite subsections (1) and (2), sections 2D, 2E and 2F of the *Acts Interpretation Act 1901* apply to this Part.

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100.6 Concurrent operation intended

(1) This Part is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

(2) Without limiting subsection (1), this Part is not intended to exclude or limit the concurrent operation of a law of a State or Territory that makes:

(a) an act or omission that is an offence against a provision of this Part; or

(b) a similar act or omission;

an offence against the law of the State or Territory.

(3) Subsection (2) applies even if the law of the State or Territory does any one or more of the following:

(a) provides for a penalty for the offence that differs from the penalty provided for in this Part;

(b) provides for a fault element in relation to the offence that differs from the fault elements applicable to the offence under this Part;

(c) provides for a defence in relation to the offence that differs from the defences applicable to the offence under this Part.

(4) If:

(a) an act or omission of a person is an offence under this Part and is also an offence under the law of a State or Territory; and

(b) the person has been punished for the offence under the law of the State or Territory;

the person is not liable to be punished for the offence under this Part.

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100.7 Regulations may modify operation of this Part to deal with interaction between this Part and State and Territory laws

(1) The regulations may modify the operation of this Part so that:
  (a) provisions of this Part do not apply to a matter that is dealt with by a law of a State or Territory specified in the regulations; or
  (b) no inconsistency arises between the operation of a provision of this Part and the operation of a State or Territory law specified in the regulations.

(2) Without limiting subsection (1), regulations made for the purposes of that subsection may provide that the provision of this Part does not apply to:
  (a) a person specified in the regulations; or
  (b) a body specified in the regulations; or
  (c) circumstances specified in the regulations; or
  (d) a person or body specified in the regulations in the circumstances specified in the regulations.

(3) In this section:

matter includes act, omission, body, person or thing.

100.8 Approval for changes to or affecting this Part

(1) This section applies to:
  (a) an express amendment of this Part (including this section); and
  (b) an express amendment of Chapter 2 that applies only to this Part (whether or not it is expressed to apply only to this Part).

(2) An express amendment to which this section applies is not to be made unless the amendment is approved by:
  (a) a majority of the group consisting of the States, the Australian Capital Territory and the Northern Territory; and
  (b) at least 4 States.

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Division 101—Terrorism

101.1 Terrorist acts

(1) A person commits an offence if the person engages in a terrorist act.

Penalty: Imprisonment for life.

(2) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

101.2 Providing or receiving training connected with terrorist acts

(1) A person commits an offence if:
(a) the person provides or receives training; and
(b) the training is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
(c) the person mentioned in paragraph (a) knows of the connection described in paragraph (b).

Penalty: Imprisonment for 25 years.

(2) A person commits an offence if:
(a) the person provides or receives training; and
(b) the training is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
(c) the person mentioned in paragraph (a) is reckless as to the existence of the connection described in paragraph (b).

Penalty: Imprisonment for 15 years.

(3) A person commits an offence under this section even if:
(a) a terrorist act does not occur; or
(b) the training is not connected with preparation for, the engagement of a person in, or assistance in a specific terrorist act; or

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(c) the training is connected with preparation for, the engagement of a person in, or assistance in more than one terrorist act.

(4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.

(5) If, in a prosecution for an offence (the ***prosecuted offence***) against a subsection of this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the ***alternative offence***) against another subsection of this section, the trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

101.4 Possessing things connected with terrorist acts

(1) A person commits an offence if:
(a) the person possesses a thing; and
(b) the thing is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
(c) the person mentioned in paragraph (a) knows of the connection described in paragraph (b).

Penalty: Imprisonment for 15 years.

(2) A person commits an offence if:
(a) the person possesses a thing; and
(b) the thing is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
(c) the person mentioned in paragraph (a) is reckless as to the existence of the connection described in paragraph (b).

Penalty: Imprisonment for 10 years.

(3) A person commits an offence under subsection (1) or (2) even if:
(a) a terrorist act does not occur; or

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(b) the thing is not connected with preparation for, the engagement of a person in, or assistance in a specific terrorist act; or

(c) the thing is connected with preparation for, the engagement of a person in, or assistance in more than one terrorist act.

(4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.

(5) Subsections (1) and (2) do not apply if the possession of the thing was not intended to facilitate preparation for, the engagement of a person in, or assistance in a terrorist act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3)).

(6) If, in a prosecution for an offence (the ***prosecuted offence***) against a subsection of this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the ***alternative offence***) against another subsection of this section, the trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

101.5 Collecting or making documents likely to facilitate terrorist acts

(1) A person commits an offence if:

(a) the person collects or makes a document; and

(b) the document is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and

(c) the person mentioned in paragraph (a) knows of the connection described in paragraph (b).

Penalty: Imprisonment for 15 years.

(2) A person commits an offence if:

(a) the person collects or makes a document; and

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(b) the document is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and

(c) the person mentioned in paragraph (a) is reckless as to the existence of the connection described in paragraph (b).

Penalty: Imprisonment for 10 years.

(3) A person commits an offence under subsection (1) or (2) even if:

(a) a terrorist act does not occur; or

(b) the document is not connected with preparation for, the engagement of a person in, or assistance in a specific terrorist act; or

(c) the document is connected with preparation for, the engagement of a person in, or assistance in more than one terrorist act.

(4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.

(5) Subsections (1) and (2) do not apply if the collection or making of the document was not intended to facilitate preparation for, the engagement of a person in, or assistance in a terrorist act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3)).

(6) If, in a prosecution for an offence (the ***prosecuted offence***) against a subsection of this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the ***alternative offence***) against another subsection of this section, the trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

101.6 Other acts done in preparation for, or planning, terrorist acts

(1) A person commits an offence if the person does any act in preparation for, or planning, a terrorist act.

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Penalty: Imprisonment for life.

(2) A person commits an offence under subsection (1) even if:
  (a) a terrorist act does not occur; or
  (b) the person's act is not done in preparation for, or planning, a specific terrorist act; or
  (c) the person's act is done in preparation for, or planning, more than one terrorist act.

(3) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

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Division 102—Terrorist organisations

Subdivision A—Definitions

102.1 Definitions

(1) In this Division:

advocate has the meaning given by subsection (1A).

associate: a person associates with another person if the person meets or communicates with the other person.

close family member of a person means:

(a) the person's spouse or de facto partner; or

(b) a parent, step-parent or grandparent of the person; or

(c) a child, step-child or grandchild of the person; or

(d) a brother, sister, step-brother or step-sister of the person; or

(e) a guardian or carer of the person.

Note: See also subsection (19).

member of an organisation includes:

(a) a person who is an informal member of the organisation; and

(b) a person who has taken steps to become a member of the organisation; and

(c) in the case of an organisation that is a body corporate—a director or an officer of the body corporate.

recruit includes induce, incite and encourage.

terrorist organisation means:

(a) an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or

(b) an organisation that is specified by the regulations for the purposes of this paragraph (see subsections (2), (3) and (4)).

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*Definition of **advocates***

(1A) In this Division, an organisation ***advocates*** the doing of a terrorist act if:

(a) the organisation directly or indirectly counsels, promotes, encourages or urges the doing of a terrorist act; or

(b) the organisation directly or indirectly provides instruction on the doing of a terrorist act; or

(c) the organisation directly praises the doing of a terrorist act in circumstances where there is a substantial risk that such praise might have the effect of leading a person (regardless of his or her age or any mental impairment that the person might suffer) to engage in a terrorist act.

Terrorist organisation regulations

(2) Before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in this section, the Minister must be satisfied on reasonable grounds that the organisation:

(a) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or

(b) advocates the doing of a terrorist act.

(2A) Before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in this section, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation.

(3) Regulations for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in this section cease to have effect on the third anniversary of the day on which they take effect. To avoid doubt, this subsection does not prevent:

(a) the repeal of those regulations; or

(b) the cessation of effect of those regulations under subsection (4); or

(c) the making of new regulations the same in substance as those regulations (whether the new regulations are made or take

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effect before or after those regulations cease to have effect because of this subsection).

(4) If:

(a) an organisation is specified by regulations made for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in this section; and

(b) the Minister ceases to be satisfied of either of the following (as the case requires):

(i) that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act;

(ii) that the organisation advocates the doing of a terrorist act;

the Minister must, by written notice published in the *Gazette*, make a declaration to the effect that the Minister has ceased to be so satisfied. The regulations, to the extent to which they specify the organisation, cease to have effect when the declaration is made.

(5) To avoid doubt, subsection (4) does not prevent the organisation from being subsequently specified by regulations made for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in this section if the Minister becomes satisfied as mentioned in subsection (2).

(17) If:

(a) an organisation (the ***listed organisation***) is specified in regulations made for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in this section; and

(b) an individual or an organisation (which may be the listed organisation) makes an application (the ***de-listing application***) to the Minister for a declaration under subsection (4) in relation to the listed organisation; and

(c) the de-listing application is made on the grounds that there is no basis for the Minister to be satisfied that the listed organisation:

(i) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or

(ii) advocates the doing of a terrorist act;

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as the case requires;

the Minister must consider the de-listing application.

(18) Subsection (17) does not limit the matters that may be considered by the Minister for the purposes of subsection (4).

(19) For the purposes of this Division, the close family members of a person are taken to include the following (without limitation):

(a) a de facto partner of the person;

(b) someone who is the child of the person, or of whom the person is the child, because of the definition of ***child*** in the Dictionary;

(c) anyone else who would be a member of the person's family if someone mentioned in paragraph (a) or (b) is taken to be a close family member of the person.

(20) In this section, a reference to the doing of a terrorist act includes:

(a) a reference to the doing of a terrorist act, even if a terrorist act does not occur; and

(b) a reference to the doing of a specific terrorist act; and

(c) a reference to the doing of more than one terrorist act.

102.1AA Including or removing names of prescribed terrorist organisations

(1) This section applies if the Minister is satisfied on reasonable grounds that:

(a) an organisation is specified in regulations made for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1(1); and

(b) the organisation:

(i) is referred to by another name (the ***alias***), in addition to, or instead of, a name used to specify the organisation in the regulations; or

(ii) no longer uses a name (the ***former name***) used in the regulations to specify the organisation.

(2) The Minister may, by legislative instrument, amend the regulations to do either or both of the following:

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(a) include the alias in the regulations if the Minister is satisfied as referred to in subparagraph (1)(b)(i);
(b) remove the former name from the regulations if the Minister is satisfied as referred to in subparagraph (1)(b)(ii).

(3) Amendment of regulations under subsection (2) does not:
(a) prevent the further amendment or repeal of the regulations by regulations made under section 5 of this Act for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1(1); or
(b) affect when the amended regulations cease to have effect under section 102.1.

(4) The Minister may not, by legislative instrument made under this section, amend the regulations to remove entirely an organisation that has been prescribed.

(5) To avoid doubt, this section does not affect the power under section 5 of this Act to make regulations for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1(1).

102.1A Reviews by Parliamentary Joint Committee on Intelligence and Security

Disallowable instruments

(1) This section applies in relation to the following disallowable instruments:
(a) a regulation that specifies an organisation for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in section 102.1;
(b) an instrument made under section 102.1AA.

Review of disallowable instrument

(2) The Parliamentary Joint Committee on Intelligence and Security may:
(a) review the disallowable instrument as soon as possible after the making of the instrument; and

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(b) report the Committee's comments and recommendations to each House of the Parliament before the end of the applicable disallowance period for that House.

Review of disallowable instrument—extension of disallowance period

(3) If the Committee's report on a review of a disallowable instrument is tabled in a House of the Parliament:

(a) during the applicable disallowance period for that House; and

(b) on or after the eighth sitting day of the applicable disallowance period;

then Part 2 of Chapter 3 of the *Legislation Act 2003* has effect, in relation to that disallowable instrument and that House, as if each period of 15 sitting days referred to in that Part were extended in accordance with the table:

Extension of applicable disallowance period

Item	If the Committee's report is tabled in that House...	extend the period of 15 sitting days by...
1	on the fifteenth sitting day of the applicable disallowance period	8 sitting days of that House
2	on the fourteenth sitting day of the applicable disallowance period	7 sitting days of that House
3	on the thirteenth sitting day of the applicable disallowance period	6 sitting days of that House
4	on the twelfth sitting day of the applicable disallowance period	5 sitting days of that House
5	on the eleventh sitting day of the applicable disallowance period	4 sitting days of that House
6	on the tenth sitting day of the applicable disallowance period	3 sitting days of that House
7	on the ninth sitting day of the applicable disallowance period	2 sitting days of that House
8	on the eighth sitting day of the applicable disallowance period	1 sitting day of that House

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Applicable disallowance period

(4) The ***applicable disallowance period*** for a House of the Parliament means the period of 15 sitting days of that House after the disallowable instrument, or a copy of the disallowable instrument, was laid before that House in accordance with section 38 of the *Legislation Act 2003*.

Subdivision B—Offences

102.2 Directing the activities of a terrorist organisation

(1) A person commits an offence if:
  (a) the person intentionally directs the activities of an organisation; and
  (b) the organisation is a terrorist organisation; and
  (c) the person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

(2) A person commits an offence if:
  (a) the person intentionally directs the activities of an organisation; and
  (b) the organisation is a terrorist organisation; and
  (c) the person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 15 years.

102.3 Membership of a terrorist organisation

(1) A person commits an offence if:
  (a) the person intentionally is a member of an organisation; and
  (b) the organisation is a terrorist organisation; and
  (c) the person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 10 years.

(2) Subsection (1) does not apply if the person proves that he or she took all reasonable steps to cease to be a member of the

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organisation as soon as practicable after the person knew that the organisation was a terrorist organisation.

Note: A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4).

102.4 Recruiting for a terrorist organisation

(1) A person commits an offence if:

(a) the person intentionally recruits a person to join, or participate in the activities of, an organisation; and

(b) the organisation is a terrorist organisation; and

(c) the first-mentioned person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

(2) A person commits an offence if:

(a) the person intentionally recruits a person to join, or participate in the activities of, an organisation; and

(b) the organisation is a terrorist organisation; and

(c) the first-mentioned person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 15 years.

102.5 Training involving a terrorist organisation

(1) A person commits an offence if:

(a) the person does any of the following:

(i) intentionally provides training to an organisation;

(ii) intentionally receives training from an organisation;

(iii) intentionally participates in training with an organisation; and

(b) the organisation is a terrorist organisation; and

(c) the person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

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(2) A person commits an offence if:

(a) the person does any of the following:

(i) intentionally provides training to an organisation;

(ii) intentionally receives training from an organisation;

(iii) intentionally participates in training with an organisation; and

(b) the organisation is a terrorist organisation that is covered by paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1(1).

Penalty: Imprisonment for 25 years.

(3) Subject to subsection (4), strict liability applies to paragraph (2)(b).

(4) Subsection (2) does not apply unless the person is reckless as to the circumstance mentioned in paragraph (2)(b).

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3)).

102.6 Getting funds to, from or for a terrorist organisation

(1) A person commits an offence if:

(a) the person intentionally:

(i) receives funds from, or makes funds available to, an organisation (whether directly or indirectly); or

(ii) collects funds for, or on behalf of, an organisation (whether directly or indirectly); and

(b) the organisation is a terrorist organisation; and

(c) the person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

(2) A person commits an offence if:

(a) the person intentionally:

(i) receives funds from, or makes funds available to, an organisation (whether directly or indirectly); or

(ii) collects funds for, or on behalf of, an organisation (whether directly or indirectly); and

(b) the organisation is a terrorist organisation; and

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(c) the person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 15 years.

(3) Subsections (1) and (2) do not apply to the person's receipt of funds from the organisation if the person proves that he or she received the funds solely for the purpose of the provision of:

(a) legal representation for a person in proceedings relating to this Division; or

(b) assistance to the organisation for it to comply with a law of the Commonwealth or a State or Territory.

Note: A defendant bears a legal burden in relation to the matter in subsection (3) (see section 13.4).

102.7 Providing support to a terrorist organisation

(1) A person commits an offence if:

(a) the person intentionally provides to an organisation support or resources that would help the organisation engage in an activity described in paragraph (a) of the definition of ***terrorist organisation*** in this Division; and

(b) the organisation is a terrorist organisation; and

(c) the person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

(2) A person commits an offence if:

(a) the person intentionally provides to an organisation support or resources that would help the organisation engage in an activity described in paragraph (a) of the definition of ***terrorist organisation*** in this Division; and

(b) the organisation is a terrorist organisation; and

(c) the person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 15 years.

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102.8 Associating with terrorist organisations

(1) A person commits an offence if:

(a) on 2 or more occasions:

(i) the person intentionally associates with another person who is a member of, or a person who promotes or directs the activities of, an organisation; and

(ii) the person knows that the organisation is a terrorist organisation; and

(iii) the association provides support to the organisation; and

(iv) the person intends that the support assist the organisation to expand or to continue to exist; and

(v) the person knows that the other person is a member of, or a person who promotes or directs the activities of, the organisation; and

(b) the organisation is a terrorist organisation because of paragraph (b) of the definition of ***terrorist organisation*** in this Division (whether or not the organisation is a terrorist organisation because of paragraph (a) of that definition also).

Penalty: Imprisonment for 3 years.

(2) A person commits an offence if:

(a) the person has previously been convicted of an offence against subsection (1); and

(b) the person intentionally associates with another person who is a member of, or a person who promotes or directs the activities of, an organisation; and

(c) the person knows that the organisation is a terrorist organisation; and

(d) the association provides support to the organisation; and

(e) the person intends that the support assist the organisation to expand or to continue to exist; and

(f) the person knows that the other person is a member of, or a person who promotes or directs the activities of, the organisation; and

(g) the organisation is a terrorist organisation because of paragraph (b) of the definition of ***terrorist organisation*** in

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this Division (whether or not the organisation is a terrorist organisation because of paragraph (a) of that definition also).

Penalty: Imprisonment for 3 years.

(3) Strict liability applies to paragraphs (1)(b) and (2)(g).

(4) This section does not apply if:

(a) the association is with a close family member and relates only to a matter that could reasonably be regarded (taking into account the person's cultural background) as a matter of family or domestic concern; or

(b) the association is in a place being used for public religious worship and takes place in the course of practising a religion; or

(c) the association is only for the purpose of providing aid of a humanitarian nature; or

(d) the association is only for the purpose of providing legal advice or legal representation in connection with:

(i) criminal proceedings or proceedings related to criminal proceedings (including possible criminal proceedings in the future); or

(ii) proceedings relating to whether the organisation in question is a terrorist organisation; or

(iii) a decision made or proposed to be made under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*, or proceedings relating to such a decision or proposed decision; or

(iv) a listing or proposed listing under section 15 of the *Charter of the United Nations Act 1945* or an application or proposed application to revoke such a listing, or proceedings relating to such a listing or application or proposed listing or application; or

(v) proceedings conducted by a military commission of the United States of America established under a Military Order of 13 November 2001 made by the President of the United States of America and entitled "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism"; or

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(vi) proceedings for a review of a decision relating to a passport or other travel document or to a failure to issue such a passport or other travel document (including a passport or other travel document that was, or would have been, issued by or on behalf of the government of a foreign country).

Note: A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3).

(5) This section does not apply unless the person is reckless as to the circumstance mentioned in paragraph (1)(b) and (2)(g) (as the case requires).

Note: A defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3).

(6) This section does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6). See subsection 13.3(3).

(7) A person who is convicted of an offence under subsection (1) in relation to the person's conduct on 2 or more occasions is not liable to be punished for an offence under subsection (1) for other conduct of the person that takes place:

(a) at the same time as that conduct; or

(b) within 7 days before or after any of those occasions.

Subdivision C—General provisions relating to offences

102.9 Extended geographical jurisdiction for offences

Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this Division.

102.10 Alternative verdicts

(1) This section applies if, in a prosecution for an offence (the ***prosecuted offence***) against a subsection of a section of this Division, the trier of fact is not satisfied that the defendant is guilty

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of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the ***alternative offence***) against another subsection of that section.

(2) The trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

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Division 103—Financing terrorism

103.1 Financing terrorism

(1) A person commits an offence if:
  (a) the person provides or collects funds; and
  (b) the person is reckless as to whether the funds will be used to facilitate or engage in a terrorist act.

Penalty: Imprisonment for life.

Note: Intention is the fault element for the conduct described in paragraph (1)(a). See subsection 5.6(1).

(2) A person commits an offence under subsection (1) even if:
  (a) a terrorist act does not occur; or
  (b) the funds will not be used to facilitate or engage in a specific terrorist act; or
  (c) the funds will be used to facilitate or engage in more than one terrorist act.

103.2 Financing a terrorist

(1) A person commits an offence if:
  (a) the person intentionally:
    (i) makes funds available to another person (whether directly or indirectly); or
    (ii) collects funds for, or on behalf of, another person (whether directly or indirectly); and
  (b) the first-mentioned person is reckless as to whether the other person will use the funds to facilitate or engage in a terrorist act.

Penalty: Imprisonment for life.

(2) A person commits an offence under subsection (1) even if:
  (a) a terrorist act does not occur; or
  (b) the funds will not be used to facilitate or engage in a specific terrorist act; or

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(c) the funds will be used to facilitate or engage in more than one terrorist act.

103.3 Extended geographical jurisdiction for offences

Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this Division.

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Division 104—Control orders

Subdivision A—Objects of this Division

104.1 Objects of this Division

The objects of this Division are to allow obligations, prohibitions and restrictions to be imposed on a person by a control order for one or more of the following purposes:

(a) protecting the public from a terrorist act;

(b) preventing the provision of support for or the facilitation of a terrorist act;

(c) preventing the provision of support for or the facilitation of the engagement in a hostile activity in a foreign country.

Subdivision B—Making an interim control order

104.2 Attorney-General's consent to request an interim control order

(1) A senior AFP member must not request an interim control order in relation to a person without the Attorney-General's written consent.

Note: However, in urgent circumstances, a senior AFP member may request an interim control order without first obtaining the Attorney-General's consent (see Subdivision C).

(2) A senior AFP member may only seek the Attorney-General's written consent to request an interim control order in relation to a person if the member:

(a) suspects on reasonable grounds that the order in the terms to be requested would substantially assist in preventing a terrorist act; or

(b) suspects on reasonable grounds that the person has:

(i) provided training to, received training from or participated in training with a listed terrorist organisation; or

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(ii) engaged in a hostile activity in a foreign country; or

(iii) been convicted in Australia of an offence relating to terrorism, a terrorist organisation (within the meaning of subsection 102.1(1)) or a terrorist act (within the meaning of section 100.1); or

(iv) been convicted in a foreign country of an offence that is constituted by conduct that, if engaged in in Australia, would constitute a terrorism offence (within the meaning of subsection 3(1) of the *Crimes Act 1914*); or

(c) suspects on reasonable grounds that the order in the terms to be requested would substantially assist in preventing the provision of support for or the facilitation of a terrorist act; or

(d) suspects on reasonable grounds that the person has provided support for or otherwise facilitated the engagement in a hostile activity in a foreign country.

(3) In seeking the Attorney-General's consent, the member must give the Attorney-General:

(a) a draft of the interim control order to be requested; and

(aa) the following:

(i) a statement of the facts relating to why the order should be made;

(ii) if the member is aware of any facts relating to why the order should not be made—a statement of those facts; and

(b) information (if any) that the member has about the person's age; and

(c) a summary of the grounds on which the order should be made.

Note: An interim control order cannot be requested in relation to a person who is under 16 years of age (see section 104.28).

(3A) To avoid doubt, paragraph (3)(c) does not require any information to be included in the summary if disclosure of that information is likely to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*).

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(4) The Attorney-General's consent may be made subject to the member making changes required by the Attorney-General to the draft of the interim control order to be requested.

(5) To avoid doubt, a senior AFP member may seek the Attorney-General's consent to request an interim control order in relation to a person, even if such a request has previously been made in relation to the person.

(6) In subsection (2), a reference to a terrorist act includes:
  (a) a reference to a terrorist act that does not occur; and
  (b) a reference to a specific terrorist act; and
  (c) a reference to more than one terrorist act.

104.3 Requesting the court to make an interim control order

If the Attorney-General consents to the request under section 104.2, the senior AFP member may request an interim control order by giving an issuing court the following:

(a) a request the information in which is sworn or affirmed by the member;

(b) all that is required under subsection 104.2(3) (incorporating any change made to the draft of the interim control order under subsection 104.2(4));

(d) the following:
  (i) an explanation as to why each of the proposed obligations, prohibitions or restrictions should be imposed on the person;
  (ii) if the member is aware of any facts relating to why any of those obligations, prohibitions or restrictions should not be imposed on the person—a statement of those facts;

(e) the following:
  (i) the outcomes and particulars of all previous requests for interim control orders (including the outcomes of the hearings to confirm the orders) in relation to the person;

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(ii) the outcomes and particulars of all previous applications for variations of control orders made in relation to the person;

(iii) the outcomes and particulars of all previous applications for revocations of control orders made in relation to the person;

(iv) the outcomes and particulars of all previous applications for preventative detention orders in relation to the person;

(v) information (if any) that the member has about any periods for which the person has been detained under an order made under a corresponding State preventative detention law;

(f) a copy of the Attorney-General's consent.

Note: The member might commit an offence if the draft request is false or misleading (see sections 137.1 and 137.2).

104.4 Making an interim control order

(1) The issuing court may make an order under this section in relation to the person, but only if:

(a) the senior AFP member has requested it in accordance with section 104.3; and

(b) the court has received and considered such further information (if any) as the court requires; and

(c) the court is satisfied on the balance of probabilities:

(i) that making the order would substantially assist in preventing a terrorist act; or

(ii) that the person has provided training to, received training from or participated in training with a listed terrorist organisation; or

(iii) that the person has engaged in a hostile activity in a foreign country; or

(iv) that the person has been convicted in Australia of an offence relating to terrorism, a terrorist organisation (within the meaning of subsection 102.1(1)) or a terrorist act (within the meaning of section 100.1); or

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(v) that the person has been convicted in a foreign country of an offence that is constituted by conduct that, if engaged in in Australia, would constitute a terrorism offence (within the meaning of subsection 3(1) of the *Crimes Act 1914*); or

(vi) that making the order would substantially assist in preventing the provision of support for or the facilitation of a terrorist act; or

(vii) that the person has provided support for or otherwise facilitated the engagement in a hostile activity in a foreign country; and

(d) the court is satisfied on the balance of probabilities that each of the obligations, prohibitions and restrictions to be imposed on the person by the order is reasonably necessary, and reasonably appropriate and adapted, for the purpose of:

(i) protecting the public from a terrorist act; or

(ii) preventing the provision of support for or the facilitation of a terrorist act; or

(iii) preventing the provision of support for or the facilitation of the engagement in a hostile activity in a foreign country.

(2) In determining whether each of the obligations, prohibitions and restrictions to be imposed on the person by the order is reasonably necessary, and reasonably appropriate and adapted, the court must take into account the impact of the obligation, prohibition or restriction on the person's circumstances (including the person's financial and personal circumstances).

(3) The court need not include in the order an obligation, prohibition or restriction that was sought by the senior AFP member if the court is not satisfied as mentioned in paragraph (1)(d) in respect of that obligation, prohibition or restriction.

(4) In paragraphs (1)(c) and (d), a reference to a terrorist act includes:

(a) a reference to a terrorist act that does not occur; and

(b) a reference to a specific terrorist act; and

(c) a reference to more than one terrorist act.

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104.5 Terms of an interim control order

(1) If the issuing court makes the interim control order, the order must:

(a) state that the court is satisfied of the matters mentioned in paragraphs 104.4(1)(c) and (d); and

(b) specify the name of the person to whom the order relates; and

(c) specify all of the obligations, prohibitions and restrictions mentioned in subsection (3) that are to be imposed on the person by the order; and

(d) state that the order does not begin to be in force until it is served personally on the person; and

(e) specify a day on which the person may attend the court for the court to:

(i) confirm (with or without variation) the interim control order; or

(ii) declare the interim control order to be void; or

(iii) revoke the interim control order; and

(f) specify the period during which the confirmed control order is to be in force, which must not end more than 12 months after the day on which the interim control order is made; and

(g) state that the person's lawyer may attend a specified place in order to obtain a copy of the interim control order; and

(h) set out a summary of the grounds on which the order is made.

Note 1: An interim control order made in relation to a person must be served on the person at least 48 hours before the day specified as mentioned in paragraph (1)(e) (see section 104.12).

Note 2: A confirmed control order that is made in relation to a 16- to 18-year-old must not end more than 3 months after the day on which the interim control order is made (see section 104.28).

(1A) The day specified for the purposes of paragraph (1)(e) must be as soon as practicable, but at least 72 hours, after the order is made.

(1B) In specifying a day for the purposes of paragraph (1)(e), the issuing court must take into account:

(a) that the persons mentioned in subsection 104.14(1) may need to prepare in order to adduce evidence or make submissions to the court in relation to the confirmation of the order; and

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(b) any other matter the court considers relevant.

(2) Paragraph (1)(f) does not prevent the making of successive control orders in relation to the same person.

(2A) To avoid doubt, paragraph (1)(h) does not require any information to be included in the summary if disclosure of that information is likely to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*).

Obligations, prohibitions and restrictions

(3) The obligations, prohibitions and restrictions that the court may impose on the person by the order are the following:

(a) a prohibition or restriction on the person being at specified areas or places;

(b) a prohibition or restriction on the person leaving Australia;

(c) a requirement that the person remain at specified premises between specified times each day, or on specified days, but for no more than 12 hours within any 24 hours;

(d) a requirement that the person wear a tracking device;

(e) a prohibition or restriction on the person communicating or associating with specified individuals;

(f) a prohibition or restriction on the person accessing or using specified forms of telecommunication or other technology (including the internet);

(g) a prohibition or restriction on the person possessing or using specified articles or substances;

(h) a prohibition or restriction on the person carrying out specified activities (including in respect of his or her work or occupation);

(i) a requirement that the person report to specified persons at specified times and places;

(j) a requirement that the person allow himself or herself to be photographed;

(k) a requirement that the person allow impressions of his or her fingerprints to be taken;

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(l) a requirement that the person participate in specified counselling or education.

Note: Restrictions apply to the use of photographs or impressions of fingerprints taken as mentioned in paragraphs (3)(j) and (k) (see section 104.22).

Communicating and associating

(4) Subsection 102.8(4) applies to paragraph (3)(e) and the person's communication or association in the same way as that subsection applies to section 102.8 and a person's association.

(5) This section does not affect the person's right to contact, communicate or associate with the person's lawyer unless the person's lawyer is a specified individual as mentioned in paragraph (3)(e). If the person's lawyer is so specified, the person may contact, communicate or associate with any other lawyer who is not so specified.

Counselling and education

(6) A person is required to participate in specified counselling or education as mentioned in paragraph (3)(l) only if the person agrees, at the time of the counselling or education, to participate in the counselling or education.

Subdivision C—Making an urgent interim control order

104.6 Requesting an urgent interim control order by electronic means

(1) A senior AFP member may request, by telephone, fax, email or other electronic means, an issuing court to make an interim control order in relation to a person if:

(a) the member considers it necessary to use such means because of urgent circumstances; and

(b) the member suspects the matters mentioned in subsection 104.2(2) on reasonable grounds.

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(2) The Attorney-General's consent under section 104.2 is not required before the request is made.

Note: However, if the Attorney-General's consent is not obtained before the member makes the request, the Attorney-General's consent must be obtained within 8 hours of the member making the request (see section 104.10).

(3) The issuing court may require communication by voice to the extent that is practicable in the circumstances.

(4) The request must include the following:

(a) all that is required under paragraphs 104.3(b) to (e) in respect of an ordinary request for an interim control order;

(b) an explanation as to why the making of the interim control order is urgent;

(c) if the Attorney-General's consent has been obtained before making the request—a copy of the Attorney-General's consent.

Note: The member might commit an offence if the request is false or misleading (see sections 137.1 and 137.2).

(5) The information and the explanation included in the request must be sworn or affirmed by the member, but do not have to be sworn or affirmed before the request is made.

Note: Subsection 104.7(5) requires the information and the explanation to be sworn or affirmed within 24 hours.

104.7 Making an urgent interim control order by electronic means

(1) Before making an order in response to a request under section 104.6, the issuing court must:

(a) consider the information and the explanation included in the request; and

(b) receive and consider such further information (if any) as the court requires.

(2) If the issuing court is satisfied that an order should be made urgently, the court may complete the same form of order that would be made under sections 104.4 and 104.5.

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Procedure after urgent interim control order is made

(3) If the issuing court makes the order, the court must inform the senior AFP member, by telephone, fax, email or other electronic means, of:
  (a) the terms of the order; and
  (b) the day on which, and the time at which, it was completed.

(4) The member must then complete a form of order in terms substantially corresponding to those given by the issuing court, stating on the form:
  (a) the name of the court; and
  (b) the day on which, and the time at which, the order was completed.

(5) Within 24 hours of being informed under subsection (3), the member must give or transmit the following to the issuing court:
  (a) the form of order completed by the member;
  (b) if the information and the explanation included in the request were not already sworn or affirmed—that information and explanation duly sworn or affirmed;
  (c) if the Attorney-General's consent was not obtained before making the request—a copy of the Attorney-General's consent.

(6) The issuing court must attach to the documents provided under subsection (5) the form of order the court has completed.

104.8 Requesting an urgent interim control order in person

(1) A senior AFP member may request, in person, an issuing court to make an interim control order in relation to a person without first obtaining the Attorney-General's consent under section 104.2 if:
  (a) the member considers it necessary to request the order without the consent because of urgent circumstances; and
  (b) the member suspects the matters mentioned in subsection 104.2(2) on reasonable grounds.

Note: The Attorney-General's consent must be obtained within 8 hours of making the request (see section 104.10).

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(2) The request must include the following:

(a) all that is required under paragraphs 104.3(a) to (e) in respect of an ordinary request for an interim control order;

(b) an explanation that is sworn or affirmed as to why the making of the interim control order without first obtaining the Attorney-General's consent is urgent.

Note: The member might commit an offence if the request is false or misleading (see sections 137.1 and 137.2).

104.9 Making an urgent interim control order in person

(1) Before making an order in response to a request under section 104.8, the issuing court must:

(a) consider the information and the explanation included in the request; and

(b) receive and consider such further information (if any) as the court requires.

(2) If the issuing court is satisfied that an order should be made urgently, the court may make the same order that would be made under sections 104.4 and 104.5.

(3) Within 24 hours of the order being made under subsection (2), the member must:

(a) give or transmit a copy of the order to the issuing court; and

(b) either:

(i) give or transmit a copy of the Attorney-General's consent to request the order to the court; or

(ii) notify the court in writing that the Attorney-General's consent was not obtained.

Note: Section 104.10 deals with the Attorney-General's consent.

104.10 Obtaining the Attorney-General's consent within 8 hours

(1) If the Attorney-General's consent to request an interim control order was not first sought before making a request under section 104.6 or 104.8, the senior AFP member who made the

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request must, in accordance with subsection 104.2(3), seek that consent within 8 hours of making the request.

(2) In any case, if the Attorney-General:

(a) refuses his or her consent to request the order; or

(b) has not given his or her consent to request the order;

within 8 hours of the request being made, the order immediately ceases to be in force.

Note: However, the senior AFP member can seek the Attorney-General's consent to request a new interim control order in relation to the person (see subsection 104.2(5)).

(3) If the order ceases to be in force under subsection (2), the senior AFP member must, as soon as practicable:

(a) notify the court that the order has ceased to be in force; and

(b) if the order has been served on the person in relation to whom it was made:

(i) annotate the order to indicate that it has ceased to be in force; and

(ii) cause the annotated order to be served personally on the person.

104.11 Court to assume that exercise of power not authorised by urgent interim control order

If:

(a) it is material, in any proceedings, for a court to be satisfied that an interim control order was duly made under section 104.7; and

(b) the form of order completed by the relevant issuing court is not produced in evidence;

the first-mentioned court is to assume, unless the contrary is proved, that the order was not duly made.

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Subdivision D—Confirming an interim control order

104.12 Service, explanation and notification of an interim control order

Service and explanation of an interim control order

(1) As soon as practicable after an interim control order is made in relation to a person, and at least 48 hours before the day specified as mentioned in paragraph 104.5(1)(e), an AFP member:

(a) must serve the order personally on the person; and

(b) must inform the person of the following:

(i) the effect of the order;

(ii) the period for which the order (if confirmed) is in force;

(iii) the effect of sections 104.12A, 104.13, 104.14, 104.18 and 104.27 (and section 104.22 if appropriate);

(iv) that the person may have appeal and review rights in relation to the decision of the issuing court to make the order;

(v) the person's right to attend court on the day specified for the purposes of paragraph 104.5(1)(e);

(vi) the right of the person or one or more representatives of the person, and (if relevant) the right of the Queensland public interest monitor, to adduce evidence or make submissions under subsection 104.14(1) if the order is confirmed;

(vii) that the person may have appeal and review rights in relation to any decision of the issuing court to confirm the order;

(viii) the person's right to apply under section 104.18 for an order revoking or varying the order if it is confirmed;

(ix) the right of the person or one or more representatives of the person, and (if relevant) the right of the Queensland public interest monitor, to adduce evidence or make submissions under subsection 104.19(3) or 104.23(4) in relation to an application to revoke or vary the order if it is confirmed; and

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(c) must ensure that the person understands the information provided under paragraph (b) (taking into account the person's age, language skills, mental capacity and any other relevant factor).

(3) Paragraphs (1)(b) and (c) do not apply if the actions of the person in relation to whom the interim control order has been made make it impracticable for the AFP member to comply with those paragraphs.

(4) A failure to comply with paragraph (1)(c) does not make the control order ineffective to any extent.

Queensland public interest monitor to be given copy of interim control order

(5) If:

(a) the person in relation to whom the interim control order is made is a resident of Queensland; or

(b) the issuing court that made the interim control order did so in Queensland;

an AFP member must give to the Queensland public interest monitor a copy of the order.

104.12A Election to confirm control order

(1) At least 48 hours before the day specified in an interim control order as mentioned in paragraph 104.5(1)(e), the senior AFP member who requested the order must:

(a) elect whether to confirm the order on the specified day; and

(b) give a written notification to the issuing court that made the order of the member's election.

(2) If the senior AFP member elects to confirm the order, an AFP member must:

(a) serve personally on the person in relation to whom the order is made:

(i) a copy of the notification; and

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(ii) a copy of the documents mentioned in paragraphs 104.2(3)(aa) and 104.3(d); and

(iii) any other details required to enable the person to understand and respond to the substance of the facts, matters and circumstances which will form the basis of the confirmation of the order; and

(b) if the person is a resident of Queensland, or the court made the order in Queensland—give the Queensland public interest monitor a copy of the documents mentioned in paragraph (a).

(3) To avoid doubt, subsection (2) does not require any information to be served or given if disclosure of that information is likely:

(a) to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*); or

(b) to be protected by public interest immunity; or

(c) to put at risk ongoing operations by law enforcement agencies or intelligence agencies; or

(d) to put at risk the safety of the community, law enforcement officers or intelligence officers.

The fact that information of a kind mentioned in this subsection is not required to be disclosed does not imply that such information is required to be disclosed in other provisions of this Part that relate to the disclosure of information.

(4) If the senior AFP member elects not to confirm the order, and the order has already been served on the person, then:

(a) the order immediately ceases to be in force; and

(b) an AFP member must:

(i) annotate the order to indicate that it has ceased to be in force; and

(ii) cause the annotated order and a copy of the notification to be served personally on the person; and

(iii) if the person is a resident of Queensland, or the court made the order in Queensland—give the Queensland public interest monitor a copy of the annotated order and the notification.

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104.13 Lawyer may request a copy of an interim control order

(1) A lawyer of the person in relation to whom an interim control order is made may attend the place specified in the order as mentioned in paragraph 104.5(1)(g) in order to obtain a copy of the order.

(2) This section does not:
  (a) require more than one person to give the lawyer a copy of the order; or
  (b) entitle the lawyer to request, be given a copy of, or see, a document other than the order.

104.14 Confirming an interim control order

Who may adduce evidence or make submissions

(1) If an election has been made to confirm an interim control order, then, on the day specified as mentioned in paragraph 104.5(1)(e), the following persons may adduce evidence (including by calling witnesses or producing material), or make submissions, to the issuing court in relation to the confirmation of the order:
  (a) the senior AFP member who requested the interim control order;
  (b) one or more other AFP members;
  (c) the person in relation to whom the interim control order is made;
  (d) one or more representatives of the person;
  (e) if:
    (i) the person is a resident of Queensland; or
    (ii) the court made the interim control order in Queensland;
  the Queensland public interest monitor (unless the monitor is already a representative of the person).

(2) Subsection (1) does not otherwise limit the power of the court to control proceedings in relation to the confirmation of an interim control order.

(3) Before taking action under this section, the court must consider:
  (a) the original request for the interim control order; and

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(b) any evidence adduced, and any submissions made, under subsection (1) in respect of the order.

Failure of person or representative etc. to attend

(4) The court may confirm the order without variation if:
   (a) none of the following persons attend the court on the specified day:
      (i) the person in relation to whom the order is made;
      (ii) a representative of the person;
      (iii) if the person is a resident of Queensland, or the court made the order in Queensland—the Queensland public interest monitor; and
   (b) the court is satisfied on the balance of probabilities that the order was properly served on the person in relation to whom the order is made.

Attendance of person or representative etc.

(5) The court may take the action mentioned in subsection (6) or (7) if any of the following persons attend the court on the specified day:
   (a) the person in relation to whom the order is made;
   (b) a representative of the person;
   (c) if the person is a resident of Queensland, or the court made the order in Queensland—the Queensland public interest monitor.

(6) The court may declare, in writing, the order to be void if the court is satisfied that, at the time of making the order, there were no grounds on which to make the order.

(7) Otherwise, the court may:
   (a) revoke the order if, at the time of confirming the order, the court is not satisfied as mentioned in paragraph 104.4(1)(c); or
   (b) confirm and vary the order by removing one or more obligations, prohibitions or restrictions if, at the time of confirming the order, the court is satisfied as mentioned in

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paragraph 104.4(1)(c) but is not satisfied as mentioned in paragraph 104.4(1)(d); or

(c) confirm the order without variation if, at the time of confirming the order, the court is satisfied as mentioned in paragraphs 104.4(1)(c) and (d).

Note: If the court confirms the interim control order, the court must make a new order under section 104.16.

104.15 When a declaration, or a revocation, variation or confirmation of a control order, is in force

(1) If the court declares the interim control order to be void under section 104.14, the order is taken never to have been in force.

(2) If the court revokes the interim control order under section 104.14, the order ceases to be in force when the court revokes the order.

(3) If the court confirms the interim control order (with or without variation) under section 104.14 then:

(a) the interim control order ceases to be in force; and

(b) the confirmed control order begins to be in force;

when the court makes a corresponding order under section 104.16.

104.16 Terms of a confirmed control order

(1) If the issuing court confirms the interim control order under section 104.14, the court must make a corresponding order that:

(a) states that the court is satisfied of the matters mentioned in paragraphs 104.4(1)(c) and (d); and

(b) specifies the name of the person to whom the order relates; and

(c) specifies all of the obligations, prohibitions and restrictions mentioned in subsection 104.5(3) that are to be imposed on the person by the order; and

(d) specifies the period during which the order is to be in force, which must not end more than 12 months after the day on which the interim control order was made; and

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(e) states that the person's lawyer may attend a specified place in order to obtain a copy of the confirmed control order.

Note: A confirmed control order that is made in relation to a 16- to 18-year-old must not end more than 3 months after the day on which the interim control order was made (see section 104.28).

(2) Paragraph (1)(d) does not prevent the making of successive control orders in relation to the same person.

104.17 Service of a declaration, or a revocation, variation or confirmation of a control order

(1) As soon as practicable after an interim control order is declared to be void, revoked or confirmed (with or without variation) under section 104.14, an AFP member must:

(a) serve the declaration, the revocation or the confirmed control order personally on the person; and

(b) if the court confirms the interim order (with or without variation)—inform the person of the following:

(i) that the person may have appeal and review rights in relation to the decision of the issuing court to confirm the order;

(ii) the person's right to apply under section 104.18 for an order revoking or varying the order;

(iii) the right of the person or one or more representatives of the person, and (if relevant) the right of the Queensland public interest monitor, to adduce evidence or make submissions under subsection 104.19(3) or 104.23(4) in relation to an application to revoke or vary the order; and

(c) if paragraph (b) applies—ensure that the person understands the information provided under that paragraph (taking into account the person's age, language skills, mental capacity and any other relevant factor).

(2) Paragraphs (1)(b) and (c) do not apply if the actions of the person in relation to whom the interim control order has been declared void, revoked or confirmed make it impracticable for the AFP member to comply with those paragraphs.

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(3) A failure to comply with paragraph (1)(c) does not make the control order ineffective to any extent.

Subdivision E—Rights in respect of a control order

104.18 Application by the person for a revocation or variation of a control order

(1) A person in relation to whom a confirmed control order is made may apply to an issuing court for the court to revoke or vary the order under section 104.20.

(2) The person may make the application at any time after the order is served on the person.

(3) The person must give written notice of both the application and the grounds on which the revocation or variation is sought to the following persons:

(a) the Commissioner of the Australian Federal Police;

(b) if:

(i) the person in relation to whom the order is made is a resident of Queensland; or

(ii) the court will hear the application in Queensland;

the Queensland public interest monitor.

(4) The following persons may adduce additional evidence (including by calling witnesses or producing material), or make additional submissions, to the court in relation to the application to revoke or vary the order:

(a) the Commissioner;

(b) one or more other AFP members;

(c) the person in relation to whom the order is made;

(d) one or more representatives of the person;

(e) if paragraph (3)(b) applies—the Queensland public interest monitor (unless the monitor is a representative of the person).

(5) Subsection (4) does not otherwise limit the power of the court to control proceedings in relation to an application to revoke or vary a confirmed control order.

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104.19 Application by the AFP Commissioner for a revocation or variation of a control order

(1) While a confirmed control order is in force, the Commissioner of the Australian Federal Police must cause an application to be made to an issuing court:

(a) to revoke the order, under section 104.20, if the Commissioner is satisfied that the grounds on which the order was confirmed have ceased to exist; and

(b) to vary the order, under that section, by removing one or more obligations, prohibitions or restrictions, if the Commissioner is satisfied that those obligations, prohibitions or restrictions should no longer be imposed on the person.

(2) The Commissioner must cause written notice of both the application and the grounds on which the revocation or variation is sought to be given to the following persons:

(a) the person in relation to whom the order is made;

(b) if:

(i) the person in relation to whom the order is made is a resident of Queensland; or

(ii) the court will hear the application in Queensland;

the Queensland public interest monitor.

(3) The following persons may adduce additional evidence (including by calling witnesses or producing material), or make additional submissions, to the court in relation to the application to revoke or vary the order:

(a) the Commissioner;

(b) one or more other AFP members;

(c) the person in relation to whom the order is made;

(d) one or more representatives of the person;

(e) if paragraph (2)(b) applies—the Queensland public interest monitor (unless the monitor is a representative of the person).

(4) Subsection (3) does not otherwise limit the power of the court to control proceedings in relation to an application to revoke or vary a confirmed control order.

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104.20 Revocation or variation of a control order

(1) If an application is made under section 104.18 or 104.19 in respect of a confirmed control order, the court may:

(a) revoke the order if, at the time of considering the application, the court is not satisfied as mentioned in paragraph 104.4(1)(c); or

(b) vary the order by removing one or more obligations, prohibitions or restrictions if, at the time of considering the application, the court is satisfied as mentioned in paragraph 104.4(1)(c) but is not satisfied as mentioned in paragraph 104.4(1)(d); or

(c) dismiss the application if, at the time of considering the application, the court is satisfied as mentioned in paragraphs 104.4(1)(c) and (d).

(2) A revocation or variation begins to be in force when the court revokes or varies the order.

(3) An AFP member must serve the revocation or variation personally on the person as soon as practicable after a confirmed control order is revoked or varied.

104.21 Lawyer may request a copy of a control order

(1) If a control order is confirmed or varied under section 104.14, 104.20 or 104.24, a lawyer of the person in relation to whom the control order is made may attend the place specified in the order as mentioned in paragraph 104.16(1)(e) or 104.25(d) in order to obtain a copy of the order.

(2) This section does not:

(a) require more than one person to give the lawyer a copy of the order; or

(b) entitle the lawyer to request, be given a copy of, or see, a document other than the order.

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104.22 Treatment of photographs and impressions of fingerprints

(1) A photograph, or an impression of fingerprints, taken as mentioned in paragraph 104.5(3)(j) or (k) must only be used for the purpose of ensuring compliance with the relevant control order.

(2) If:

(a) a period of 12 months elapses after the control order ceases to be in force; and

(b) proceedings in respect of the control order have not been brought, or have been brought and discontinued or completed, within that period;

the photograph or the impression must be destroyed as soon as practicable after the end of that period.

(3) A person commits an offence if:

(a) the person engages in conduct; and

(b) the conduct contravenes subsection (1).

Penalty: Imprisonment for 2 years.

Subdivision F—Adding obligations, prohibitions or restrictions to a control order

104.23 Application by the AFP Commissioner for addition of obligations, prohibitions or restrictions

(1) The Commissioner of the Australian Federal Police may cause an application to be made to an issuing court to vary, under section 104.24, a confirmed control order, by adding one or more obligations, prohibitions or restrictions mentioned in subsection 104.5(3) to the order, if the Commissioner:

(a) suspects on reasonable grounds that the varied order in the terms to be sought would substantially assist in preventing a terrorist act; or

(b) suspects on reasonable grounds that the person has:

(i) provided training to, received training from or participated in training with a listed terrorist organisation; or

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(ii) engaged in a hostile activity in a foreign country; or

(iii) been convicted in Australia of an offence relating to terrorism, a terrorist organisation (within the meaning of subsection 102.1(1)) or a terrorist act (within the meaning of section 100.1); or

(iv) been convicted in a foreign country of an offence that is constituted by conduct that, if engaged in in Australia, would constitute a terrorism offence (within the meaning of subsection 3(1) of the *Crimes Act 1914*); or

(c) suspects on reasonable grounds that the varied order in the terms to be sought would substantially assist in preventing the provision of support for or the facilitation of a terrorist act; or

(d) suspects on reasonable grounds that the person has provided support for or otherwise facilitated the engagement in a hostile activity in a foreign country.

(2) The Commissioner must cause the court to be given:

(a) a copy of the additional obligations, prohibitions and restrictions to be imposed on the person by the order; and

(b) the following:

(i) an explanation as to why each of those obligations, prohibitions and restrictions should be imposed on the person; and

(ii) if the Commissioner is aware of any facts relating to why any of those obligations, prohibitions or restrictions should not be imposed on the person—a statement of those facts; and

(c) the outcomes and particulars of all previous applications under this section for variations of the order; and

(d) information (if any) that the Commissioner has about the person's age.

Note 1: A control order cannot be made in relation to a person who is under 16 years of age (see section 104.28).

Note 2: An offence might be committed if the application is false or misleading (see sections 137.1 and 137.2).

(3) The Commissioner must cause:

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(a) written notice of the application and the grounds on which the variation is sought; and
(b) a copy of the documents mentioned in paragraph (2)(b); and
(c) any other details required to enable the person in relation to whom the order is made to understand and respond to the substance of the facts, matters and circumstances which will form the basis of the variation of the order;

to be given to the following persons:

(d) the person in relation to whom the order is made;
(e) if the person is a resident of Queensland, or the court will hear the application in Queensland—the Queensland public interest monitor.

(3A) To avoid doubt, subsection (3) does not require any information to be given if disclosure of that information is likely:

(a) to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*); or
(b) to be protected by public interest immunity; or
(c) to put at risk ongoing operations by law enforcement agencies or intelligence agencies; or
(d) to put at risk the safety of the community, law enforcement officers or intelligence officers.

The fact that information of a kind mentioned in this subsection is not required to be disclosed does not imply that such information is required to be disclosed in other provisions of this Part that relate to the disclosure of information.

(4) The following persons may adduce additional evidence (including by calling witnesses or producing material), or make additional submissions, to the court in relation to the application to vary the order:

(a) the Commissioner;
(b) one or more other AFP members;
(c) the person in relation to whom the order is made;
(d) one or more representatives of the person;
(e) if paragraph (3)(b) applies—the Queensland public interest monitor (unless the monitor is a representative of the person).

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(5) Subsection (4) does not otherwise limit the power of the court to control proceedings in relation to an application to vary a confirmed control order.

(6) In subsection (1), a reference to a terrorist act includes:
  (a) a reference to a terrorist act that does not occur; and
  (b) a reference to a specific terrorist act; and
  (c) a reference to more than one terrorist act.

104.24 Varying a control order

(1) If an application is made under section 104.23, the issuing court may vary the control order, but only if:
  (a) an application has been made in accordance with section 104.23; and
  (b) the court is satisfied on the balance of probabilities that each of the additional obligations, prohibitions and restrictions to be imposed on the person by the order is reasonably necessary, and reasonably appropriate and adapted, for the purpose of:
    (i) protecting the public from a terrorist act; or
    (ii) preventing the provision of support for or the facilitation of a terrorist act; or
    (iii) preventing the provision of support for or the facilitation of the engagement in a hostile activity in a foreign country.

(2) In determining whether each of the additional obligations, prohibitions and restrictions to be imposed on the person by the order is reasonably necessary, and reasonably appropriate and adapted, the court must take into account the impact of the obligation, prohibition or restriction on the person's circumstances (including the person's financial and personal circumstances).

(3) The court need not include in the order an obligation, prohibition or restriction that was sought if the court is not satisfied as mentioned in paragraph (1)(b) in respect of that obligation, prohibition or restriction.

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(4) In paragraph (1)(b), a reference to a terrorist act includes:
  (a) a reference to a terrorist act that does not occur; and
  (b) a reference to a specific terrorist act; and
  (c) a reference to more than one terrorist act.

104.25 Terms of a varied control order

If the issuing court varies the control order under section 104.24, the following must be included in the order:
  (a) a statement that the court is satisfied of the matter mentioned in paragraph 104.24(1)(b); and
  (b) the additional obligations, prohibitions and restrictions that are to be imposed on the person by the varied order; and
  (c) a statement that the variation of the order does not begin to be in force until the varied order is served personally on the person; and
  (d) a statement that the person's lawyer may attend a specified place in order to obtain a copy of the varied order.

104.26 Service and explanation of a varied control order

(1) As soon as practicable after a control order is varied under section 104.24, an AFP member:
  (a) must serve the varied order personally on the person; and
  (b) must inform the person that the order has been varied to impose additional obligations, prohibitions and restrictions; and
  (c) must inform the person of the following:
    (i) the effect of the additional obligations, prohibitions and restrictions;
    (ii) the effect of sections 104.18, 104.21 and 104.27 (and section 104.22 if appropriate);
    (iii) that the person may have appeal and review rights in relation to the decision of the issuing court to vary the order;
    (iv) the person's right to apply under section 104.18 for an order revoking or varying the order;

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(v) the right of the person or one or more representatives of the person, and (if relevant) the right of the Queensland public interest monitor, to adduce evidence or make submissions under subsection 104.19(3) or 104.23(4) in relation to an application to revoke or vary the order; and

(d) must ensure that the person understands the information provided under paragraph (c) (taking into account the person's age, language skills, mental capacity and any other relevant factor).

(3) Paragraphs (1)(c) and (d) do not apply if the actions of the person in relation to whom the interim control order has been made make it impracticable for the AFP member to comply with those paragraphs.

(4) A failure to comply with paragraph (1)(d) does not make the control order ineffective to any extent.

Subdivision G—Contravening a control order

104.27 Offence for contravening a control order

A person commits an offence if:

(a) a control order is in force in relation to the person; and

(b) the person contravenes the order.

Penalty: Imprisonment for 5 years.

Subdivision H—Miscellaneous

104.28 Special rules for young people

Rule for persons under 16

(1) A control order cannot be requested, made or confirmed in relation to a person who is under 16 years of age.

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Rule for persons who are at least 16 but under 18

(2) If an issuing court is satisfied that a person in relation to whom an interim control order is being made or confirmed is at least 16 but under 18, the period during which the confirmed control order is to be in force must not end more than 3 months after the day on which the interim control order is made by the court.

(3) Subsection (2) does not prevent the making of successive control orders in relation to the same person.

104.28A Interlocutory proceedings

(1) Proceedings in relation to a request under section 104.3, 104.6 or 104.8 to make an interim control order are taken to be interlocutory proceedings for all purposes (including for the purpose of section 75 of the *Evidence Act 1995*).

(2) The following proceedings are taken not to be interlocutory proceedings for any purpose (including for the purpose of section 75 of the *Evidence Act 1995*):

(a) proceedings in relation to the confirmation under section 104.14 of an interim control order;

(b) proceedings in relation to an application under section 104.18, 104.19 or 104.23 to revoke or vary a confirmed control order.

104.29 Reporting requirements

(1) The Attorney-General must, as soon as practicable after each 30 June, cause to be prepared a report about the operation of this Division during the year ended on that 30 June.

(2) Without limiting subsection (1), a report relating to a year must include the following matters:

(a) the number of interim control orders made under:

(i) section 104.4; and

(ii) section 104.7; and

(iii) section 104.9;

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(aa) the number of interim control orders in respect of which an election was made under section 104.12A not to confirm the order;

(b) the number of control orders confirmed under section 104.14;

(c) the number of control orders declared to be void under section 104.14;

(d) the number of control orders revoked under sections 104.14 and 104.20;

(e) the number of control orders varied under sections 104.14, 104.20 and 104.24;

(f) particulars of:

(i) any complaints made or referred to the Commonwealth Ombudsman that related to control orders; and

(ii) any information given under section 40SA of the *Australian Federal Police Act 1979* that related to control orders and raised an AFP conduct or practices issue (within the meaning of that Act).

(3) The Attorney-General must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the report is completed.

104.30 Requirement to notify Attorney-General of declarations, revocations or variations

The Commissioner must cause:

(a) the Attorney-General to be notified in writing if:

(i) a control order is declared to be void under section 104.14; or

(ii) a control order is revoked under section 104.14 or 104.20; or

(iii) a control order is varied under section 104.14, 104.20 or 104.24; and

(b) the Attorney-General to be given a copy of the varied order (if appropriate).

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104.31 Queensland public interest monitor functions and powers not affected

This Division does not affect a function or power that the Queensland public interest monitor, or a Queensland deputy public interest monitor, has under a law of Queensland.

104.32 Sunset provision

(1) A control order that is in force at the end of 7 September 2018 ceases to be in force at that time.

(2) A control order cannot be requested, made or confirmed after 7 September 2018.

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Division 105—Preventative detention orders

Subdivision A—Preliminary

105.1 Object

The object of this Division is to allow a person to be taken into custody and detained for a short period of time in order to:

(a) prevent an imminent terrorist act occurring; or

(b) preserve evidence of, or relating to, a recent terrorist act.

Note: Section 105.42 provides that, while a person is being detained under a preventative detention order, the person may only be questioned for very limited purposes.

105.2 Issuing authorities for continued preventative detention orders

(1) The Minister may, by writing, appoint as an issuing authority for continued preventative detention orders:

(a) a person who is a judge of a State or Territory Supreme Court; or

(b) a person who is a Judge; or

(d) a person who:

(i) has served as a judge in one or more superior courts for a period of 5 years; and

(ii) no longer holds a commission as a judge of a superior court; or

(e) a person who:

(i) holds an appointment to the Administrative Appeals Tribunal as President or Deputy President; and

(ii) is enrolled as a legal practitioner of a federal court or of the Supreme Court of a State or Territory; and

(iii) has been enrolled for at least 5 years.

(2) The Minister must not appoint a person unless:

(a) the person has, by writing, consented to being appointed; and

(b) the consent is in force.

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105.3 Police officer detaining person under a preventative detention order

If:

(a) a number of police officers are detaining, or involved in the detention of, a person under a preventative detention order at a particular time; and

(b) an obligation is expressed in this Division to be imposed on the police officer detaining the person;

the obligation is imposed at that time on:

(c) if those police officers include only one AFP member—that AFP member; or

(d) if those police officers include 2 or more AFP members—the most senior of those AFP members; or

(e) if those police officers do not include an AFP member—the most senior of those police officers.

Note: See also paragraph 105.27(2)(c).

Subdivision B—Preventative detention orders

105.4 Basis for applying for, and making, preventative detention orders

(1) An AFP member may apply for a preventative detention order in relation to a person only if the AFP member meets the requirements of subsection (4) or (6).

(2) An issuing authority may make a preventative detention order in relation to a person only if the issuing authority meets the requirements of subsection (4) or (6).

Note: For the definition of ***issuing authority***, see subsection 100.1(1) and section 105.2.

(3) The person in relation to whom the preventative detention order is applied for, or made, is the ***subject*** for the purposes of this section.

(4) A person meets the requirements of this subsection if:

(a) in the case of an AFP member—the member suspects, on reasonable grounds, that the subject:

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(i) will engage in a terrorist act; or

(ii) possesses a thing that is connected with the preparation for, or the engagement of a person in, a terrorist act; or

(iii) has done an act in preparation for, or planning, a terrorist act; and

(b) in the case of an issuing authority—the issuing authority is satisfied there are reasonable grounds to suspect that the subject:

(i) will engage in a terrorist act; or

(ii) possesses a thing that is connected with the preparation for, or the engagement of a person in, a terrorist act; or

(iii) has done an act in preparation for, or planning, a terrorist act; and

(c) the person is satisfied that making the order would substantially assist in preventing a terrorist act occurring; and

(d) the person is satisfied that detaining the subject for the period for which the person is to be detained under the order is reasonably necessary for the purpose referred to in paragraph (c).

(5) A terrorist act referred to in subsection (4):

(a) must be one that is imminent; and

(b) must be one that is expected to occur, in any event, at some time in the next 14 days.

(6) A person meets the requirements of this subsection if the person is satisfied that:

(a) a terrorist act has occurred within the last 28 days; and

(b) it is reasonably necessary to detain the subject to preserve evidence of, or relating to, the terrorist act; and

(c) detaining the subject for the period for which the person is to be detained under the order is reasonably necessary for the purpose referred to in paragraph (b).

(7) An issuing authority may refuse to make a preventative detention order unless the AFP member applying for the order gives the issuing authority any further information that the issuing authority requests concerning the grounds on which the order is sought.

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105.5 No preventative detention order in relation to person under 16 years of age

(1) A preventative detention order cannot be applied for, or made, in relation to a person who is under 16 years of age.

Note: See also section 105.39 and subsections 105.43(4) to (9) and (11) for the special rules for people who are under 18 years of age.

(2) If:

(a) a person is being detained under a preventative detention order or a purported preventative detention order; and

(b) the police officer who is detaining the person is satisfied on reasonable grounds that the person is under 16 years of age;

the police officer must:

(c) if the police officer is an AFP member—release the person, as soon as practicable, from detention under the order or purported order; or

(d) if the police officer is not an AFP member—inform a senior AFP member, as soon as practicable, of the police officer's reasons for being satisfied that the person is under 16 years of age.

(3) If:

(a) a senior AFP member is informed by a police officer under paragraph (2)(d); and

(b) the senior AFP member is satisfied on reasonable grounds that the person being detained is under 16 years of age;

the senior AFP member must arrange to have the person released, as soon as practicable, from detention under the order or purported order.

105.5A Special assistance for person with inadequate knowledge of English language or disability

If the police officer who is detaining a person under a preventative detention order has reasonable grounds to believe that the person is unable, because of inadequate knowledge of the English language or a disability, to communicate with reasonable fluency in that language:

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(a) the police officer has an obligation under subsection 105.31(3) to arrange for the assistance of an interpreter in informing the person about:
  (i) the effect of the order or any extension, or further extension, of the order; and
  (ii) the person's rights in relation to the order; and
(b) the police officer has an obligation under subsection 105.37(3A) to give the person reasonable assistance to:
  (i) choose a lawyer to act for the person in relation to the order; and
  (ii) contact the lawyer.

105.6 Restrictions on multiple preventative detention orders

Preventative detention orders under this Division

(1) If:
  (a) an initial preventative detention order is made in relation to a person on the basis of assisting in preventing a terrorist act occurring within a particular period; and
  (b) the person is taken into custody under the order;

another initial preventative detention order cannot be applied for, or made, in relation to the person on the basis of assisting in preventing the same terrorist act occurring within that period.

Note: It will be possible to apply for, and make, another initial preventative detention order in relation to the person on the basis of preserving evidence of, or relating to, the terrorist act if it occurs.

(2) If:
  (a) an initial preventative detention order is made in relation to a person on the basis of assisting in preventing a terrorist act occurring within a particular period; and
  (b) the person is taken into custody under the order;

another initial preventative detention order cannot be applied for, or made, in relation to the person on the basis of assisting in preventing a different terrorist act occurring within that period unless the application, or the order, is based on information that

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became available to be put before an issuing authority only after the initial preventative detention order referred to in paragraph (a) was made.

(3) If:

(a) an initial preventative detention order is made in relation to a person on the basis of preserving evidence of, or relating to, a terrorist act; and

(b) the person is taken into custody under the order;

another initial preventative detention order cannot be applied for, or made, in relation to the person on the basis of preserving evidence of, or relating to, the same terrorist act.

Detention orders under corresponding State preventative detention laws

(4) If:

(a) an order for a person's detention is made under a corresponding State preventative detention law on the basis of assisting in preventing a terrorist act occurring within a particular period; and

(b) the person is taken into custody under that order;

an initial preventative detention order cannot be applied for, or made, under this Division in relation to the person on the basis of assisting in preventing the same terrorist act occurring within that period.

(5) If:

(a) an order for a person's detention is made under a corresponding State preventative detention law on the basis of assisting in preventing a terrorist act occurring within a particular period; and

(b) the person is taken into custody under that order;

an initial preventative detention order cannot be applied for, or made, under this Division in relation to the person on the basis of assisting in preventing a different terrorist act occurring within that period unless the application, or the order, is based on information that became available to be put before an issuing authority only after the order referred to in paragraph (a) was made.

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(6) If:

(a) an order for a person's detention is made under a corresponding State preventative detention law on the basis of preserving evidence of, or relating to, a terrorist act; and

(b) the person is taken into custody under that order;

an initial preventative detention order cannot be applied for, or made, under this Division in relation to the person on the basis of preserving evidence of, or relating to, the same terrorist act.

105.7 Application for initial preventative detention order

(1) An AFP member may apply to an issuing authority for an initial preventative detention order in relation to a person.

Note 1: Senior AFP members are issuing authorities for initial preventative detention orders (see the definition of ***issuing authority*** in subsection 100.1(1)).

Note 2: For the definition of ***senior AFP member***, see subsection 100.1(1).

(2) The application must:

(a) be made either:

(i) in writing (other than writing by means of an electronic communication); or

(ii) if the AFP member considers it necessary because of urgent circumstances—orally in person or by telephone, or by fax, email or other electronic means of communication; and

(b) set out the facts and other grounds on which the AFP member considers that the order should be made; and

(c) specify the period for which the person is to be detained under the order and set out the facts and other grounds on which the AFP member considers that the person should be detained for that period; and

(d) set out the information (if any) that the applicant has about the person's age; and

(e) set out the following:

(i) the outcomes and particulars of all previous applications for preventative detention orders in relation to the person;

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(ii) the outcomes and particulars of all previous requests for interim control orders (including the outcomes of the hearings to confirm the orders) in relation to the person;

(iii) the outcomes and particulars of all previous applications for variations of control orders made in relation to the person;

(iv) the outcomes of all previous applications for revocations of control orders made in relation to the person; and

(f) set out the information (if any) that the applicant has about any periods for which the person has been detained under an order made under a corresponding State preventative detention law; and

(g) set out a summary of the grounds on which the AFP member considers that the order should be made.

Note: Sections 137.1 and 137.2 create offences for providing false or misleading information or documents.

(2A) To avoid doubt, paragraph (2)(g) does not require any information to be included in the summary if disclosure of that information is likely to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*).

(2B) If the application is made orally, information given by the AFP member to the issuing authority in connection with the application must be verified or given on oath or affirmation, unless the issuing authority is satisfied that it is not practical to administer an oath or affirmation to the member.

(3) If:

(a) an initial preventative detention order is made in relation to a person on the basis of assisting in preventing a terrorist act occurring within a particular period; and

(b) the person is taken into custody under the order; and

(c) an application is made for another initial preventative detention order in relation to the person on the basis of assisting in preventing a different terrorist act occurring within that period;

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the application must also identify the information on which the application is based that became available to be put before an issuing authority only after the initial preventative detention order referred to in paragraph (a) was made.

Note: See subsection 105.6(2).

(4) If:

(a) an order for a person's detention is made under a corresponding State preventative detention law on the basis of assisting in preventing a terrorist act occurring within a particular period; and

(b) the person is taken into custody under that order; and

(c) an application is made for an initial preventative detention order in relation to the person on the basis of assisting in preventing a different terrorist act occurring within that period;

the application must also identify the information on which the application is based that became available to be put before an issuing authority only after the order referred to in paragraph (a) was made.

Note: See subsection 105.6(5).

105.8 Senior AFP member may make initial preventative detention order

(1) On application by an AFP member, an issuing authority may, subject to subsection (1A), make an initial preventative detention order under this section in relation to a person.

Note 1: Senior AFP members are issuing authorities for initial preventative detention orders (see the definition of ***issuing authority*** in subsection 100.1(1)).

Note 2: For the definition of ***senior AFP member***, see subsection 100.1(1).

(1A) If the application is made orally in person or by telephone, or by fax, email or other electronic means of communication, the issuing authority must not make the order unless the issuing authority is satisfied that it is necessary, because of urgent circumstances, to apply for the order by such means.

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Section 105.8

(2) Subsection (1) has effect subject to sections 105.4, 105.5 and 105.6.

(3) An initial preventative detention order under this section is an order that the person specified in the order may be:
  (a) taken into custody; and
  (b) detained during the period that:
    (i) starts when the person is first taken into custody under the order; and
    (ii) ends a specified period of time after the person is first taken into custody under the order.

(4) The order must be in writing.

(5) The period of time specified in the order under subparagraph (3)(b)(ii) must not exceed 24 hours.

(6) An initial preventative detention order under this section must set out:
  (a) any of the following:
    (i) the true name of the person in relation to whom the order is made;
    (ii) if, after reasonable inquiries have been made, the person's true name is not known but an alias is known for the person—the alias of the person in relation to whom the order is made;
    (iii) if, after reasonable inquiries have been made, the person's true name is not known and no alias is known for the person—a description sufficient to identify the person in relation to whom the order is made; and
  (b) the period during which the person may be detained under the order; and
  (c) the date on which, and the time at which, the order is made; and
  (d) the date and time after which the person may not be taken into custody under the order; and
  (e) a summary of the grounds on which the order is made.

Note: Paragraph (d)—see subsection 105.9(2).

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(6A) To avoid doubt, paragraph (6)(e) does not require any information to be included in the summary if disclosure of that information is likely to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*).

(7) If the person in relation to whom the order is made is:

(a) under 18 years of age; or

(b) incapable of managing his or her affairs;

the order may provide that the period each day for which the person is entitled to have contact with another person under subsection 105.39(2) is the period of more than 2 hours that is specified in the order.

(7A) If the order is made on an application that was made orally (see subparagraph 105.7(2)(a)(ii)), the issuing authority must either:

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

(b) as soon as practicable after the order is made, make a written record of the details of the application, including any information given in support of it.

(8) The senior AFP member nominated under subsection 105.19(5) in relation to the initial preventative detention order must, as soon as reasonably practicable after the order is made:

(a) notify the Commonwealth Ombudsman in writing of the making of the order; and

(b) give the Commonwealth Ombudsman a copy of the order; and

(c) if the person in relation to whom the order is made is taken into custody under the order—notify the Commonwealth Ombudsman in writing that the person has been taken into custody under the order.

105.9 Duration of initial preventative detention order

(1) An initial preventative detention order in relation to a person starts to have effect when it is made.

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Note: The order comes into force when it is made and authorises the person to be taken into custody (see paragraph 105.8(3)(a)). The period for which the person may then be detained under the order only starts to run when the person is first taken into custody under the order (see subparagraph 105.8(3)(b)(i)).

(2) An initial preventative detention order in relation to a person ceases to have effect at the end of the period of 48 hours after the order is made if the person has not been taken into custody under the order within that period.

(3) If the person is taken into custody under the order within 48 hours after the order is made, the order ceases to have effect when whichever of the following first occurs:

(a) the end of:

(i) the period specified in the order as the period during which the person may be detained under the order; or

(ii) if that period is extended or further extended under section 105.10—that period as extended or further extended;

(b) the revocation of the order under section 105.17.

Note 1: The order does not cease to have effect merely because the person is released from detention under the order.

Note 2: An AFP member may apply under section 105.11 for a continued preventative detention order in relation to the person to allow the person to continue to be detained for up to 48 hours after the person is first taken into custody under the initial preventative detention order.

105.10 Extension of initial preventative detention order

(1) If:

(a) an initial preventative detention order is made in relation to a person; and

(b) the order is in force in relation to the person;

an AFP member may apply to an issuing authority for initial preventative detention orders for an extension, or a further extension, of the period for which the order is to be in force in relation to the person.

(2) The application must:

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(a) be made in writing; and

(b) set out the facts and other grounds on which the AFP member considers that the extension, or further extension, is reasonably necessary for the purpose for which the order was made; and

(c) set out the outcomes and particulars of all previous applications for extensions, or further extensions, of the order.

Note: Paragraph (b)—see subsections 105.4(4) and (6) for the purpose for which a preventative detention order may be made.

(3) The issuing authority may extend, or further extend, the period for which the order is to be in force in relation to the person if the issuing authority is satisfied that detaining the person under the order for the period as extended, or further extended, is reasonably necessary for the purpose for which the order was made.

(4) The extension, or further extension, must be made in writing.

(5) The period as extended, or further extended, must end no later than 24 hours after the person is first taken into custody under the order.

105.10A Notice of application for continued preventative detention order

An AFP member who proposes to apply for a continued preventative detention order in relation to a person under section 105.11 must, before applying for the order:

(a) notify the person of the proposed application; and

(b) inform the person that, when the proposed application is made, any material that the person gives the AFP member in relation to the proposed application will be put before the issuing authority for continued preventative detention orders to whom the application is made.

Note: The AFP member who applies for the order must put the material before the issuing authority—see subsection 105.11(5).

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Section 105.11

105.11 Application for continued preventative detention order

(1) If an initial preventative detention order is in force in relation to a person in relation to a terrorist act, an AFP member may apply to an issuing authority in relation to continued preventative detention orders for a continued preventative detention order in relation to the person in relation to the terrorist act.

Note: Certain judges, AAT members and retired judges are issuing authorities for continued preventative detention orders (see the definition of ***issuing authority*** in subsection 100.1(1) and section 105.2).

(2) The application must:

(a) be made in writing; and

(b) set out the facts and other grounds on which the AFP member considers that the order should be made; and

(c) specify the period for which the person is to continue to be detained under the order and set out the facts and other grounds on which the AFP member considers that the person should continue to be detained for that period; and

(d) set out the information (if any) that the applicant has about the person's age; and

(e) set out the following:

(i) the outcomes and particulars of all previous applications for preventative detention orders in relation to the person;

(ii) the outcomes and particulars of all previous requests for interim control orders (including the outcomes of the hearings to confirm the orders) in relation to the person;

(iii) the outcomes and particulars of all previous applications for variations of control orders made in relation to the person;

(iv) the outcomes of all previous applications for revocations of control orders made in relation to the person; and

(f) set out the information (if any) that the applicant has about any periods for which the person has been detained under an

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order made under a corresponding State preventative detention law; and

(g) set out a summary of the grounds on which the AFP member considers that the order should be made.

Note: Sections 137.1 and 137.2 create offences for providing false or misleading information or documents.

(3) Subparagraph (2)(e)(i) does not require the application to set out details in relation to the application that was made for the initial preventative detention order in relation to which the continued preventative detention order is sought.

(3A) To avoid doubt, paragraph (2)(g) does not require any information to be included in the summary if disclosure of that information is likely to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*).

(4) The information in the application must be sworn or affirmed by the AFP member.

(5) The AFP member applying for the continued preventative detention order in relation to the person must put before the issuing authority to whom the application is made any material in relation to the application that the person has given the AFP member.

105.12 Judge, AAT member or retired judge may make continued preventative detention order

(1) On application by an AFP member, an issuing authority may make a continued preventative detention order under this section in relation to a person if:

(a) an initial preventative detention order is in force in relation to the person; and

(b) the person has been taken into custody under the order (whether or not the person is being detained under the order).

Note: Certain judges, AAT members and retired judges are issuing authorities for continued preventative detention orders (see the definition of ***issuing authority*** in subsection 100.1(1) and section 105.2).

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Section 105.12

(2) Subsection (1) has effect subject to sections 105.4, 105.5 and 105.6. Section 105.4 requires the issuing authority to consider afresh the merits of making the order and to be satisfied, after taking into account relevant information (including any information that has become available since the initial preventative detention order was made), of the matters referred to in subsection 105.4(4) or (6) before making the order.

(3) A continued preventative detention order under this section is an order that the person specified in the order may be detained during a further period that:

(a) starts at the end of the period during which the person may be detained under the initial preventative detention order; and

(b) ends a specified period of time after the person is first taken into custody under the initial preventative detention order.

(4) The order must be in writing.

(5) The period of time specified under paragraph (3)(b) must not exceed 48 hours.

(6) A continued preventative detention order under this section must set out:

(a) any of the following:

(i) the true name of the person in relation to whom the order is made;

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

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

(b) the further period during which the person may be detained under the order; and

(c) the date on which, and the time at which, the order is made; and

(d) a summary of the grounds on which the order is made.

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(6A) To avoid doubt, paragraph (6)(d) does not require any information to be included in the summary if disclosure of that information is likely to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*).

(7) If the person in relation to whom the order is made is:

(a) under 18 years of age; or

(b) incapable of managing his or her affairs;

the order may provide that the period each day for which the person is entitled to have contact with another person under subsection 105.39(2) is the period of more than 2 hours that is specified in the order.

(8) The senior AFP member nominated under subsection 105.19(5) in relation to the continued preventative detention order must, as soon as reasonably practicable after the order is made:

(a) notify the Commonwealth Ombudsman in writing of the making of the order; and

(b) give the Commonwealth Ombudsman a copy of the order.

105.13 Duration of continued preventative detention order

(1) A continued preventative detention order in relation to a person starts to have effect when it is made.

Note: The order comes into force when it is made. The period for which the person may be detained under the order, however, only starts to run when the period during which the person may be detained under the initial preventative detention order ends (see paragraph 105.12(3)(a)).

(2) A continued preventative detention order in relation to a person ceases to have effect when whichever of the following first occurs:

(a) the end of:

(i) the period specified in the order as the further period during which the person may be detained; or

(ii) if that period is extended or further extended under section 105.14—that period as extended or further extended;

(b) the revocation of the order under section 105.17.

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Note: The order does not cease to have effect merely because the person is released from detention under the order.

105.14 Extension of continued preventative detention order

(1) If:

(a) an initial preventative detention order is made in relation to a person; and

(b) a continued preventative detention order is made in relation to the person in relation to that initial preventative detention order; and

(c) the continued preventative detention order is in force in relation to the person;

an AFP member may apply to an issuing authority for continued preventative detention orders for an extension, or a further extension, of the period for which the continued preventative detention order is to be in force in relation to the person.

(2) The application must:

(a) be made in writing; and

(b) set out the facts and other grounds on which the AFP member considers that the extension, or further extension, is reasonably necessary for the purpose for which the order was made; and

(c) set out the outcomes and particulars of all previous applications for extensions, or further extensions, of the continued preventative detention order.

Note: Paragraph (b)—see subsections 105.4(4) and (6) for the purpose for which a preventative detention order may be made.

(3) The information in the application must be sworn or affirmed by the AFP member.

(4) The issuing authority may extend, or further extend, the period for which the continued preventative detention order is to be in force in relation to the person if the issuing authority is satisfied that detaining the person under the order for the period as extended, or further extended, is reasonably necessary for the purpose for which the order was made.

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(5) The extension, or further extension, must be made in writing.

(6) The period as extended, or further extended, must end no later than 48 hours after the person is first taken into custody under the initial preventative detention order.

105.14A Basis for applying for, and making, prohibited contact order

(1) An AFP member may apply for a prohibited contact order in relation to a person only if the AFP member meets the requirements of subsection (4).

(2) An issuing authority for initial preventative detention orders, or continued preventative detention orders, may make a prohibited contact order in relation to a person's detention under a preventative detention order only if the issuing authority meets the requirements of subsection (4).

(3) The person in relation to whose detention the prohibited contact order is applied for, or made, is the ***subject*** for the purposes of this section.

(4) A person meets the requirements of this subsection if the person is satisfied that making the prohibited contact order is reasonably necessary:

(a) to avoid a risk to action being taken to prevent a terrorist act occurring; or

(b) to prevent serious harm to a person; or

(c) to preserve evidence of, or relating to, a terrorist act; or

(d) to prevent interference with the gathering of information about:

(i) a terrorist act; or

(ii) the preparation for, or the planning of, a terrorist act; or

(e) to avoid a risk to:

(i) the arrest of a person who is suspected of having committed an offence against this Part; or

(ii) the taking into custody of a person in relation to whom a preventative detention order is in force, or in relation to

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whom a preventative detention order is likely to be made; or

(iii) the service on a person of a control order.

(5) An issuing authority may refuse to make a prohibited contact order unless the AFP member applying for the order gives the issuing authority any further information that the issuing authority requests concerning the grounds on which the order is sought.

105.15 Prohibited contact order (person in relation to whom preventative detention order is being sought)

(1) An AFP member who applies to an issuing authority for a preventative detention order in relation to a person (the ***subject***) may also apply for a prohibited contact order under this section in relation to the subject's detention under the preventative detention order.

(1A) The application for the prohibited contact order may be made either:

(a) in writing (other than writing by means of an electronic communication); or

(b) if the AFP member considers it necessary because of urgent circumstances—orally in person or by telephone, or by fax, email or other electronic means of communication.

(2) The application must set out:

(a) the terms of the order sought; and

(b) the facts and other grounds on which the AFP member considers that the order should be made.

(3) If:

(a) a continued preventative detention order is being applied for; and

(b) the application for the prohibited contact order is made in accordance with paragraph (1A)(a);

the information in the application for the prohibited contact order must be sworn or affirmed by the AFP member.

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(3A) If:

(a) a continued preventative detention order is being applied for; and

(b) the application for the prohibited contact order is made in accordance with paragraph (1A)(b);

the information in the application for the prohibited contact order must be sworn or affirmed by the AFP member unless the issuing authority is satisfied that it is not practical to administer an oath or affirmation to the member.

(4) If the issuing authority makes the preventative detention order, the issuing authority may, subject to subsection (4A), make a prohibited contact order under this section that the subject is not, while being detained under the preventative detention order, to contact the person specified in the prohibited contact order.

Note: Section 105.14A sets out the basis on which the order may be made.

(4A) If the application for the prohibited contact order is made orally in person or by telephone, or by fax, email or other electronic means of communication, the issuing authority must not make the order unless the issuing authority is satisfied that it was necessary, because of urgent circumstances, to apply for the order by such means.

(5) The prohibited contact order must be in writing.

(6) The senior AFP member nominated under subsection 105.19(5) in relation to the preventative detention order must:

(a) notify the Commonwealth Ombudsman in writing of the making of the prohibited contact order; and

(b) give the Commonwealth Ombudsman a copy of the prohibited contact order.

(7) If the prohibited contact order is made on an application that was made orally, the issuing authority must either:

(a) ensure that there is an audio, 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 details of the application, including any information given in support of it.

105.16 Prohibited contact order (person in relation to whom preventative detention order is already in force)

(1) If a preventative detention order is in force in relation to a person (the ***subject***), an AFP member may apply to an issuing authority for preventative detention orders of that kind for a prohibited contact order under this section in relation to the subject's detention under the preventative detention order.

(1A) The application may be made either:

(a) in writing (other than writing by means of an electronic communication); or

(b) if the AFP member considers it necessary because of urgent circumstances—orally in person or by telephone, or by fax, email or other electronic means of communication.

(2) The application must set out:

(a) the terms of the order sought; and

(b) the facts and other grounds on which the AFP member considers that the order should be made.

(3) If:

(a) the preventative detention order is a continued preventative detention order; and

(b) the application for the prohibited contact order is made in accordance with paragraph (1A)(a);

the information in the application for the prohibited contact order must be sworn or affirmed by the AFP member.

(3A) If:

(a) the preventative detention order is a continued preventative detention order; and

(b) the application for the prohibited contact order is made in accordance with paragraph (1A)(b);

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the information in the application for the prohibited contact order must be sworn or affirmed by the AFP member unless the issuing authority is satisfied that it is not practical to administer an oath or affirmation to the member.

(4) The issuing authority may, subject to subsection (4A), make a prohibited contact order under this section that the subject is not, while being detained under the preventative detention order, to contact the person specified in the prohibited contact order.

Note: Section 105.14A sets out the basis on which the order may be made.

(4A) If the application for the prohibited contact order is made orally in person or by telephone, or by fax, email or other electronic means of communication, the issuing authority must not make the order unless the issuing authority is satisfied that it was necessary, because of urgent circumstances, to apply for the order by such means.

(5) The prohibited contact order must be in writing.

(6) The senior AFP member nominated under subsection 105.19(5) in relation to the preventative detention order must:

(a) notify the Commonwealth Ombudsman in writing of the making of the prohibited contact order; and

(b) give the Commonwealth Ombudsman a copy of the prohibited contact order.

(7) If the prohibited contact order is made on an application that was made orally, the issuing authority must either:

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

(b) as soon as practicable after the order is made, make a written record of the details of the application, including any information given in support of it.

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Section 105.17

105.17 Revocation of preventative detention order or prohibited contact order

Preventative detention order

(1) If:

(a) a preventative detention order is in force in relation to a person; and

(b) the police officer who is detaining the person under the order is satisfied that the grounds on which the order was made have ceased to exist;

the police officer must:

(c) if the police officer is an AFP member—apply to an issuing authority for preventative detention orders of that kind for the revocation of the order; or

(d) if the police officer is not an AFP member—inform a senior AFP member of the police officer's reasons for being satisfied that the grounds on which the order was made have ceased to exist.

(2) If:

(a) a senior AFP member is informed by a police officer under paragraph (1)(d); and

(b) the senior AFP member is satisfied that the grounds on which the preventative detention order was made have ceased to exist;

the senior AFP member must apply to an issuing authority for preventative detention orders of that kind for the revocation of the order.

(3) If:

(a) a preventative detention order is in force in relation to a person; and

(b) an issuing authority for preventative detention orders of that kind is satisfied, on application by an AFP member, that the grounds on which the order was made have ceased to exist;

the issuing authority must revoke the order.

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Prohibited contact order

(4) If:

(a) a prohibited contact order is in force in relation to a person's detention under a preventative detention order; and

(b) the police officer who is detaining the person under the preventative detention order is satisfied that the grounds on which the prohibited contact order was made have ceased to exist;

the police officer must:

(c) if the police officer is an AFP member—apply to an issuing authority for preventative detention orders of that kind for the revocation of the prohibited contact order; or

(d) if the police officer is not an AFP member—inform a senior AFP member of the police officer's reasons for being satisfied that the grounds on which the prohibited contact order was made have ceased to exist.

(5) If:

(a) a senior AFP member is informed by a police officer under paragraph (4)(d); and

(b) the senior AFP member is satisfied that the grounds on which the prohibited contact order was made in relation to the person's detention under the preventative detention order have ceased to exist;

the senior AFP member must apply to an issuing authority for preventative detention orders of that kind for the revocation of the prohibited contact order.

(6) If:

(a) a prohibited contact order is in force in relation to a person's detention under a preventative detention order; and

(b) an issuing authority for preventative detention orders of that kind is satisfied, on application by an AFP member, that the grounds on which the prohibited contact order was made have ceased to exist;

the issuing authority must revoke the prohibited contact order.

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Detainee's right to make representations about revocation of preventative detention order

(7) A person being detained under a preventative detention order may make representations to the senior AFP member nominated under subsection 105.19(5) in relation to the order with a view to having the order revoked.

105.18 Status of person making continued preventative detention order

(1) An issuing authority who makes:

(a) a continued preventative detention order; or

(b) a prohibited contact order in relation to a person's detention under a continued preventative detention order;

has, in the performance of his or her duties under this Subdivision, the same protection and immunity as a Justice of the High Court.

(2) A function of:

(a) making or revoking a continued preventative detention order; or

(b) extending, or further extending, the period for which a continued preventative detention order is to be in force; or

(c) making or revoking a prohibited contact order in relation to a person's detention under a continued preventative detention order;

that is conferred on a judge or a member of the Administrative Appeals Tribunal is conferred on the judge or member of the Administrative Appeals Tribunal in a personal capacity and not as a court or a member of a court.

Subdivision C—Carrying out preventative detention orders

105.19 Power to detain person under preventative detention order

General powers given by preventative detention order

(1) While a preventative detention order is in force in relation to a person:

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(a) any police officer may take the person into custody; and
(b) any police officer may detain the person.

(2) A police officer, in taking a person into custody under and in detaining a person under a preventative detention order, has the same powers and obligations as the police officer would have if the police officer were arresting the person, or detaining the person, for an offence.

(3) In subsection (2):

offence means:
(a) if the police officer is an AFP member—an offence against a law of the Commonwealth; or
(b) if the police officer is not an AFP member—an offence against a law of the State or Territory of whose police force the police officer is a member.

(4) Subsection (2) does not apply to the extent to which particular powers, and the obligations associated with those powers, are provided for in this Subdivision or Subdivision D or E.

Nominated senior AFP member

(5) If a preventative detention order is made in relation to person, the Commissioner of the Australian Federal Police must nominate a senior AFP member (the ***nominated senior AFP member***) to oversee the exercise of powers under, and the performance of obligations in relation to, the preventative detention order.

(6) The nominated senior AFP member must be someone who was not involved in the making of the application for the preventative detention order.

(7) The nominated senior AFP member must:
(a) oversee the exercise of powers under, and the performance of obligations in relation to, the preventative detention order; and
(b) without limiting paragraph (a), ensure that the provisions of section 105.17 (which deals with revocation of preventative

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detention orders and prohibited contact orders) are complied with in relation to the preventative detention order; and

(c) receive and consider any representations that are made under subsection (8).

(8) The following persons:

(a) the person being detained under the preventative detention order;

(b) a lawyer acting for that person in relation to the preventative detention order;

(c) a person with whom that person has contact under subsection 105.39(2);

are entitled to make representations to the nominated senior AFP member in relation to:

(d) the exercise of powers under, and the performance of obligations in relation to, the preventative detention order; and

(e) without limiting paragraph (a), compliance with the provisions of section 105.17 (which deals with revocation of preventative detention orders and prohibited contact orders) in relation to the preventative detention order; and

(f) the person's treatment in connection with the person's detention under the preventative detention order.

(9) The Commissioner of the Australian Federal Police may, in writing, delegate to a senior AFP member the Commissioner's powers under subsection (5).

105.20 Endorsement of order with date and time person taken into custody

As soon as practicable after a person is first taken into custody under an initial preventative detention order, the police officer who is detaining the person under the order must endorse on the order the date on which, and time at which, the person is first taken into custody under the order.

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105.21 Requirement to provide name etc.

(1) If a police officer believes on reasonable grounds that a person whose name or address is, or whose name and address are, unknown to the police officer may be able to assist the police officer in executing a preventative detention order, the police officer may request the person to provide his or her name or address, or name and address, to the police officer.

(2) If a police officer:

(a) makes a request of a person under subsection (1); and

(b) informs the person of the reason for the request; and

(c) if the police officer is not in uniform—shows the person evidence that the police officer is a police officer; and

(d) complies with subsection (4) if the person makes a request under that subsection;

the person must not:

(e) refuse or fail to comply with the request; or

(f) give a name or address that is false in a material particular.

Penalty: 20 penalty units.

(3) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3)).

(4) If a police officer who makes a request of a person under subsection (1) is requested by the person to provide to the person any of the following:

(a) his or her name;

(b) the address of his or her place of duty;

(c) his or her identification number if he or she has an identification number;

(d) his or her rank if he or she does not have an identification number;

the police officer must not:

(e) refuse or fail to comply with the request; or

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(f) give a name, address, number or rank that is false in a material particular.

Penalty: 5 penalty units.

105.22 Power to enter premises

(1) Subject to subsection (2), if:

(a) a preventative detention order is in force in relation to a person; and

(b) a police officer believes on reasonable grounds that the person is on any premises;

the police officer may enter the premises, using such force as is necessary and reasonable in the circumstances and with such assistance from other police officers as is necessary, at any time of the day or night for the purpose of searching the premises for the person or taking the person into custody.

(2) A police officer must not enter a dwelling house under subsection (1) at any time during the period commencing at 9 pm on a day and ending at 6 am on the following day unless the police officer believes on reasonable grounds that:

(a) it would not be practicable to take the person into custody, either at the dwelling house or elsewhere, at another time; or

(b) it is necessary to do so in order to prevent the concealment, loss or destruction of evidence of, or relating to, a terrorist act.

(3) In subsection (2):

dwelling house includes a conveyance, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.

105.23 Power to conduct a frisk search

A police officer who takes a person into custody under a preventative detention order, or who is present when the person is taken into custody, may, if the police officer suspects on

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reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying any seizable items:

(a) conduct a frisk search of the person at, or soon after, the time when the person is taken into custody; and

(b) seize any seizable items found as a result of the search.

105.24 Power to conduct an ordinary search

A police officer who takes a person into custody under a preventative detention order, or who is present when the person is taken into custody, may, if the police officer suspects on reasonable grounds that the person is carrying:

(a) evidence of, or relating to, a terrorist act; or

(b) a seizable item;

conduct an ordinary search of the person at, or soon after, the time when the person is taken into custody, and seize any such thing found as a result of the search.

105.25 Warrant under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*

(1) This section applies if:

(a) a person is being detained under a preventative detention order; and

(b) a warrant under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979* is in force in relation to the person; and

(c) a copy of the warrant is given to the police officer who is detaining the person under the preventative detention order.

(2) The police officer must take such steps as are necessary to ensure that the person may be dealt with in accordance with the warrant.

(3) Without limiting subsection (2), the police officer may, under section 105.26, release the person from detention under the preventative detention order so that the person may be dealt with in accordance with the warrant.

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Note: If the police officer is not an AFP member, the police officer will need to obtain the approval of a senior AFP member before releasing the person from detention (see subsection 105.26(2)).

(4) To avoid doubt, the fact that the person is released from detention under the preventative detention order so that the person may be:

(a) questioned before a prescribed authority under the warrant; or

(b) detained under the warrant in connection with that questioning;

does not extend the period for which the preventative detention order remains in force in relation to the person.

Note: See paragraph 105.26(7)(a).

105.26 Release of person from preventative detention

(1) The police officer who is detaining a person under a preventative detention order may release the person from detention under the order.

Note: A person may be released, for example, so that the person may be arrested and otherwise dealt with under the provisions of Division 4 of Part IAA, and Part IC, of the *Crimes Act 1914*.

(2) If the police officer detaining the person under the order is not an AFP member:

(a) the police officer must not release the person from detention without the approval of a senior AFP member; and

(b) the senior AFP member must approve the person's release if the person is being released so that the person may be dealt with in accordance with a warrant under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*.

(3) The police officer who releases the person from detention under the preventative detention order must give the person a written statement that the person is being released from that detention. The statement must be signed by the police officer.

(4) Subsection (3) does not apply if the police officer releases the person from detention so that the person may be dealt with:

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(a) in accordance with a warrant under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*; or

(b) under the provisions of Division 4 of Part IAA, and Part IC, of the *Crimes Act 1914*.

(5) To avoid doubt, a person may be taken to have been released from detention under a preventative detention order even if:

(a) the person is informed that he or she is being released from detention under the order; and

(b) the person is taken into custody on some other basis immediately after the person is informed that he or she is being released from detention under the order.

(6) To avoid doubt, a person is taken not to be detained under a preventative detention order during a period during which the person is released from detention under the order.

Note: During this period, the provisions of this Division that apply to a person who is being detained under a preventative detention order (for example, section 105.34 which deals with the people the person may contact) do not apply to the person.

(7) To avoid doubt:

(a) the release of the person under subsection (1) from detention under the preventative detention order does not extend the period for which the preventative detention order remains in force; and

(b) a person released under subsection (1) from detention under a preventative detention order may again be taken into custody and detained under the order at any time while the order remains in force in relation to the person.

Note: Paragraph (a)—this means that the time for which the person may be detained under the order continues to run while the person is released.

105.27 Arrangement for detainee to be held in State or Territory prison or remand centre

(1) A senior AFP member may arrange for a person (the ***subject***) who is being detained under a preventative detention order to be

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detained under the order at a prison or remand centre of a State or Territory.

(2) If an arrangement is made under subsection (1):

(a) the preventative detention order is taken to authorise the person in charge of the prison or remand centre to detain the subject at the prison or remand centre while the order is in force in relation to the subject; and

(b) section 105.33 applies in relation to the subject's detention under the order at the prison or remand centre as if:

(i) the person in charge of that prison or remand centre; or

(ii) any other person involved in the subject's detention at that prison or remand centre;

were a person exercising authority under the order or implementing or enforcing the order; and

(c) the senior AFP member who makes the arrangement is taken, while the subject is detained at the prison or remand centre, to be the AFP member detaining the subject for the purposes of Subdivisions D and E of this Division.

(3) The arrangement under subsection (1) may include provision for the Commonwealth meeting the expenses of the subject's detention at the prison or remand centre.

Subdivision D—Informing person detained about preventative detention order

105.28 Effect of initial preventative detention order to be explained to person detained

(1) As soon as practicable after a person is first taken into custody under an initial preventative detention order, the police officer who is detaining the person under the order must inform the person of the matters covered by subsection (2).

Note 1: A contravention of this subsection may be an offence under section 105.45.

Note 2: A contravention of this subsection does not affect the lawfulness of the person's detention under the order (see subsection 105.31(5)).

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(2) The matters covered by this subsection are:

(a) the fact that the preventative detention order has been made in relation to the person; and

(b) the period during which the person may be detained under the order; and

(c) the restrictions that apply to the people the person may contact while the person is being detained under the order; and

(d) the fact that an application may be made under section 105.11 for an order that the person continue to be detained for a further period; and

(da) the person's entitlement under subsection 105.17(7) to make representations to the senior AFP member nominated under subsection 105.19(5) in relation to the order with a view to having the order revoked; and

(e) any right the person has to make a complaint to the Commonwealth Ombudsman under the *Ombudsman Act 1976* in relation to:

(i) the application for, or the making of, the preventative detention order; or

(ii) the treatment of the person by an AFP member in connection with the person's detention under the order; and

(ea) any right the person has to give information under section 40SA of the *Australian Federal Police Act 1979* in relation to:

(i) the application for, or the making of, the preventative detention order; or

(ii) the treatment of the person by an AFP member in connection with the person's detention under the order; and

(f) any right the person has to complain to an officer or authority of a State or Territory in relation to the treatment of the person by a member of the police force of that State or Territory in connection with the person's detention under the order; and

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(g) the fact that the person may seek from a federal court a remedy relating to:
  (i) the order; or
  (ii) the treatment of the person in connection with the person's detention under the order; and
(h) the person's entitlement under section 105.37 to contact a lawyer; and
(i) the name and work telephone number of the senior AFP member who has been nominated under subsection 105.19(5) to oversee the exercise of powers under, and the performance of obligations in relation to, the order.

Note: Paragraph (g)—see section 105.51.

(2A) Without limiting paragraph (2)(c), the police officer detaining the person under the order must inform the person under that paragraph about the persons that he or she may contact under section 105.35 or 105.39.

(3) Paragraph (2)(c) does not require the police officer to inform the person being detained of:
(a) the fact that a prohibited contact order has been made in relation to the person's detention; or
(b) the name of a person specified in a prohibited contact order that has been made in relation to the person's detention.

105.29 Effect of continued preventative detention order to be explained to person detained

(1) As soon as practicable after a continued preventative detention order (the ***continued order***) is made in relation to a person, the police officer who is detaining the person must inform the person of the matters covered by subsection (2).

Note 1: A contravention of this subsection may be an offence under section 105.45.

Note 2: A contravention of this subsection does not affect the lawfulness of the person's detention under the order (see subsection 105.31(5)).

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(2) The matters covered by this subsection are:

(a) the fact that the continued order has been made in relation to the person; and

(b) the further period during which the person may continue to be detained under the continued order; and

(c) the restrictions that apply to the people the person may contact while the person is being detained under the continued order; and

(ca) the person's entitlement under subsection 105.17(7) to make representations to the senior AFP member nominated under subsection 105.19(5) in relation to the order with a view to having the order revoked; and

(d) any right the person has to make a complaint to the Commonwealth Ombudsman under the *Ombudsman Act 1976* in relation to:

(i) the application for the continued order; or

(ii) the treatment of the person by an AFP member in connection with the person's detention under the continued order; and

(da) any right the person has to give information under section 40SA of the *Australian Federal Police Act 1979* in relation to:

(i) the application for the continued order; or

(ii) the treatment of the person by an AFP member in connection with the person's detention under the continued order; and

(e) any right the person has to complain to an officer or authority of a State or Territory about the treatment of the person by a member of the police force of that State or Territory in connection with the person's detention under the continued order; and

(f) the fact that the person may seek from a federal court a remedy relating to:

(i) the continued order; or

(ii) the treatment of the person in connection with the person's detention under the continued order; and

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(g) the person's entitlement under section 105.37 to contact a lawyer; and

(h) the name and work telephone number of the senior AFP member who has been nominated under subsection 105.19(5) to oversee the exercise of powers under, and the performance of obligations in relation to, the continued order.

Note: Paragraph (f)—see section 105.51.

(2A) Without limiting paragraph (2)(c), the police officer detaining the person under the order must inform the person under that paragraph about the persons that he or she may contact under section 105.35 or 105.39.

(3) Paragraph (2)(c) does not require the police officer to inform the person being detained of:

(a) the fact that a prohibited contact order has been made in relation to the person's detention; or

(b) the name of a person specified in a prohibited contact order that has been made in relation to the person's detention.

105.30 Person being detained to be informed of extension of preventative detention order

If a preventative detention order is extended, or further extended, under section 105.10 or 105.14, the police officer detaining the person under the order must inform the person of the extension, or further extension, as soon as practicable after the extension, or further extension, is made.

Note 1: A contravention of this subsection may be an offence under section 105.45.

Note 2: A contravention of this subsection does not affect the lawfulness of the person's detention under the order (see subsection 105.31(5)).

105.31 Compliance with obligations to inform

(1) Subsection 105.28(1) or 105.29(1) or section 105.30 does not apply if the actions of the person being detained under the preventative detention order make it impracticable for the police officer to comply with that subsection.

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Note: A defendant bears an evidential burden in relation to the matter in subsection (1) (see subsection 13.3(3)).

(2) The police officer detaining the person under the preventative detention order complies with subsection 105.28(1) or 105.29(1) if the police officer informs the person in substance of the matters covered by subsection 105.28(2) or 105.29(2) (even if this is not done in language of a precise or technical nature).

(3) The police officer who is detaining the person under the preventative detention order must arrange for the assistance of an interpreter in complying with subsection 105.28(1) or 105.29(1) or section 105.30 if the police officer has reasonable grounds to believe that the person is unable, because of inadequate knowledge of the English language or a disability, to communicate with reasonable fluency in that language.

(4) Without limiting subsection (3), the assistance of the interpreter may be provided by telephone.

(5) The lawfulness of a person's detention under a preventative detention order is not affected by a failure to comply with subsection 105.28(1) or 105.29(1), section 105.30 or subsection (3) of this section.

105.32 Copy of preventative detention order

(1) As soon as practicable after a person is first taken into custody under an initial preventative detention order, the police officer who is detaining the person under the order must give the person a copy of the order.

(3) Despite subsection 105.19(2), a police officer does not need to have a copy of the order with him or her, or to produce a copy of the order to the person being taken into custody, when the police officer takes the person into custody.

(4) As soon as practicable after a continued preventative detention order is made in relation to a person in relation to whom an initial preventative detention order is in force, the police officer who is detaining the person under the initial preventative detention order,

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or the continued preventative detention order, must give the person a copy of the continued preventative detention order.

(5) As soon as practicable after a preventative detention order is extended, or further extended, under section 105.10 or 105.14, the police officer who is detaining the person under the preventative detention order must give the person a copy of the extension or further extension.

(6) A person who is being detained under a preventative detention order may request a police officer who is detaining the person to arrange for a copy of:

(a) the order; or

(c) any extension or further extension of the order under section 105.10 or 105.14;

to be given to a lawyer acting for the person in relation to the order.

Note 1: Section 105.37 deals with the person's right to contact a lawyer and the obligation of the police officer detaining the person to give the person assistance to choose a lawyer.

Note 2: Section 105.40 prevents the person from contacting a lawyer who is specified in a prohibited contact order.

(7) The police officer must make arrangements for a copy of the order, or the extension or further extension, to be given to the lawyer as soon as practicable after the request is made.

(8) Without limiting subsection (7), the copy of the order, or the extension, may be faxed or emailed to the lawyer.

(9) To avoid doubt, subsection (7) does not entitle the lawyer to be given a copy of, or see, a document other than the order, or the extension or further extension.

(10) Nothing in this section requires a copy of a prohibited contact order to be given to a person.

(11) The police officer who gives:

(a) the person being detained under an initial preventative detention order; or

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(b) a lawyer acting for the person;

a copy of the initial preventative detention order under this section must endorse on the copy the date on which, and time at which, the person was first taken into custody under the order.

(12) The lawfulness of a person's detention under a preventative detention order is not affected by a failure to comply with subsection (1), (4), (5), (7) or (11).

Subdivision E—Treatment of person detained

105.33 Humane treatment of person being detained

A person being taken into custody, or being detained, under a preventative detention order:

(a) must be treated with humanity and with respect for human dignity; and

(b) must not be subjected to cruel, inhuman or degrading treatment;

by anyone exercising authority under the order or implementing or enforcing the order.

Note: A contravention of this section may be an offence under section 105.45.

105.33A Detention of persons under 18

(1) Subject to subsection (2), the police officer detaining a person who is under 18 years of age under a preventative detention order must ensure that the person is not detained together with persons who are 18 years of age or older.

Note: A contravention of this subsection may be an offence under section 105.45.

(2) Subsection (1) does not apply if a senior AFP member approves the person being detained together with persons who are 18 years of age or older.

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(3) The senior AFP member may give an approval under subsection (2) only if there are exceptional circumstances justifying the giving of the approval.

(4) An approval under subsection (2) must:
  (a) be given in writing; and
  (b) set out the exceptional circumstances that justify the giving of the approval.

105.34 Restriction on contact with other people

Except as provided by sections 105.35, 105.36, 105.37 and 105.39, while a person is being detained under a preventative detention order, the person:
  (a) is not entitled to contact another person; and
  (b) may be prevented from contacting another person.

Note 1: This section will not apply to the person if the person is released from detention under the order (even though the order may still be in force in relation to the person).

Note 2: A person's entitlement to contact other people under sections 105.35, 105.37 and 105.39 may be subject to a prohibited contact order made under section 105.15 or 105.16 (see section 105.40).

105.35 Contacting family members etc.

(1) The person being detained is entitled to contact:
  (a) one of his or her family members; and
  (b) if he or she:
    (i) lives with another person and that other person is not a family member of the person being detained; or
    (ii) lives with other people and those other people are not family members of the person being detained;

  that other person or one of those other people; and
  (c) if he or she is employed—his or her employer; and
  (d) if he or she employs people in a business—one of the people he or she employs in that business; and

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(e) if he or she engages in a business together with another person or other people—that other person or one of those other people; and

(f) if the police officer detaining the person being detained agrees to the person contacting another person—that person;

by telephone, fax or email but solely for the purposes of letting the person contacted know that the person being detained is safe but is not able to be contacted for the time being.

(2) To avoid doubt, the person being detained is not entitled, under subsection (1), to disclose:

(a) the fact that a preventative detention order has been made in relation to the person; or

(b) the fact that the person is being detained; or

(c) the period for which the person is being detained.

(3) In this section:

family member of a person means:

(a) the person's spouse or de facto partner; or

(b) a parent, step-parent or grandparent of the person; or

(c) a child, step-child or grandchild of the person; or

(d) a brother, sister, step-brother or step-sister of the person; or

(e) a guardian or carer of the person.

(4) For the purposes of this section, the family members of a person are taken to include the following (without limitation):

(a) a de facto partner of the person;

(b) someone who is the child of the person, or of whom the person is the child, because of the definition of ***child*** in the Dictionary;

(c) anyone else who would be a member of the person's family if someone mentioned in paragraph (a) or (b) is taken to be a family member of the person.

105.36 Contacting Ombudsman etc.

(1) The person being detained is entitled to contact:

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(a) the Commonwealth Ombudsman in accordance with subsections 7(3) to (5) of the *Ombudsman Act 1976*; or

(b) a person referred to in subsection 40SA(1) of the *Australian Federal Police Act 1979* in accordance with section 40SB of that Act.

Note 1: Subsections 7(3) to (5) of the *Ombudsman Act 1976* provide for the manner in which a person who is in custody may make a complaint to the Commonwealth Ombudsman under that Act.

Note 2: Section 40SB of the *Australian Federal Police Act 1979* provides for the manner in which a person who is in custody may give information under section 40SA of that Act.

(2) If the person being detained has the right, under a law of a State or Territory, to complain to an officer or authority of the State or Territory about the treatment of the person by a member of the police force of that State or Territory in connection with the person's detention under the order, the person is entitled to contact that officer or authority to make a complaint in accordance with that law.

105.37 Contacting lawyer

(1) The person being detained is entitled to contact a lawyer but solely for the purpose of:

(a) obtaining advice from the lawyer about the person's legal rights in relation to:

(i) the preventative detention order; or

(ii) the treatment of the person in connection with the person's detention under the order; or

(b) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, proceedings in a federal court for a remedy relating to:

(i) the preventative detention order; or

(ii) the treatment of the person in connection with the person's detention under the order; or

(c) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, a complaint to the Commonwealth Ombudsman under the *Ombudsman Act 1976* in relation to:

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(i) the application for, or the making of, the preventative detention order; or

(ii) the treatment of the person by an AFP member in connection with the person's detention under the order; or

(ca) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, the giving of information under section 40SA of the *Australian Federal Police Act 1979* in relation to:

(i) the application for, or the making of, the preventative detention order; or

(ii) the treatment of the person by an AFP member in connection with the person's detention under the order; or

(d) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, a complaint to an officer or authority of a State or Territory about the treatment of the person by a member of the police force of that State or Territory in connection with the person's detention under the order; or

(e) arranging for the lawyer to act for the person in relation to an appearance, or hearing, before a court that is to take place while the person is being detained under the order.

(2) The form of contact that the person being detained is entitled to have with a lawyer under subsection (1) includes:

(a) being visited by the lawyer; and

(b) communicating with the lawyer by telephone, fax or email.

(3) If:

(a) the person being detained asks to be allowed to contact a particular lawyer under subsection (1); and

(b) either:

(i) the person is not entitled to contact that lawyer because of section 105.40 (prohibited contact order); or

(ii) the person is not able to contact that lawyer;

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the police officer who is detaining the person must give the person reasonable assistance to choose another lawyer for the person to contact under subsection (1).

(3A) If the police officer who is detaining a person under a preventative detention order has reasonable grounds to believe that:

(a) the person is unable, because of inadequate knowledge of the English language, or a disability, to communicate with reasonable fluency in that language; and

(b) the person may have difficulties in choosing or contacting a lawyer because of that inability;

the police officer must give the person reasonable assistance (including, if appropriate, by arranging for the assistance of an interpreter) to choose and contact a lawyer under subsection (1).

(4) In recommending lawyers to the person being detained as part of giving the person assistance under subsection (3) or (3A), the police officer who is detaining the person may give priority to lawyers who have been given a security clearance at an appropriate level by the Department.

(5) Despite subsection (4) but subject to section 105.40, the person being detained is entitled under this section to contact a lawyer who does not have a security clearance of the kind referred to in subsection (4).

105.38 Monitoring contact under section 105.35 or 105.37

(1) The contact the person being detained has with another person under section 105.35 or 105.37 may take place only if it is conducted in such a way that the contact, and the content and meaning of the communication that takes place during the contact, can be effectively monitored by a police officer exercising authority under the preventative detention order.

(2) The contact may take place in a language other than English only if the content and meaning of the communication that takes place during the contact can be effectively monitored with the assistance of an interpreter.

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(3) Without limiting subsection (2), the interpreter referred to in that subsection may be a police officer.

(4) If the person being detained indicates that he or she wishes the contact to take place in a language other than English, the police officer who is detaining the person must:
  (a) arrange for the services of an appropriate interpreter to be provided if it is reasonably practicable to do so during the period during which the person is being detained; and
  (b) if it is reasonably practicable to do so—arrange for those services to be provided as soon as practicable.

(5) Any communication between:
  (a) a person who is being detained under a preventative detention order; and
  (b) a lawyer;

for a purpose referred to in paragraph 105.37(1)(a), (b), (c), (ca), (d) or (e) is not admissible in evidence against the person in any proceedings in a court.

105.39 Special contact rules for person under 18 or incapable of managing own affairs

(1) This section applies if the person being detained under a preventative detention order:
  (a) is under 18 years of age; or
  (b) is incapable of managing his or her affairs.

(2) The person is entitled, while being detained under the order, to have contact with:
  (a) a parent or guardian of the person; or
  (b) another person who:
    (i) is able to represent the person's interests; and
    (ii) is, as far as practicable in the circumstances, acceptable to the person and to the police officer who is detaining the person; and
    (iii) is not an AFP member; and

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(iv) is not an AFP employee (within the meaning of the *Australian Federal Police Act 1979*); and

(v) is not a member (however described) of a police force of a State or Territory; and

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

(3) To avoid doubt:

(a) if the person being detained (the ***detainee***) has 2 parents or 2 or more guardians, the detainee is entitled, subject to section 105.40, to have contact under subsection (2) with each of those parents or guardians; and

(b) the detainee is entitled to disclose the following to a person with whom the detainee has contact under subsection (2):

(i) the fact that a preventative detention order has been made in relation to the detainee;

(ii) the fact that the detainee is being detained;

(iii) the period for which the detainee is being detained.

(4) The form of contact that the person being detained is entitled to have with another person under subsection (2) includes:

(a) being visited by that other person; and

(b) communicating with that other person by telephone, fax or email.

(5) The period for which the person being detained is entitled to have contact with another person each day under subsection (2) is:

(a) 2 hours; or

(b) such longer period as is specified in the preventative detention order.

Note: Paragraph (b)—see subsections 105.8(7) and 105.12(7).

(6) Despite subsection (5), the police officer who is detaining the person may permit the person to have contact with a person under subsection (2) for a period that is longer than the period provided for in subsection (5).

(7) The contact that the person being detained has with another person under subsection (2) must be conducted in such a way that the content and meaning of any communication that takes place during

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the contact can be effectively monitored by a police officer exercising authority under the preventative detention order.

(8) If the communication that takes place during the contact takes place in a language other than English, the contact may continue only if the content and meaning of the communication in that language can be effectively monitored with the assistance of an interpreter.

(9) Without limiting subsection (8), the interpreter referred to in that subsection may be a police officer.

(10) If the person being detained indicates that he or she wishes the communication that takes place during the contact to take place in a language other than English, the police officer who is detaining the person must:

(a) arrange for the services of an appropriate interpreter to be provided if it is reasonably practicable to do so during the period during which the person is being detained; and

(b) if it is reasonably practicable to do so—arrange for those services to be provided as soon as practicable.

105.40 Entitlement to contact subject to prohibited contact order

Sections 105.35, 105.37 and 105.39 have effect subject to any prohibited contact order made in relation to the person's detention.

105.41 Disclosure offences

Person being detained

(1) A person (the ***subject***) commits an offence if:

(a) the subject is being detained under a preventative detention order; and

(b) the subject discloses to another person:

(i) the fact that a preventative detention order has been made in relation to the subject; or

(ii) the fact that the subject is being detained; or

(iii) the period for which the subject is being detained; and

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(c) the disclosure occurs while the subject is being detained under the order; and

(d) the disclosure is not one that the subject is entitled to make under section 105.36, 105.37 or 105.39.

Penalty: Imprisonment for 5 years.

Lawyer

(2) A person (the ***lawyer***) commits an offence if:

(a) a person being detained under a preventative detention order (the ***detainee***) contacts the lawyer under section 105.37; and

(b) the lawyer discloses to another person:

(i) the fact that a preventative detention order has been made in relation to the detainee; or

(ii) the fact that the detainee is being detained; or

(iii) the period for which the detainee is being detained; or

(iv) any information that the detainee gives the lawyer in the course of the contact; and

(c) the disclosure occurs while the detainee is being detained under the order; and

(d) the disclosure is not made for the purposes of:

(i) proceedings in a federal court for a remedy relating to the preventative detention order or the treatment of the detainee in connection with the detainee's detention under the order; or

(ii) a complaint to the Commonwealth Ombudsman under the *Ombudsman Act 1976* in relation to the application for, or making of, the preventative detention order or the treatment of the detainee by an AFP member in connection with the detainee's detention under the order; or

(iia) the giving of information under section 40SA of the *Australian Federal Police Act 1979* in relation to the application for, or making of, the preventative detention order or the treatment of the detainee by an AFP member in connection with the detainee's detention under the order; or

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(iii) a complaint to an officer or authority of a State or Territory about the treatment of the detainee by a member of the police force of that State or Territory in connection with the detainee's detention under the order; or

(iv) making representations to the senior AFP member nominated under subsection 105.19(5) in relation to the order, or another police officer involved in the detainee's detention, about the exercise of powers under the order, the performance of obligations in relation to the order or the treatment of the detainee in connection with the detainee's detention under the order.

Penalty: Imprisonment for 5 years.

Person having special contact with detainee who is under 18 years of age or incapable of managing own affairs

(3) A person (the ***parent/guardian***) commits an offence if:

(a) a person being detained under a preventative detention order (the ***detainee***) has contact with the parent/guardian under section 105.39; and

(b) the parent/guardian discloses to another person:

(i) the fact that a preventative detention order has been made in relation to the detainee; or

(ii) the fact that the detainee is being detained; or

(iii) the period for which the detainee is being detained; or

(iv) any information that the detainee gives the parent/guardian in the course of the contact; and

(c) the other person is not a person the detainee is entitled to have contact with under section 105.39; and

(d) the disclosure occurs while the detainee is being detained under the order; and

(e) the disclosure is not made for the purposes of:

(i) a complaint to the Commonwealth Ombudsman under *the Ombudsman Act 1976* in relation to the application for, or the making of, the preventative detention order or the treatment of the detainee by an AFP member in

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connection with the detainee's detention under the order; or

(ia) the giving of information under section 40SA of the *Australian Federal Police Act 1979* in relation to the application for, or the making of, the preventative detention order or the treatment of the detainee by an AFP member in connection with the detainee's detention under the order; or

(ii) a complaint to an officer or authority of a State or Territory about the treatment of the detainee by a member of the police force of that State or Territory in connection with the detainee's detention under the order; or

(iii) making representations to the senior AFP member nominated under subsection 105.19(5) in relation to the order, or another police officer involved in the detainee's detention, about the exercise of powers under the order, the performance of obligations in relation to the order or the treatment of the detainee in connection with the detainee's detention under the order.

Penalty: Imprisonment for 5 years.

(4) To avoid doubt, a person does not contravene subsection (3) merely by letting another person know that the detainee is safe but is not able to be contacted for the time being.

(4A) A person (the ***parent/guardian***) commits an offence if:

(a) the parent/guardian is a parent or guardian of a person who is being detained under a preventative detention order (the ***detainee***); and

(b) the detainee has contact with the parent/guardian under section 105.39; and

(c) while the detainee is being detained under the order, the parent/guardian discloses information of the kind referred to in paragraph (3)(b) to another parent or guardian of the detainee (the ***other parent/guardian***); and

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(d) when the disclosure is made, the detainee has not had contact with the other parent/guardian under section 105.39 while being detained under the order; and

(e) the parent/guardian does not, before making the disclosure, inform the senior AFP member nominated under subsection 105.19(5) in relation to the order that the parent/guardian is proposing to disclose information of that kind to the other parent/guardian.

Penalty: Imprisonment for 5 years.

(4B) If:

(a) a person (the ***parent/guardian***) is a parent or guardian of a person being detained under a preventative detention order (the ***detainee***); and

(b) the parent/guardian informs the senior AFP member nominated under subsection 105.19(5) in relation to the order that the parent/guardian proposes to disclose information of the kind referred to in paragraph (3)(b) to another parent or guardian of the detainee (the ***other parent/guardian***);

that senior AFP member may inform the parent/guardian that the detainee is not entitled to contact the other parent/guardian under section 105.39.

Note: The parent/guardian may commit an offence against subsection (2) if the other parent/guardian is a person the detainee is not entitled to have contact with under section 105.39 and the parent/guardian does disclose information of that kind to the other parent/guardian. This is because of the operation of paragraph (3)(c).

Interpreter assisting in monitoring contact with detainee

(5) A person (the ***interpreter***) commits an offence if:

(a) the interpreter is an interpreter who assists in monitoring the contact that a person being detained under a preventative detention order (the ***detainee***) has with someone while the detainee is being detained under the order; and

(b) the interpreter discloses to another person:

(i) the fact that a preventative detention order has been made in relation to the detainee; or

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(ii) the fact that the detainee is being detained; or
(iii) the period for which the detainee is being detained; or
(iv) any information that interpreter obtains in the course of assisting in the monitoring of that contact; and

(c) the disclosure occurs while the detainee is being detained under the order.

Penalty: Imprisonment for 5 years.

Passing on improperly disclosed information

(6) A person (the ***disclosure recipient***) commits an offence if:

(a) a person (the ***earlier discloser***) discloses to the disclosure recipient:
(i) the fact that a preventative detention order has been made in relation to a person; or
(ii) the fact that a person is being detained under a preventative detention order; or
(iii) the period for which a person is being detained under a preventative detention order; or
(iv) any information that a person who is being detained under a preventative detention order communicates to a person while the person is being detained under the order; and

(b) the disclosure by the earlier discloser to the disclosure recipient contravenes:
(i) subsection (1), (2), (3) or (5); or
(ii) this subsection; and

(c) the disclosure recipient discloses that information to another person; and

(d) the disclosure by the disclosure recipient occurs while the person referred to in subparagraph (a)(i), (ii), (iii) or (iv) is being detained under the order.

Penalty: Imprisonment for 5 years.

Police officer or interpreter monitoring contact with lawyer

(7) A person (the ***monitor***) commits an offence if:

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(a) the monitor is:
  (i) a police officer who monitors; or
  (ii) an interpreter who assists in monitoring;
contact that a person being detained under a preventative detention order (the ***detainee***) has with a lawyer under section 105.37 while the detainee is being detained under the order; and

(b) information is communicated in the course of that contact; and

(c) the information is communicated for one of the purposes referred to in subsection 105.37(1); and

(d) the monitor discloses that information to another person.

Penalty: Imprisonment for 5 years.

Note: See also subsection 105.38(5).

105.42 Questioning of person prohibited while person is detained

(1) A police officer must not question a person while the person is being detained under a preventative detention order except for the purposes of:

(a) determining whether the person is the person specified in the order; or

(b) ensuring the safety and well-being of the person being detained; or

(c) allowing the police officer to comply with a requirement of this Division in relation to the person's detention under the order.

Note 1: This subsection will not apply to the person if the person is released from detention under the order (even though the order may still be in force in relation to the person).

Note 2: A contravention of this subsection may be an offence under section 105.45.

(2) An ASIO employee or an ASIO affiliate must not question a person while the person is being detained under a preventative detention order.

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Note 1: This subsection will not apply to the person if the person is released from detention under the order (even though the order may still be in force in relation to the person).

Note 2: A contravention of this subsection may be an offence under section 105.45.

(3) An AFP member, or an ASIO employee or an ASIO affiliate, must not question a person while the person is being detained under an order made under a corresponding State preventative detention law.

Note 1: This subsection will not apply to the person if the person is released from detention under the order (even though the order may still be in force in relation to the person).

Note 2: A contravention of this subsection may be an offence under section 105.45.

(4) If a police officer questions a person while the person is being detained under a preventative detention order, the police officer who is detaining the person must ensure that:

(a) a video recording is made of the questioning if it is practicable to do so; or

(b) an audio recording is made of the questioning if it is not practicable for a video recording to be made of the questioning.

Note: A contravention of this subsection may be an offence under section 105.45.

(5) Subsection (4) does not apply if:

(a) the questioning occurs to:

(i) ensure the safety and well being of the person being detained; or

(ii) determine whether the person is the person specified in the order; and

(b) complying with subsection (4) is not practicable because of the seriousness and urgency of the circumstances in which the questioning occurs.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3)).

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(6) A recording made under subsection (4) must be kept for the period of 12 months after the recording is made.

105.43 Taking fingerprints, recordings, samples of handwriting or photographs

(1) A police officer must not take identification material from a person who is being detained under a preventative detention order except in accordance with this section.

Note: A contravention of this subsection may be an offence under section 105.45.

(2) A police officer who is of the rank of sergeant or higher may take identification material from the person, or cause identification material from the person to be taken, if:

(a) the person consents in writing; or

(b) the police officer believes on reasonable grounds that it is necessary to do so for the purpose of confirming the person's identity as the person specified in the order.

(3) A police officer may use such force as is necessary and reasonable in the circumstances to take identification material from a person under this section.

(4) Subject to this section, a police officer must not take identification material (other than hand prints, fingerprints, foot prints or toe prints) from the person if the person:

(a) is under 18 years of age; or

(b) is incapable of managing his or her affairs;

unless a Judge of the Federal Circuit Court of Australia orders that the material be taken.

Note: A contravention of this subsection may be an offence under section 105.45.

(5) In deciding whether to make such an order, the Judge of the Federal Circuit Court of Australia must have regard to:

(a) the age, or any disability, of the person; and

(b) such other matters as the Judge of the Federal Circuit Court of Australia thinks fit.

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(6) The taking of identification material from a person who:

(a) is under 18 years of age; or

(b) is incapable of managing his or her affairs;

must be done in the presence of:

(c) a parent or guardian of the person; or

(d) if a parent or guardian of the person is not acceptable to the person—another appropriate person.

Note 1: For ***appropriate person***, see subsection (11).

Note 2: A contravention of this subsection may be an offence under section 105.45.

(7) Despite this section, identification material may be taken from a person who is under 18 years of age and is capable of managing his or her affairs if:

(a) subsections (8) and (9) are satisfied; or

(b) subsection (8) or (9) is satisfied (but not both) and a Judge of the Federal Circuit Court of Australia orders that the material be taken.

In deciding whether to make such an order, the Judge of the Federal Circuit Court of Australia must have regard to the matters set out in subsection (5).

(8) This subsection applies if the person agrees in writing to the taking of the material.

(9) This subsection applies if either:

(a) a parent or guardian of the person; or

(b) if a parent or guardian is not acceptable to the person—another appropriate person;

agrees in writing to the taking of the material.

Note: For ***appropriate person***, see subsection (11).

(10) Despite this section, identification material may be taken from a person who:

(a) is at least 18 years of age; and

(b) is capable of managing his or her affairs;

if the person consents in writing.

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(11) A reference in this section to an ***appropriate person*** in relation to a person (the ***subject***) who is under 18 years of age, or incapable of managing his or her affairs, is a reference to a person who:

(a) is capable of representing the subject's interests; and

(b) as far as is practicable in the circumstances, is acceptable to the subject and the police officer who is detaining the subject; and

(c) is none of the following:

(i) an AFP member;

(ii) an AFP employee (within the meaning of the *Australian Federal Police Act 1979*);

(iii) a member (however described) of a police force of a State or Territory;

(iv) an ASIO employee or an ASIO affiliate.

105.44 Use of identification material

(1) This section applies if identification material is taken under section 105.43 from a person being detained under a preventative detention order.

(2) The material may be used only for the purpose of determining whether the person is the person specified in the order.

Note: A contravention of this subsection may be an offence under section 105.45.

(3) If:

(a) a period of 12 months elapses after the identification material is taken; and

(b) proceedings in respect of:

(i) the preventative detention order; or

(ii) the treatment of the person in connection with the person's detention under the order;

have not been brought, or have been brought and discontinued or completed, within that period;

the material must be destroyed as soon as practicable after the end of that period.

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105.45 Offences of contravening safeguards

A person commits an offence if:

(a) the person engages in conduct; and

(b) the conduct contravenes:

(i) subsection 105.28(1); or

(ii) subsection 105.29(1); or

(iii) section 105.30; or

(iv) section 105.33; or

(iva) subsection 105.33A(1); or

(v) subsection 105.42(1), (2), (3) or (4); or

(vi) subsection 105.43(1), (4) or (6); or

(vii) subsection 105.44(2).

Penalty: Imprisonment for 2 years.

Subdivision F—Miscellaneous

105.46 Nature of functions of Federal Circuit Court Judge

(1) A function of making an order conferred on a Judge of the Federal Circuit Court of Australia by section 105.43 is conferred on the Judge of the Federal Circuit Court of Australia in a personal capacity and not as a court or a member of a court.

(2) Without limiting the generality of subsection (1), an order made by a Judge of the Federal Circuit Court of Australia under section 105.43 has effect only by virtue of this Act and is not to be taken by implication to be made by a court.

(3) A Judge of the Federal Circuit Court of Australia performing a function of, or connected with, making an order under section 105.43 has the same protection and immunity as if he or she were performing that function as, or as a member of, the Federal Circuit Court of Australia.

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105.47 Annual report

(1) The Attorney-General must, as soon as practicable after each 30 June, cause to be prepared a report about the operation of this Division during the year ended on that 30 June.

(2) Without limiting subsection (1), a report relating to a year must include the following matters:

(a) the number of initial preventative detention orders made under section 105.8 during the year;

(b) the number of continued preventative detention orders made under section 105.12 during the year;

(c) whether a person was taken into custody under each of those orders and, if so, how long the person was detained for;

(d) particulars of:

(i) any complaints made or referred to the Commonwealth Ombudsman during the year that related to the detention of a person under a preventative detention order; and

(ii) any information given under section 40SA of the *Australian Federal Police Act 1979* during the year that related to the detention of a person under a preventative detention order and raised an AFP conduct or practices issue (within the meaning of that Act);

(e) the number of prohibited contact orders made under sections 105.15 and 105.16 during the year;

(f) the number of preventative detention orders, and the number of prohibited contact orders, that a court has found not to have been validly made or that the Administrative Appeals Tribunal has declared to be void.

(3) The Attorney-General must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the report is completed.

105.48 Certain functions and powers not affected

This Division does not affect:

(a) a function or power of the Commonwealth Ombudsman under the *Ombudsman Act 1976*; or

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(b) a function or power of a person under Part V of the *Australian Federal Police Act 1979*.

105.49 Queensland public interest monitor functions and powers not affected

This Division does not affect a function or power that the Queensland public interest monitor, or a Queensland deputy public interest monitor, has under a law of Queensland.

105.50 Law relating to legal professional privilege not affected

To avoid doubt, this Division does not affect the law relating to legal professional privilege.

105.51 Legal proceedings in relation to preventative detention orders

(1) Subject to subsections (2) and (4), proceedings may be brought in a court for a remedy in relation to:
  (a) a preventative detention order; or
  (b) the treatment of a person in connection with the person's detention under a preventative detention order.

(2) A court of a State or Territory does not have jurisdiction in proceedings for a remedy if:
  (a) the remedy relates to:
    (i) a preventative detention order; or
    (ii) the treatment of a person in connection with the person's detention under a preventative detention order; and
  (b) the proceedings are commenced while the order is in force.

(3) Subsection (2) has effect despite any other law of the Commonwealth (whether passed or made before or after the commencement of this section).

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(4) An application cannot be made under the *Administrative Decisions (Judicial Review) Act 1977* in relation to a decision made under this Division.

Note: See paragraph (dac) of Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1977*.

(5) An application may be made to the Administrative Appeals Tribunal for review of:

(a) a decision by an issuing authority under section 105.8 or 105.12 to make a preventative detention order; or

(b) a decision by an issuing authority in relation to a preventative detention order to extend or further extend the period for which the order is in force in relation to a person.

The application cannot be made while the order is in force.

(6) The power of the Administrative Appeals Tribunal to review a decision referred to in subsection (5) may be exercised by the Tribunal only in the Security Division of the Tribunal.

(7) The Administrative Appeals Tribunal may:

(a) declare a decision referred to in subsection (5) in relation to a preventative detention order in relation to a person to be void if the Tribunal would have set the decision aside if an application for review of the decision had been able to be made to the Tribunal while the order was in force; and

(b) determine that the Commonwealth should compensate the person in relation to the person's detention under the order if the Tribunal declares the decision to be void under paragraph (a).

(8) If the Administrative Appeals Tribunal makes a determination under paragraph (7)(b), the Commonwealth is liable to pay the compensation determined by the Tribunal.

(9) The provisions of the *Administrative Appeals Tribunal Act 1975* apply in relation to an application to the Administrative Appeals Tribunal for review of a decision referred to in subsection (5) with the modifications specified in the regulations made under this Act.

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105.52 Review by State and Territory courts

(1) This section applies if:

(a) a person is detained under a preventative detention order (the ***Commonwealth order***) that is made on the basis of:

(i) assisting in preventing a terrorist act occurring within a period; or

(ii) preserving evidence of, or relating to, a terrorist act; and

(b) the person is detained under an order (the ***State order***) that is made under a corresponding State preventative detention law on the basis of:

(i) assisting in preventing the same terrorist act, or a different terrorist act, occurring within that period; or

(ii) preserving evidence of, or relating to, the same terrorist act; and

(c) the person brings proceedings before a court of a State or Territory in relation to:

(i) the application for, or the making of, the State order; or

(ii) the person's treatment in connection with the person's detention under the State order.

(2) The court may:

(a) review the application for, or the making of, the Commonwealth order, or the person's treatment in connection with the person's detention under the Commonwealth order, on the same grounds as those on which the court may review the application for, or the making of, the State order, or the person's treatment in connection with the person's detention under the State order; and

(b) grant the same remedies in relation to the application for, or the making of, the Commonwealth order, or the person's treatment in connection with the person's detention under the Commonwealth order, as those the court can grant in relation to the application for, or the making of, the State order, or the person's treatment in connection with the person's detention under the State order.

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(3) If:

(a) the person applies to the court for:

(i) review of the application for, or the making of, the Commonwealth order or the person's treatment in connection with the person's detention under the Commonwealth order; or

(ii) a remedy in relation to the application for, or the making of, the Commonwealth order or the person's treatment in connection with the person's detention under the Commonwealth order; and

(b) the person applies to the court for an order under this subsection;

the court may order the Commissioner of the Australian Federal Police to give the court, and the parties to the proceedings, the information that was put before the person who issued the Commonwealth order when the application for the Commonwealth order was made.

(4) Subsection (3) does not require information to be given to the court, or the parties to the proceedings, if the disclosure of the information is likely to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*).

(5) This section has effect:

(a) without limiting subsection 105.51(1); and

(b) subject to subsection 105.51(2).

(6) Nothing in this section affects the operation of the *National Security Information (Criminal and Civil Proceedings) Act 2004* in relation to the proceedings.

105.53 Sunset provision

(1) A preventative detention order, or a prohibited contact order, that is in force at the end of 7 September 2018 ceases to be in force at that time.

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Section 105.53

(2) A preventative detention order, and a prohibited contact order, cannot be applied for, or made, after 7 September 2018.

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Division 106—Transitional provisions

106.1 Saving—regulations originally made for the purposes of paragraph (c) of the definition of *terrorist organisation*

(1) If:

(a) regulations were made before commencement for the purposes of paragraph (c) of the definition of ***terrorist organisation*** in subsection 102.1(1), as in force before commencement; and

(b) the regulations were in force immediately before commencement;

the regulations have effect, after commencement, as if they had been made for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1(1), as in force after commencement.

(2) In this section, ***commencement*** means the commencement of this section.

106.2 Saving—regulations made for the purposes of paragraph (a) of the definition of *terrorist organisation*

(1) If:

(a) regulations were made before commencement for the purposes of paragraph (a) of the definition of ***terrorist organisation*** in subsection 102.1(1), as in force before commencement; and

(b) the regulations were in force immediately before commencement;

the regulations continue to have effect, after commencement, as if they had been made for the purposes of that paragraph, as in force after commencement.

(2) In this section, ***commencement*** means the commencement of this section.

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106.3 Application provision

The amendments to this Code made by Schedule 1 to the *Anti-Terrorism Act 2005* apply to offences committed:

(a) before the commencement of this section (but not before the commencement of the particular section of the Code being amended); and

(b) after the commencement of this section.

106.4 Saving—Federal Magistrates

(1) An appointment that is in force immediately before the commencement of this section under subsection 105.2(1) in respect of a Federal Magistrate continues in force, after that commencement, as an appointment in respect of a Judge of the Federal Circuit Court of Australia under that subsection.

(2) A consent that is in force immediately before the commencement of this section under subsection 105.2(2) in respect of a Federal Magistrate continues in force, after that commencement, as a consent in respect of a Judge of the Federal Circuit Court of Australia.

(3) A thing done by, or in relation to, a Federal Magistrate, as an issuing authority for continued preventative detention orders, under Division 105 before the commencement of this section has effect, after that commencement, as if it had been done by, or in relation to, a Judge of the Federal Circuit Court of Australia, as an issuing authority for continued preventative detention orders, under that Division.

106.5 Application provisions for certain amendments in the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*

(1) The amendments of section 102.1, made by Schedule 1 to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*, do not affect the continuity of any regulations that are in force for the purposes of that section immediately before the commencement of this section.

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(2) Section 104.2, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*, applies to requests for interim control orders made after the commencement of this section, where the conduct in relation to which the request is made occurs before or after that commencement.

(3) Section 104.4, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*, applies to the making of orders requested after the commencement of this section, where the conduct in relation to which the request is made occurs before or after that commencement.

(4) Sections 104.6 and 104.8, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*, apply to the making of requests after the commencement of this section, where the conduct in relation to which the request is made occurs before or after that commencement.

(4A) Section 104.23, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*, applies to variations of control orders, where the relevant interim control order is requested after that commencement.

(5) Section 105.4, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*, applies in relation to applications for preventative detention orders made after the commencement of this section.

(6) Section 105.7, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*, applies in relation to applications for initial preventative detention orders made after the commencement of this section.

(7) Section 105.8, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*, applies in relation to initial preventative detention orders made after the commencement of this section.

(8) Section 105.12, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*, applies in relation to continued preventative detention orders

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made after the commencement of this section, regardless of when the initial preventative detention order to which the continued order relates was made.

(9) Section 105.15, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*, applies in relation to applications for prohibited contact orders made after the commencement of this section, regardless of when the application for the preventative detention order to which the prohibited contact order relates was made.

(10) Section 105.16, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*, applies in relation to applications for prohibited contact orders made after the commencement of this section, regardless of when the preventative detention order to which the prohibited contact order relates was made.

106.6 Application provisions for certain amendments in the *Counter-Terrorism Legislation Amendment Act (No. 1) 2014*

(1) Section 104.1, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment Act (No. 1) 2014*, applies in relation to control orders, where the relevant interim control order is requested after the commencement of this section.

(2) Sections 104.2, 104.3, 104.10 and 104.12A, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment Act (No. 1) 2014*, apply to requests for interim control orders made after the commencement of this section, where the conduct in relation to which the request is made occurs before or after that commencement.

(3) Section 104.4 and subsection 104.5(1B), as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment Act (No. 1) 2014*, apply to the making of orders requested after the commencement of this section, where the conduct in relation to which the request is made occurs before or after that commencement.

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(4) Sections 104.6 and 104.8, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment Act (No. 1) 2014*, apply to the making of requests after the commencement of this section, where the conduct in relation to which the request is made occurs before or after that commencement.

(5) Section 104.14, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment Act (No. 1) 2014*, applies to confirmations of control orders, where the relevant interim control order is requested after that commencement.

(6) Sections 104.20, 104.23 and 104.24, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment Act (No. 1) 2014*, apply to variations of control orders, where the relevant interim control order is requested after that commencement.

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Part 5.4—Harming Australians

Division 115—Harming Australians

115.1 Murder of an Australian citizen or a resident of Australia

(1) A person commits an offence if:

(a) the person engages in conduct outside Australia (whether before or after 1 October 2002 or the commencement of this Code); and

(b) the conduct causes the death of another person; and

(c) the other person is an Australian citizen or a resident of Australia; and

(d) the first-mentioned person intends to cause, or is reckless as to causing, the death of the Australian citizen or resident of Australia or any other person by the conduct; and

(e) if the conduct was engaged in before 1 October 2002—at the time the conduct was engaged in, the conduct constituted an offence against a law of the foreign country, or the part of the foreign country, in which the conduct was engaged.

Note: This section commenced on 1 October 2002.

(1A) If the conduct constituting an offence against subsection (1) was engaged in before 1 October 2002, the offence is punishable on conviction by:

(a) if, at the time the conduct was engaged in, the offence mentioned in paragraph (1)(e) was punishable on conviction by a term of imprisonment (other than imprisonment for life)—a maximum penalty of imprisonment for a term of not more than that term; or

(b) otherwise—a maximum penalty of imprisonment for life.

(1B) If the conduct constituting an offence against subsection (1) was engaged in on or after 1 October 2002, the offence is punishable on conviction by a maximum penalty of imprisonment for life.

(2) Absolute liability applies to paragraphs (1)(c) and (e).

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(3) If:

(a) a person has been convicted or acquitted of an offence in respect of conduct under a law of a foreign country or a part of a foreign country; and

(b) the person engaged in the conduct before 1 October 2002;

the person cannot be convicted of an offence against this section in respect of that conduct.

115.2 Manslaughter of an Australian citizen or a resident of Australia

(1) A person commits an offence if:

(a) the person engages in conduct outside Australia (whether before or after 1 October 2002 or the commencement of this Code); and

(b) the conduct causes the death of another person; and

(c) the other person is an Australian citizen or a resident of Australia; and

(d) the first-mentioned person intends that the conduct will cause serious harm, or is reckless as to a risk that the conduct will cause serious harm, to the Australian citizen or resident of Australia or any other person; and

(e) if the conduct was engaged in before 1 October 2002—at the time the conduct was engaged in, the conduct constituted an offence against a law of the foreign country, or the part of the foreign country, in which the conduct was engaged.

Note: This section commenced on 1 October 2002.

(1A) If the conduct constituting an offence against subsection (1) was engaged in before 1 October 2002, the offence is punishable on conviction by:

(a) if, at the time the conduct was engaged in, the offence mentioned in paragraph (1)(e) was punishable on conviction by imprisonment for a term of less than 25 years—a maximum penalty of imprisonment for a term of not more than that term; or

(b) otherwise—a maximum penalty of imprisonment for a term of not more than 25 years.

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(1B) If the conduct constituting an offence against subsection (1) was engaged in on or after 1 October 2002, the offence is punishable on conviction by a maximum penalty of imprisonment for a term of not more than 25 years.

(2) Absolute liability applies to paragraphs (1)(b), (c) and (e).

(3) If:

(a) a person has been convicted or acquitted of an offence in respect of conduct under a law of a foreign country or a part of a foreign country; and

(b) the person engaged in the conduct before 1 October 2002;

the person cannot be convicted of an offence against this section in respect of that conduct.

115.3 Intentionally causing serious harm to an Australian citizen or a resident of Australia

(1) A person commits an offence if:

(a) the person engages in conduct outside Australia; and

(b) the conduct causes serious harm to another person; and

(c) the other person is an Australian citizen or a resident of Australia; and

(d) the first-mentioned person intends to cause serious harm to the Australian citizen or resident of Australia or any other person by the conduct.

Penalty: Imprisonment for 20 years.

(2) Absolute liability applies to paragraph (1)(c).

115.4 Recklessly causing serious harm to an Australian citizen or a resident of Australia

(1) A person commits an offence if:

(a) the person engages in conduct outside Australia; and

(b) the conduct causes serious harm to another person; and

(c) the other person is an Australian citizen or a resident of Australia; and

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(d) the first-mentioned person is reckless as to causing serious harm to the Australian citizen or resident of Australia or any other person by the conduct.

Penalty: Imprisonment for 15 years.

(2) Absolute liability applies to paragraph (1)(c).

115.5 Saving of other laws

This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or of a State or Territory.

115.6 Bringing proceedings under this Division

(1) Proceedings for an offence under this Division must not be commenced without the Attorney-General's written consent.

(2) However, a person may be arrested, charged, remanded in custody, or released on bail, in connection with an offence under this Division before the necessary consent has been given.

115.7 Ministerial certificates relating to proceedings

(1) A Minister who administers one or more of the following Acts:
(a) the *Australian Citizenship Act 2007*;
(b) the *Migration Act 1958*;
(c) the *Australian Passports Act 2005*;
may issue a certificate stating that a person is or was an Australian citizen or a resident of Australia at a particular time.

(2) In any proceedings, a certificate under this section is prima facie evidence of the matters in the certificate.

115.8 Geographical jurisdiction

Each offence against this Division applies:
(a) whether or not a result of the conduct constituting the alleged offence occurs in Australia; and

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(b) if the alleged offence is an ancillary offence and the conduct to which the ancillary offence relates occurs outside Australia—whether or not the conduct constituting the ancillary offence occurs in Australia.

115.9 Meaning of *causes* death or harm

In this Division, a person's conduct ***causes*** death or harm if it substantially contributes to the death or harm.

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Part 5.5—Foreign incursions and recruitment

Division 117—Preliminary

117.1 Definitions

(1) In this Part:

armed force does not include an armed force forming part of the Australian Defence Force.

Defence Minister means the Minister administering the *Defence Force Discipline Act 1982*.

engage in a hostile activity: a person ***engages in a hostile activity*** in a foreign country if the person engages in conduct in that country with the intention of achieving one or more of the following objectives (whether or not such an objective is achieved):

(a) the overthrow by force or violence of the government of that or any other foreign country (or of a part of that or any other foreign country);

(b) the engagement, by that or any other person, in action that:

(i) falls within subsection 100.1(2) but does not fall within subsection 100.1(3); and

(ii) if engaged in in Australia, would constitute a serious offence;

(c) intimidating the public or a section of the public of that or any other foreign country;

(d) causing the death of, or bodily injury to, a person who is the head of state of that or any other foreign country, or holds, or performs any of the duties of, a public office of that or any other foreign country (or of a part of that or any other foreign country);

(e) unlawfully destroying or damaging any real or personal property belonging to the government of that or any other foreign country (or of a part of that or any other foreign country).

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Section 117.1

Foreign Affairs Minister means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

government of a foreign country or a part of a foreign country means the authority exercising effective governmental control in that foreign country or that part of that foreign country.

listed terrorist organisation has the meaning given by subsection 100.1(1).

military training means training in the use of arms or explosives, or the practice of military exercises or movements.

prescribed organisation is:

(a) an organisation that is prescribed by the regulations for the purposes of this paragraph; or

(b) an organisation referred to in paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1(1).

recruit includes induce, incite or encourage.

serious offence means an offence against a law of the Commonwealth, a State or a Territory that is punishable by imprisonment for 2 years or more.

Prescribing organisations

(2) Before the Governor-General makes a regulation prescribing an organisation for the purposes of paragraph (a) of the definition of ***prescribed organisation*** in subsection (1), the Minister must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering:

(a) a serious violation of human rights; or

(b) the engagement, in Australia or a foreign country allied or associated with Australia, in action that falls within subsection 100.1(2) but does not fall within subsection 100.1(3); or

(c) a terrorist act (within the meaning of section 100.1); or

(d) an act prejudicial to the security, defence or international relations (within the meaning of section 10 of the *National*

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Security Information (Criminal and Civil Proceedings) Act 2004) of Australia.

117.2 Extended geographical jurisdiction—category D

Section 15.4 (extended geographical jurisdiction—category D) applies (subject to this Part) to an offence against this Part.

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Division 119—Foreign incursions and recruitment

119.1 Incursions into foreign countries with the intention of engaging in hostile activities

Offence for entering foreign countries with the intention of engaging in hostile activities

(1) A person commits an offence if:

(a) the person enters a foreign country with the intention of engaging in a hostile activity in that or any other foreign country; and

(b) when the person enters the country, the person:

(i) is an Australian citizen; or

(ii) is a resident of Australia; or

(iii) is a holder under the *Migration Act 1958* of a visa; or

(iv) has voluntarily put himself or herself under the protection of Australia.

Penalty: Imprisonment for life.

Offence for engaging in a hostile activity in a foreign country

(2) A person commits an offence if:

(a) the person engages in a hostile activity in a foreign country; and

(b) when the person engages in the activity, the person:

(i) is an Australian citizen; or

(ii) is a resident of Australia; or

(iii) is a holder under the *Migration Act 1958* of a visa; or

(iv) has voluntarily put himself or herself under the protection of Australia.

Penalty: Imprisonment for life.

Absolute liability element

(3) Absolute liability applies to paragraphs (1)(b) and (2)(b).

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Note: For absolute liability, see section 6.2.

Exception

(4) Subsections (1) and (2) do not apply to an act done by a person in the course of, and as part of, the person's service in any capacity in or with:

(a) the armed forces of the government of a foreign country; or

(b) any other armed force if a declaration under subsection 119.8(1) covers the person and the circumstances of the person's service in or with the force.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3).

Note 2: For conduct for the defence or international relations of Australia, see section 119.9.

(5) Paragraph (4)(a) does not apply if:

(a) the person intends to engage, or engages, in a hostile activity in a foreign country while in or with an organisation; and

(b) the organisation is a prescribed organisation at the following time:

(i) for subsection (1)—the time of the entry referred to in that subsection;

(ii) for subsection (2)—the time the person engages in the hostile activity referred to in that subsection.

119.2 Entering, or remaining in, declared areas

(1) A person commits an offence if:

(a) the person enters, or remains in, an area in a foreign country; and

(b) the area is an area declared by the Foreign Affairs Minister under section 119.3; and

(c) when the person enters the area, or at any time when the person is in the area, the person:

(i) is an Australian citizen; or

(ii) is a resident of Australia; or

(iii) is a holder under the *Migration Act 1958* of a visa; or

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(iv) has voluntarily put himself or herself under the protection of Australia.

Penalty: Imprisonment for 10 years.

Absolute liability element

(2) Absolute liability applies to paragraph (1)(c).

Note: For absolute liability, see section 6.2.

Exception—entering or remaining solely for legitimate purposes

(3) Subsection (1) does not apply if the person enters, or remains in, the area solely for one or more of the following purposes:

(a) providing aid of a humanitarian nature;

(b) satisfying an obligation to appear before a court or other body exercising judicial power;

(c) performing an official duty for the Commonwealth, a State or a Territory;

(d) performing an official duty for the government of a foreign country or the government of part of a foreign country (including service in the armed forces of the government of a foreign country), where that performance would not be a violation of the law of the Commonwealth, a State or a Territory;

(e) performing an official duty for the United Nations or an agency of the United Nations;

(f) making a news report of events in the area, where the person is working in a professional capacity as a journalist or is assisting another person working in a professional capacity as a journalist;

(g) making a bona fide visit to a family member;

(h) any other purpose prescribed by the regulations.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3).

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Exception—entering or remaining solely for service with armed force other than prescribed organisation

(4) Subsection (1) does not apply if the person enters, or remains in, the area solely in the course of, and as part of, the person's service in any capacity in or with:

(a) the armed forces of the government of a foreign country; or

(b) any other armed force if a declaration under subsection 119.8(1) covers the person and the circumstances of the person's service in or with the force.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3).

(5) However, subsection (4) does not apply if:

(a) the person enters, or remains in, an area in a foreign country while in or with an organisation; and

(b) the organisation is a prescribed organisation at the time the person enters or remains in the area as referred to in paragraph (1)(a).

Note 1: For conduct for the defence or international relations of Australia, see section 119.9.

Note 2: Sections 10.1 and 10.3 also provide exceptions to subsection (1) of this section (relating to intervening conduct or event and sudden or extraordinary emergency respectively).

Sunset provision

(6) This section ceases to have effect at the end of 7 September 2018.

119.3 Declaration of areas for the purposes of section 119.2

(1) The Foreign Affairs Minister may, by legislative instrument, declare an area in a foreign country for the purposes of section 119.2 if he or she is satisfied that a listed terrorist organisation is engaging in a hostile activity in that area of the foreign country.

(2) A single declaration may cover areas in 2 or more foreign countries if the Foreign Affairs Minister is satisfied that one or more listed

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terrorist organisations are engaging in a hostile activity in each of those areas.

(2A) A declaration must not cover an entire country.

Requirement to brief Leader of the Opposition

(3) Before making a declaration, the Foreign Affairs Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed declaration.

Cessation of declaration

(4) A declaration ceases to have effect on the third anniversary of the day on which it takes effect. To avoid doubt, this subsection does not prevent:

(a) the revocation of the declaration; or

(b) the making of a new declaration the same in substance as the previous declaration (whether the new declaration is made or takes effect before or after the previous declaration ceases to have effect because of this subsection).

Note: An offence committed in relation to the declared area before the cessation can be prosecuted after the cessation: see section 7 of the *Acts Interpretation Act 1901* as it applies because of paragraph 13(1)(a) of the *Legislation Act 2003*.

(5) If:

(a) an area is declared under subsection (1); and

(b) the Foreign Affairs Minister ceases to be satisfied that a listed terrorist organisation is engaging in a hostile activity in the area;

the Foreign Affairs Minister must revoke the declaration.

Note: The Foreign Affairs Minister may, for example, cease to be satisfied that a listed terrorist organisation is engaging in a hostile activity in the area if the organisation ceases to be specified in the regulations.

(6) To avoid doubt, subsection (5) does not prevent an area from being subsequently declared if the Foreign Affairs Minister becomes satisfied as mentioned in subsection (1).

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Review of declaration

(7) The Parliamentary Joint Committee on Intelligence and Security may review a declaration before the end of the period during which the declaration may be disallowed under section 42 of the *Legislation Act 2003*.

119.4 Preparations for incursions into foreign countries for purpose of engaging in hostile activities

Preparatory acts

(1) A person commits an offence if:
  (a) the person engages in conduct (whether within or outside Australia); and
  (b) the conduct is preparatory to the commission of an offence against section 119.1 (whether by that or any other person); and
  (c) when the person engages in the conduct, the person:
    (i) is an Australian citizen; or
    (ii) is a resident of Australia; or
    (iii) is a holder under the *Migration Act 1958* of a visa; or
    (iv) has voluntarily put himself or herself under the protection of Australia; or
    (v) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

Accumulating weapons etc.

(2) A person commits an offence if:
  (a) the person (whether within or outside Australia) accumulates, stockpiles or otherwise keeps arms, explosives, munitions, poisons or weapons; and
  (b) the person engages in that conduct with the intention that an offence against section 119.1 will be committed (whether by that or any other person); and
  (c) when the person engages in the conduct, the person:

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(i) is an Australian citizen; or
(ii) is a resident of Australia; or
(iii) is a holder under the *Migration Act 1958* of a visa; or
(iv) has voluntarily put himself or herself under the protection of Australia; or
(v) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

Providing or participating in training

(3) A person commits an offence if:
(a) the person engages in any of the following conduct (whether within or outside Australia):
(i) providing military training to another person;
(ii) participating in providing military training to another person;
(iii) being present at a meeting or assembly of persons, where the person intends at that meeting or assembly to provide, or participate in providing, military training to another person; and
(b) the person engages in the conduct intending to prepare the other person to commit an offence against section 119.1; and
(c) when the person engages in the conduct, the person:
(i) is an Australian citizen; or
(ii) is a resident of Australia; or
(iii) is a holder under the *Migration Act 1958* of a visa; or
(iv) has voluntarily put himself or herself under the protection of Australia; or
(v) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

(4) A person commits an offence if:
(a) the person engages in conduct of either of the following kinds (whether within or outside Australia):

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(i) allowing military training to be provided to himself or herself;

(ii) allowing himself or herself to be present at a meeting or assembly of persons intending to allow military training to be provided to himself or herself; and

(b) the person engages in the conduct with the intention of committing an offence against section 119.1; and

(c) when the person engages in the conduct, the person:

(i) is an Australian citizen; or

(ii) is a resident of Australia; or

(iii) is a holder under the *Migration Act 1958* of a visa; or

(iv) has voluntarily put himself or herself under the protection of Australia; or

(v) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

Giving or receiving goods and services to promote the commission of an offence

(5) A person commits an offence if:

(a) the person engages in any of the following conduct (whether within or outside Australia):

(i) giving money or goods to, or performing services for, any other person, body or association;

(ii) receiving or soliciting money or goods, or the performance of services; and

(b) the person engages in the conduct with the intention of supporting or promoting the commission of an offence against section 119.1; and

(c) when the person engages in the conduct, the person:

(i) is an Australian citizen; or

(ii) is a resident of Australia; or

(iii) is a holder under the *Migration Act 1958* of a visa; or

(iv) has voluntarily put himself or herself under the protection of Australia; or

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(v) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

Absolute liability element

(6) Absolute liability applies to paragraphs (1)(c), (2)(c), (3)(c), (4)(c) and (5)(c).

Note: For absolute liability, see section 6.2.

Exception

(7) This section does not apply if the person engages in conduct solely by way of, or for the purposes of, the provision of aid of a humanitarian nature.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (7): see subsection 13.3(3).

Note 2: For conduct for the defence or international relations of Australia, see section 119.9.

Disregarding paragraphs 119.1(1)(b) and (2)(b)

(8) A reference in this section to the commission of an offence against section 119.1 includes a reference to doing an act that would constitute an offence against section 119.1 if paragraphs 119.1(1)(b) and (2)(b) were disregarded.

119.5 Allowing use of buildings, vessels and aircraft to commit offences

Use of buildings

(1) A person commits an offence if:

(a) the person is an owner, lessee, occupier, agent or superintendent of any building, room, premises or other place; and

(b) the person permits a meeting or assembly of persons to be held in that place (whether the person or the place is within or outside Australia); and

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(c) by permitting the meeting or assembly to be so held, the person intends to commit, or support or promote the commission of, an offence against section 119.4; and

(d) when the person permits the meeting to be so held, the person:

(i) is an Australian citizen; or

(ii) is a resident of Australia; or

(iii) is a holder under the *Migration Act 1958* of a visa; or

(iv) has voluntarily put himself or herself under the protection of Australia; or

(v) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

Use of vessels or aircraft

(2) A person commits an offence if:

(a) the person is:

(i) an owner, charterer, lessee, operator, agent or master of a vessel; or

(ii) an owner, charterer, lessee, operator or pilot in charge of an aircraft; and

(b) the person permits the vessel or aircraft to be used (whether the person, vessel or aircraft is within or outside Australia); and

(c) by permitting the use, the person intends to commit, or support or promote the commission of, an offence against section 119.4; and

(d) when the person permits the use, the person:

(i) is an Australian citizen; or

(ii) is a resident of Australia; or

(iii) is a holder under the *Migration Act 1958* of a visa; or

(iv) has voluntarily put himself or herself under the protection of Australia; or

(v) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

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Penalty: Imprisonment for life.

Absolute liability element

(3) Absolute liability applies to paragraphs (1)(d) and (2)(d).

Note: For absolute liability, see section 6.2.

Exception

(4) This section does not apply if the person engages in conduct solely by way of, or for the purposes of, the provision of aid of a humanitarian nature.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3).

Note 2: For conduct for the defence or international relations of Australia, see section 119.9.

119.6 Recruiting persons to join organisations engaged in hostile activities against foreign governments

A person commits an offence if:

(a) the person recruits, in Australia, another person to become a member of, or to serve in any capacity with, a body or association of persons; and

(b) the objectives of the body or association include any one or more of the objectives referred to in the definition of ***engage in a hostile activity*** in subsection 117.1(1).

Note: For conduct for the defence or international relations of Australia, see section 119.9.

Penalty: Imprisonment for 25 years.

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119.7 Recruiting persons to serve in or with an armed force in a foreign country

Recruiting others to serve with foreign armed forces

(1) A person commits an offence if the person recruits, in Australia, another person to serve in any capacity in or with an armed force in a foreign country.

Penalty: Imprisonment for 10 years.

Publishing recruitment advertisements

(2) A person commits an offence if:
  (a) the person publishes in Australia:
    (i) an advertisement; or
    (ii) an item of news that was procured by the provision or promise of money or any other consideration; and
  (b) the person is reckless as to the fact that the publication of the advertisement or item of news is for the purpose of recruiting persons to serve in any capacity in or with an armed force in a foreign country.

Penalty: Imprisonment for 10 years.

(3) A person commits an offence if:
  (a) the person publishes in Australia:
    (i) an advertisement; or
    (ii) an item of news that was procured by the provision or promise of money or any other consideration; and
  (b) the advertisement or item of news contains information:
    (i) relating to the place at which, or the manner in which, persons may make applications to serve, or obtain information relating to service, in any capacity in or with an armed force in a foreign country; or
    (ii) relating to the manner in which persons may travel to a foreign country for the purpose of serving in any capacity in or with an armed force in a foreign country.

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Penalty: Imprisonment for 10 years.

Facilitating recruitment

(4) A person commits an offence if:
  (a) the person engages in conduct in Australia; and
  (b) the person engages in the conduct intending to facilitate or promote the recruitment of persons to serve in any capacity in or with an armed force in a foreign country.

Penalty: Imprisonment for 10 years.

Exception

(5) This section does not apply in relation to service of a person in or with an armed force in circumstances if a declaration under subsection 119.8(2) covers the person and the circumstances of the person's service in or with the armed force.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (5): see subsection 13.3(3).

Note 2: For conduct for the defence or international relations of Australia, see section 119.9.

Armed forces that are not part of the government of a foreign country

(6) A reference in this section to an armed force in a foreign country includes any armed force in a foreign country, whether or not the armed force forms part of the armed forces of the government of that foreign country.

(7) Without limiting this section, a person recruits another person to serve in or with an armed force in a foreign country if the other person enters a commitment or engagement to serve in any capacity in or with an armed force, whether or not the commitment or engagement is legally enforceable or constitutes legal or formal enlistment in that force.

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119.8 Declaration in relation to specified armed forces

Service

(1) The Minister may, by legislative instrument, declare that section 119.1 or 119.2 does not apply to a specified person or class of persons in any circumstances or specified circumstances if the Minister is satisfied that it is in the interests of the defence or international relations of Australia to permit the service of that person or class of persons in those circumstances in or with:

(a) a specified armed force in a foreign country; or

(b) a specified armed force in a foreign country in a specified capacity.

Recruitment

(2) The Minister may, by legislative instrument, declare that section 119.7 does not apply to a specified person or class of persons in any circumstances or specified circumstances if the Minister is satisfied that it is in the interests of the defence or international relations of Australia to permit the recruitment in Australia of that person or class of persons to serve in those circumstances in or with:

(a) a specified armed force in a foreign country; or

(b) a specified armed force in a foreign country in a specified capacity.

119.9 Exception—conduct for defence or international relations of Australia

This Division does not apply in relation to conduct engaged in by a person acting in the course of the person's duty to the Commonwealth in relation to the defence or international relations of Australia.

Note 1: A defendant bears an evidential burden in relation to the matter in this section: see subsection 13.3(3).

Note 2: See also section 119.12 (declarations for the purposes of proceedings).

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119.10 Mode of trial

(1) A prosecution for any of the following offences is (subject to subsection (2)) to be on indictment:

(a) an offence against this Division;

(b) an offence against section 6 of the *Crimes Act 1914*, or an ancillary offence, that relates to an offence against this Division.

(2) If the law of a State or Territory provides for a person who pleads guilty to a charge in proceedings for the person's commitment for trial on indictment to be committed to a higher court and dealt with otherwise than on indictment, a person charged in that State or Territory with an offence referred to in subsection (1) may be dealt with in accordance with that law.

119.11 Consent of Attorney-General required for prosecutions

(1) Proceedings for the commitment of a person for the following must not be instituted without the written consent of the Attorney-General:

(a) the trial on indictment for an offence against the following provisions:

(i) this Division;

(ii) section 6 of the *Crimes Act 1914* to the extent that it relates to an offence against this Division;

(b) the summary trial of a person for an offence referred to in paragraph (a).

(2) However, the following steps may be taken (but no further steps in proceedings may be taken) without consent having been given:

(a) a person may be charged with an offence referred to in paragraph (1)(a);

(b) a person may be arrested for an offence referred to in paragraph (1)(a), and a warrant for such an arrest may be issued and executed;

(c) a person so charged may be remanded in custody or on bail.

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(3) Nothing in subsection (2) prevents the discharge of the accused if proceedings are not continued within a reasonable time.

119.12 Declarations for the purposes of proceedings

(1) The Foreign Affairs Minister may, in writing, declare that:

(a) a specified authority is in effective governmental control in a specified foreign country or part of a foreign country; or

(b) a specified organisation is not an armed force, or part of an armed force, of the government of a foreign country.

(2) The Defence Minister may, in writing, declare that if a specified person had done a specified act (being an act alleged to constitute an offence) the person would not have been acting in the course of the person's duty to the Commonwealth in relation to the defence or international relations of Australia.

(3) Without limiting subsection (1) or (2), a declaration under that subsection may be made in relation to a specified day or period.

(4) In proceedings for an offence referred to in paragraph 119.11(1)(a), a certificate under this section is prima facie evidence of the matters stated in the certificate.

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Chapter 7—The proper administration of Government

Part 7.1—Preliminary

Division 130—Preliminary

130.1 Definitions

In this Chapter:

duty:

(a) in relation to a person who is a Commonwealth public official—means any authority, duty, function or power that:

(i) is conferred on the person as a Commonwealth public official; or

(ii) the person holds himself or herself out as having as a Commonwealth public official; and

(b) in relation to a person who is a public official—means any authority, duty, function or power that:

(i) is conferred on the person as a public official; or

(ii) the person holds himself or herself out as having as a public official.

gain means:

(a) a gain in property, whether temporary or permanent; or

(b) a gain by way of the supply of services;

and includes keeping what one has.

loss means a loss in property, whether temporary or permanent, and includes not getting what one might get.

obtaining includes:

(a) obtaining for another person; and

(b) inducing a third person to do something that results in another person obtaining.

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property includes:

(a) real property; and

(b) personal property; and

(c) money; and

(d) a thing in action or other intangible property; and

(e) electricity; and

(f) a wild creature that is:

(i) tamed; or

(ii) ordinarily kept in captivity; or

(iii) reduced (or in the course of being reduced) into the possession of a person.

services includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities, but does not include rights or benefits being the supply of goods.

supply includes:

(a) in relation to goods—supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and

(b) in relation to services—provide, grant or confer.

Note: The expression ***person*** includes a Commonwealth entity. This is the combined effect of subsection 2C(1) of the *Acts Interpretation Act 1901* (which provides that ***person*** includes a body politic or corporate), and the definition of ***person*** in the Dictionary.

130.2 When property belongs to a person

(1) For the purposes of this Chapter, property ***belongs to*** a person if, and only if:

(a) the person has possession or control of the property; or

(b) the person has a proprietary right or interest in the property, other than an equitable interest arising only from:

(i) an agreement to transfer an interest; or

(ii) an agreement to grant an interest; or

(iii) a constructive trust.

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(2) Subsection (1) has effect subject to subsections 134.1(9) and (10) (which deal with money transfers).

130.3 Dishonesty

For the purposes of this Chapter, ***dishonest*** means:

(a) dishonest according to the standards of ordinary people; and

(b) known by the defendant to be dishonest according to the standards of ordinary people.

Note: The following provisions affect the meaning of ***dishonesty***:

(a) section 131.2 (theft);

(b) section 134.1 (obtaining property by deception).

130.4 Determination of dishonesty to be a matter for the trier of fact

In a prosecution for an offence against this Chapter, the determination of dishonesty is a matter for the trier of fact.

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Part 7.2—Theft and other property offences

Division 131—Theft

131.1 Theft

(1) A person commits an offence if:

(a) the person dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property; and

(b) the property belongs to a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(2) For the purposes of this Code, an offence against subsection (1) is to be known as the offence of theft.

(3) Absolute liability applies to the paragraph (1)(b) element of the offence of theft.

(4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

Note: For alternative verdicts, see sections 132.1 and 134.1.

131.2 Special rules about the meaning of dishonesty

(1) For the purposes of this Division, a person's appropriation of property belonging to another is taken not to be dishonest if the person appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.

(2) However, the rule in subsection (1) does not apply if the person appropriating the property held it as trustee or personal representative.

(3) For the purposes of this Division, a person's appropriation of property belonging to another may be dishonest even if the person or another person is willing to pay for the property.

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131.3 Appropriation of property

(1) For the purposes of this Division, any assumption of the rights of an owner to ownership, possession or control of property, without the consent of the person to whom it belongs, amounts to an appropriation of the property. This includes, in a case where a person has come by property (innocently or not) without committing theft, any later such assumption of rights without consent by keeping or dealing with it as owner.

(2) For the purposes of this Division, if property, or a right or interest in property, is, or purports to be, transferred or given to a person acting in good faith, a later assumption by the person of rights which the person had believed himself or herself to be acquiring does not, because of any defect in the transferor's title, amount to an appropriation of the property.

131.4 Theft of land or things forming part of land

(1) For the purposes of this Division, a person cannot commit theft of land, except in the following cases:
  (a) the case where the person appropriates anything forming part of the land by severing it or causing it to be severed;
  (b) the case where:
    (i) the person is a trustee or personal representative, or is authorised (by power of attorney, as liquidator of a company or otherwise) to sell or dispose of land belonging to another; and
    (ii) the person appropriates the land, or anything forming part of it, by dealing with it in breach of the confidence reposed in the person.

(2) For the purposes of this section, ***land*** does not include incorporeal hereditaments.

131.5 Trust property

(1) For the purposes of this Division, if property is subject to a trust, the persons to whom the property belongs include any person who has a right to enforce the trust.

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(2) Accordingly, for the purposes of this Division, an intention to defeat the trust is an intention to deprive any such person of the property.

131.6 Obligation to deal with property in a particular way

For the purposes of this Division, if:

(a) a person receives property from or on account of another; and

(b) the person is under a legal obligation to the other to retain and deal with that property or its proceeds in a particular way;

the property or proceeds belong (as against the person) to the other.

131.7 Property obtained because of fundamental mistake

(1) For the purposes of this Division, if:

(a) a person gets property by another's fundamental mistake; and

(b) the person is under a legal obligation to make restoration (in whole or in part) of the property, its proceeds or value;

then, to the extent of that obligation, the property or proceeds belongs (as against the person) to the person entitled to restoration.

(2) For the purposes of this Division, an intention not to make restoration is:

(a) an intention to permanently deprive the person so entitled of the property or proceeds; and

(b) an appropriation of the property or proceeds without the consent of the person entitled to restoration.

(3) For the purposes of this section, a ***fundamental mistake*** is:

(a) a mistake about the identity of the person getting the property; or

(b) a mistake as to the essential nature of the property; or

(c) a mistake about the amount of any money if the person getting the money is aware of the mistake at the time of getting the money.

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(4) In this section:

money includes anything that is equivalent to money. For this purpose, cheques, negotiable instruments and electronic funds transfers are taken to be equivalent to money.

131.8 Property of a corporation sole

For the purposes of this Division, property of a corporation sole belongs to the corporation despite a vacancy in the corporation.

131.9 Property belonging to 2 or more persons

If property belongs to 2 or more persons, a reference in this Division (other than paragraph 131.1(1)(b)) to the person to whom the property belongs is a reference to all of those persons.

131.10 Intention of permanently depriving a person of property

(1) For the purposes of this Division, if:

(a) a person appropriates property belonging to another without meaning the other permanently to lose the thing itself; and

(b) the person's intention is to treat the thing as the person's own to dispose of regardless of the other's rights;

the person has the intention of permanently depriving the other of it.

(2) For the purposes of this section, a borrowing or lending of a thing amounts to treating the thing as the borrower's or lender's own to dispose of regardless of another's rights if, and only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.

(3) For the purposes of this section, if:

(a) a person has possession or control (lawfully or not) of property belonging to another; and

(b) the person parts with the property under a condition as to its return that the person may not be able to perform; and

(c) the parting is done for purposes of the person's own and without the other's authority;

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the parting is taken to amount to treating the property as the person's own to dispose of regardless of the other's rights.

Note: See also paragraph 131.7(2)(a).

131.11 General deficiency

(1) For the purposes of this Division, a person may be convicted of theft of all or any part of a general deficiency in money even though the deficiency is made up of any number of particular sums of money that were appropriated over a period of time.

(2) For the purposes of this Division, a person may be convicted of theft of all or any part of a general deficiency in property other than money even though the deficiency is made up of any number of particular items of property that were appropriated over a period of time.

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Division 132—Other property offences

132.1 Receiving

(1) A person commits an offence if the person dishonestly receives stolen property, knowing or believing the property to be stolen.

Penalty: Imprisonment for 10 years.

(2) For the purposes of this Code, an offence against subsection (1) is to be known as the offence of receiving.

(2A) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew or believed that the property belonged to a Commonwealth entity.

Stolen property

(3) For the purposes of this section, property is ***stolen property*** if, and only if:

(a) it is original stolen property (as defined by subsection (5)); or

(aa) it is previously received property (as defined by subsection (5A)); or

(b) it is tainted property (as defined by subsection (7)).

This subsection has effect subject to subsections (4) and (6).

(4) For the purposes of this section, ***stolen property*** does not include land obtained in the course of an offence against section 134.1.

Original stolen property

(5) For the purposes of this section, ***original stolen property*** is:

(a) property, or a part of property, that:

(i) was appropriated in the course of theft (whether or not the property, or the part of the property, is in the state it was in when it was so appropriated); and

(ii) is in the possession or custody of the person who so appropriated the property; or

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(b) property, or a part of property, that:

(i) was obtained in the course of an offence against section 134.1 (whether or not the property, or the part of the property, is in the state it was in when it was so obtained); and

(ii) is in the possession or custody of the person who so obtained the property or the person for whom the property was so obtained.

Previously received property

(5A) For the purposes of this section, ***previously received property*** is property that:

(a) was received in the course of an offence against subsection (1); and

(b) is in the possession or custody of the person who received the property in the course of that offence.

(6) For the purposes of this section, property ceases to be original stolen property or previously received property:

(a) after the property is restored:

(i) to the person from whom it was appropriated or obtained; or

(ii) to other lawful possession or custody; or

(b) after:

(i) the person from whom the property was appropriated or obtained ceases to have any right to restitution in respect of the property; or

(ii) a person claiming through the person from whom the property was appropriated or obtained ceases to have any right to restitution in respect of the property.

Tainted property

(7) For the purposes of this section, ***tainted property*** is property that:

(a) is (in whole or in part) the proceeds of sale of, or property exchanged for:

(i) original stolen property; or

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(ii) previously received property; and

(b) if subparagraph (a)(i) applies—is in the possession or custody of:

(i) if the original stolen property was appropriated in the course of theft—the person who so appropriated the original stolen property; or

(ii) if the original stolen property was obtained in the course of an offence against section 134.1—the person who so obtained the property or the person for whom the property was so obtained; and

(c) if subparagraph (a)(ii) applies—is in the possession or custody of the person who received the previously received property in the course of an offence against subsection (1).

Money transfers

(8) For the purposes of this section, if, as a result of the application of subsection 134.1(9) or (10), an amount credited to an account held by a person is property obtained in the course of an offence against section 134.1:

(a) while the whole or any part of the amount remains credited to the account, the property is taken to be in the possession of the person; and

(b) if the person fails to take such steps as are reasonable in the circumstances to secure that the credit is cancelled—the person is taken to have received the property; and

(c) subsection (6) of this section does not apply to the property.

Note: Subsections 134.1(9) and (10) deal with money transfers.

Alternative verdicts

(9) If, in a prosecution for an offence of theft or an offence against section 134.1, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence of receiving, the trier of fact may find the defendant not guilty of the offence of theft or the section 134.1 offence but guilty of the offence of receiving, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

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(10) If, in a prosecution for an offence of receiving, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence of theft or an offence against section 134.1, the trier of fact may find the defendant not guilty of the offence of receiving but guilty of the offence of theft or the section 134.1 offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Receiving property stolen before commencement

(11) For the purposes of this section:
  (a) it is to be assumed that sections 131.1 and 134.1 had been in force at all times before the commencement of this section; and
  (b) property that was appropriated or obtained at a time before the commencement of this section does not become ***original stolen property*** unless the property was appropriated or obtained in circumstances that (apart from paragraph (a)) amounted to an offence against a law of the Commonwealth in force at that time.

Obtaining

(12) The definition of ***obtaining*** in section 130.1 does not apply to this section.

Note: See subsection 134.1(3).

Definition

(13) In this section:

account has the same meaning as in section 133.1.

132.2 Robbery

(1) A person commits an offence if the person commits theft and:
  (a) immediately before committing theft, the person:
    (i) uses force on another person; or
    (ii) threatens to use force then and there on another person;

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with intent to commit theft or to escape from the scene; or

(b) at the time of committing theft, or immediately after committing theft, the person:

(i) uses force on another person; or

(ii) threatens to use force then and there on another person;

with intent to commit theft or to escape from the scene.

Penalty: Imprisonment for 15 years.

(2) For the purposes of this Code, an offence against subsection (1) is to be known as the offence of robbery.

Note: ***Theft*** means an offence against section 131.1. Under section 131.1, an element of the offence of theft is that the property belongs to a Commonwealth entity.

(3) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the property belonged to a Commonwealth entity.

132.3 Aggravated robbery

(1) A person commits an offence if the person:

(a) commits a robbery in company with one or more other persons; or

(b) commits a robbery and, at the time of the robbery, has an offensive weapon with him or her.

Penalty: Imprisonment for 20 years.

(2) For the purposes of this Code, an offence against subsection (1) is to be known as the offence of aggravated robbery.

Note: ***Robbery*** means an offence against section 132.2. Under section 132.2, an element of the offence of robbery is that the defendant commits theft. ***Theft*** means an offence against section 131.1. Under section 131.1, an element of the offence of theft is that the property belongs to a Commonwealth entity.

(2A) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the property belonged to a Commonwealth entity.

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(3) In this section:

offensive weapon includes:

(a) an article made or adapted for use for causing injury to, or incapacitating, a person; or

(b) an article where the person who has the article intends, or threatens to use, the article to cause injury to, or to incapacitate, another person.

132.4 Burglary

(1) A person commits an offence if:

(a) the person enters, or remains in, a building, as a trespasser, with intent to commit theft of a particular item of property in the building; and

(b) the property belongs to a Commonwealth entity.

Penalty: Imprisonment for 13 years.

(2) For the purposes of this Code, an offence against subsection (1) is to be known as the offence of burglary.

(2A) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the property belonged to a Commonwealth entity.

(3) A person commits an offence if:

(a) the person enters, or remains in, a building, as a trespasser, with intent to commit an offence in the building that involves causing harm to another person or damage to property; and

(aa) the offence referred to in paragraph (a) is an offence against a law of the Commonwealth; and

(b) the offence referred to in paragraph (a) is punishable by imprisonment for life or for a term of 5 years or more.

Penalty: Imprisonment for 13 years.

(3A) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the offence

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referred to in paragraph (3)(a) is an offence against a law of the Commonwealth.

(4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the offence referred to in paragraph (3)(a) is punishable by imprisonment for life or for a term of 5 years or more.

(5) For the purposes of this Code, an offence against subsection (3) is also to be known as the offence of burglary.

(6) A person commits an offence if:

(a) the person enters, or remains in, a building, as a trespasser, with intent to commit an offence in the building that involves causing harm to another person or damage to property; and

(aa) the offence referred to in paragraph (a) is an offence against a law of the Commonwealth, a State or a Territory; and

(b) the offence referred to in paragraph (a) is punishable by imprisonment for life or for a term of 5 years or more; and

(c) the building is owned or occupied by a Commonwealth entity.

Penalty: Imprisonment for 13 years.

(6A) In a prosecution for an offence against subsection (6), it is not necessary to prove that the defendant knew that the offence referred to in paragraph (6)(a) is an offence against a law of the Commonwealth, a State or a Territory.

(7) In a prosecution for an offence against subsection (6), it is not necessary to prove that the defendant knew that the offence referred to in paragraph (6)(a) is punishable by imprisonment for life or for a term of 5 years or more.

(8) Absolute liability applies to the paragraph (6)(c) element of the offence.

(9) For the purposes of this Code, an offence against subsection (6) is also to be known as the offence of burglary.

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(10) For the purposes of this section, a person is taken not to be a trespasser:

(a) merely because the person is permitted to enter, or remain in, a building for a purpose that is not the person's intended purpose; or

(b) if the person is permitted to enter, or remain in, a building as a result of fraud, misrepresentation or another person's mistake.

(12) In this section:

building includes:

(a) a part of a building; or

(b) a mobile home or a caravan; or

(c) a structure (whether or not movable), a vehicle, or a vessel, that is used, designed or adapted for residential purposes.

132.5 Aggravated burglary

(1) A person commits an offence if the person:

(a) commits a burglary in company with one or more other persons; or

(b) commits a burglary, and at the time of the burglary, has an offensive weapon with him or her.

Penalty: Imprisonment for 17 years.

(2) For the purposes of this Code, an offence against subsection (1) is to be known as the offence of aggravated burglary.

(3) In a prosecution for an offence against subsection (1) in relation to the offence of burglary created by subsection 132.4(1), it is not necessary to prove that the defendant knew that the property concerned belonged to a Commonwealth entity.

(4) In a prosecution for an offence against subsection (1) in relation to the offence of burglary created by subsection 132.4(3), it is not necessary to prove that:

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(a) the defendant knew that the offence referred to in paragraph 132.4(3)(a) is an offence against a law of the Commonwealth; or

(b) the defendant knew that the offence referred to in paragraph 132.4(3)(a) is punishable by imprisonment for life or for a term of 5 years or more.

(5) In a prosecution for an offence against subsection (1) in relation to the offence of burglary created by subsection 132.4(6), it is not necessary to prove that:

(a) the defendant knew that the offence referred to in paragraph 132.4(6)(a) is an offence against a law of the Commonwealth, a State or a Territory; or

(b) the defendant knew that the offence referred to in paragraph 132.4(6)(a) is punishable by imprisonment for life or for a term of 5 years or more; or

(c) the defendant knew that the building was owned or occupied by a Commonwealth entity.

(6) In this section:

offensive weapon includes:

(a) an article made or adapted for use for causing injury to, or incapacitating, a person; or

(b) an article where the person who has the article intends, or threatens to use, the article to cause injury to, or to incapacitate, another person.

132.6 Making off without payment

(1) A person commits an offence if:

(a) the person, knowing that immediate payment for any goods or services supplied by another person is required or expected from him or her, dishonestly makes off:

(i) without having paid; and

(ii) with intent to avoid payment of the amount due; and

(b) the other person is a Commonwealth entity.

Penalty: Imprisonment for 2 years.

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(2) Absolute liability applies to the paragraph (1)(b) element of the offence.

(3) For the purposes of this section, ***immediate payment*** includes payment at the time of collecting goods in respect of which a service has been provided.

132.7 Going equipped for theft or a property offence

(1) A person commits an offence if the person, when not at home, has with him or her any article with intent to use it in the course of, or in connection with, theft or a property offence.

Penalty: Imprisonment for 3 years.

(2) In a prosecution for an offence against subsection (1) in relation to:
(a) theft; or
(b) robbery; or
(c) aggravated robbery; or
(d) the offence of burglary created by subsection 132.4(1); or
(e) the offence of aggravated burglary that relates to the offence of burglary created by subsection 132.4(1); or
(f) an offence against section 134.1;
it is not necessary to prove that the defendant knew that the property concerned belonged to a Commonwealth entity.

(3) In a prosecution for an offence against subsection (1) in relation to:
(a) the offence of burglary created by subsection 132.4(3); or
(b) the offence of aggravated burglary that relates to the offence of burglary created by subsection 132.4(3);
it is not necessary to prove that:
(c) the defendant knew that the offence referred to in paragraph 132.4(3)(a) is an offence against a law of the Commonwealth; or
(d) the defendant knew that the offence referred to in paragraph 132.4(3)(a) is punishable by imprisonment for life or for a term of 5 years or more.

(4) In a prosecution for an offence against subsection (1) in relation to:

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(a) the offence of burglary created by subsection 132.4(6); or

(b) the offence of aggravated burglary that relates to the offence of burglary created by subsection 132.4(6);

it is not necessary to prove that:

(c) the defendant knew that the offence referred to in paragraph 132.4(6)(a) is an offence against a law of the Commonwealth, a State or a Territory; or

(d) the defendant knew that the offence referred to in paragraph 132.4(6)(a) is punishable by imprisonment for life or for a term of 5 years or more; or

(e) the defendant knew that the building was owned or occupied by a Commonwealth entity.

(5) In this section:

property offence means:

(a) robbery; or

(b) aggravated robbery; or

(c) burglary; or

(d) aggravated burglary; or

(e) an offence against subsection 132.8(1); or

(f) an offence against section 134.1.

Note: It is an element of the offence of theft, and of each property offence, that the property belongs to a Commonwealth entity.

132.8 Dishonest taking or retention of property

Taking

(1) A person commits an offence if the person:

(a) on a particular occasion, dishonestly takes one or more items of property belonging to a Commonwealth entity, where:

(i) the value or total value of the property is $500 or more; or

(ii) the absence of the property from the possession, custody or control of the person who would otherwise have had possession, custody or control would be likely to cause

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substantial disruption to activities carried on by or on behalf of a Commonwealth entity; and

(b) does not have consent to do so from the person who has authority to give consent.

Penalty: Imprisonment for 2 years.

Retention

(2) A person commits an offence if the person:

(a) on a particular occasion, takes one or more items of property belonging to a Commonwealth entity; and

(b) dishonestly retains any or all of those items; and

(c) does not have consent to the retention from the person who has authority to give consent; and

(d) either:

(i) at the time of the taking of the property, the value or total value of the property was $500 or more; or

(ii) the absence of the property from the possession, custody or control of the person who would otherwise have had possession, custody or control is likely to cause substantial disruption to activities carried on by or on behalf of a Commonwealth entity.

Penalty: Imprisonment for 2 years.

132.9 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division.

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Part 7.3—Fraudulent conduct

Division 133—Preliminary

133.1 Definitions

In this Part:

account means an account (including a loan account, a credit card account or a similar account) with a bank or other financial institution.

deception means an intentional or reckless deception, whether by words or other conduct, and whether as to fact or as to law, and includes:

(a) a deception as to the intentions of the person using the deception or any other person; and

(b) conduct by a person that causes a computer, a machine or an electronic device to make a response that the person is not authorised to cause it to do.

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Division 134—Obtaining property or a financial advantage by deception

134.1 Obtaining property by deception

(1) A person commits an offence if:

(a) the person, by a deception, dishonestly obtains property belonging to another with the intention of permanently depriving the other of the property; and

(b) the property belongs to a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(2) Absolute liability applies to the paragraph (1)(b) element of the offence.

Obtaining property

(3) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), a person (the ***first person***) is taken to have ***obtained*** property if, and only if:

(a) the first person obtains ownership, possession or control of it for himself or herself or for another person; or

(b) the first person enables ownership, possession or control of it to be retained by himself or herself; or

(c) the first person induces a third person to pass ownership, possession or control of it to another person; or

(d) the first person induces a third person to enable another person to retain ownership, possession or control of it; or

(e) subsection (9) or (10) applies.

(4) The definition of ***obtaining*** in section 130.1 does not apply for the purposes of this section (or for the purposes of the application of section 132.1 to this section).

(5) For the purposes of this section, a person's obtaining of property belonging to another may be dishonest even if the person or another person is willing to pay for the property.

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Intention of permanently depriving a person of property

(6) For the purposes of this section, if:
   (a) a person obtains property belonging to another without meaning the other permanently to lose the thing itself; and
   (b) the person's intention is to treat the thing as the person's own to dispose of regardless of the other's rights;

   the person has the intention of permanently depriving the other of it.

(7) For the purposes of subsection (6), a borrowing or lending of a thing amounts to treating the thing as the borrower's or lender's own to dispose of regardless of another's rights if, and only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.

(8) For the purposes of subsection (6), if:
   (a) a person has possession or control (lawfully or not) of property belonging to another; and
   (b) the person parts with the property under a condition as to its return that the person may not be able to perform; and
   (c) the parting is done for purposes of the person's own and without the other's authority;

   the parting is taken to amount to treating the property as the person's own to dispose of regardless of the other's rights.

Money transfers

(9) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), if a person (the ***first person***) causes an amount to be transferred from an account held by another person (the ***second person***) to an account held by the first person:
   (a) the amount is taken to have been property that belonged to the second person; and
   (b) the first person is taken to have obtained the property for himself or herself with the intention of permanently depriving the second person of the property.

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(10) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), if a person (the ***first person***) causes an amount to be transferred from an account held by another person (the ***second person***) to an account held by a third person:

(a) the amount is taken to have been property that belonged to the second person; and

(b) the first person is taken to have obtained the property for the third person with the intention of permanently depriving the second person of the property.

(11) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), if:

(a) a credit is made to an account (the ***credited account***); and

(b) a debit is made to another account (the ***debited account***); and

(c) either:

(i) the credit results from the debit; or

(ii) the debit results from the credit;

the amount of the credit is taken to be transferred from the debited account to the credited account.

(12) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), a person is taken to cause an amount to be transferred from an account if the person induces another person to transfer the amount from the account (whether or not the other person is the holder of the account).

General deficiency

(13) A person may be convicted of an offence against this section involving all or any part of a general deficiency in money even though the deficiency is made up of any number of particular sums of money that were obtained over a period of time.

(14) A person may be convicted of an offence against this section involving all or any part of a general deficiency in property other than money even though the deficiency is made up of any number of particular items of property that were obtained over a period of time.

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Alternative verdicts

(15) If, in a prosecution for an offence of theft, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against this section, the trier of fact may find the defendant not guilty of the offence of theft but guilty of the offence against this section, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

(16) If, in a prosecution for an offence against this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence of theft, the trier of fact may find the defendant not guilty of the offence against this section but guilty of the offence of theft, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

134.2 Obtaining a financial advantage by deception

(1) A person commits an offence if:
  (a) the person, by a deception, dishonestly obtains a financial advantage from another person; and
  (b) the other person is a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(2) Absolute liability applies to the paragraph (1)(b) element of the offence.

134.3 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division.

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Division 135—Other offences involving fraudulent conduct

135.1 General dishonesty

Obtaining a gain

(1) A person commits an offence if:
  (a) the person does anything with the intention of dishonestly obtaining a gain from another person; and
  (b) the other person is a Commonwealth entity.

Penalty: Imprisonment for 5 years.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the other person was a Commonwealth entity.

Causing a loss

(3) A person commits an offence if:
  (a) the person does anything with the intention of dishonestly causing a loss to another person; and
  (b) the other person is a Commonwealth entity.

Penalty: Imprisonment for 5 years.

(4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the other person was a Commonwealth entity.

(5) A person commits an offence if:
  (a) the person dishonestly causes a loss, or dishonestly causes a risk of loss, to another person; and
  (b) the first-mentioned person knows or believes that the loss will occur or that there is a substantial risk of the loss occurring; and
  (c) the other person is a Commonwealth entity.

Penalty: Imprisonment for 5 years.

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(6) Absolute liability applies to the paragraph (5)(c) element of the offence.

Influencing a Commonwealth public official

(7) A person commits an offence if:
  (a) the person does anything with the intention of dishonestly influencing a public official in the exercise of the official's duties as a public official; and
  (b) the public official is a Commonwealth public official; and
  (c) the duties are duties as a Commonwealth public official.

Penalty: Imprisonment for 5 years.

(8) In a prosecution for an offence against subsection (7), it is not necessary to prove that the defendant knew:
  (a) that the official was a Commonwealth public official; or
  (b) that the duties were duties as a Commonwealth public official.

135.2 Obtaining financial advantage

(1) A person commits an offence if:
  (a) the person engages in conduct; and
  (aa) as a result of that conduct, the person obtains a financial advantage for himself or herself from another person; and
  (ab) the person knows or believes that he or she is not eligible to receive that financial advantage; and
  (b) the other person is a Commonwealth entity.

Penalty: Imprisonment for 12 months.

(1A) Absolute liability applies to the paragraph (1)(b) element of the offence.

(2) A person commits an offence if:
  (a) the person engages in conduct; and
  (aa) as a result of that conduct, the person obtains a financial advantage for another person from a third person; and

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(ab) the person knows or believes that the other person is not eligible to receive that financial advantage; and

(b) the third person is a Commonwealth entity.

Penalty: Imprisonment for 12 months.

(2A) Absolute liability applies to the paragraph (2)(b) element of the offence.

(3) For the purposes of subsection (2), a person is taken to have obtained a financial advantage for another person from a Commonwealth entity if the first-mentioned person induces the Commonwealth entity to do something that results in the other person obtaining the financial advantage.

(4) The definition of ***obtaining*** in section 130.1 does not apply to this section.

135.4 Conspiracy to defraud

Obtaining a gain

(1) A person commits an offence if:

(a) the person conspires with another person with the intention of dishonestly obtaining a gain from a third person; and

(b) the third person is a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the third person was a Commonwealth entity.

Causing a loss

(3) A person commits an offence if:

(a) the person conspires with another person with the intention of dishonestly causing a loss to a third person; and

(b) the third person is a Commonwealth entity.

Penalty: Imprisonment for 10 years.

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(4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the third person was a Commonwealth entity.

(5) A person commits an offence if:
  (a) the person conspires with another person to dishonestly cause a loss, or to dishonestly cause a risk of loss, to a third person; and
  (b) the first-mentioned person knows or believes that the loss will occur or that there is a substantial risk of the loss occurring; and
  (c) the third person is a Commonwealth entity.

  Penalty: Imprisonment for 10 years.

(6) In a prosecution for an offence against subsection (5), it is not necessary to prove that the defendant knew that the third person was a Commonwealth entity.

Influencing a Commonwealth public official

(7) A person commits an offence if:
  (a) the person conspires with another person with the intention of dishonestly influencing a public official in the exercise of the official's duties as a public official; and
  (b) the public official is a Commonwealth public official; and
  (c) the duties are duties as a Commonwealth public official.

  Penalty: Imprisonment for 10 years.

(8) In a prosecution for an offence against subsection (7), it is not necessary to prove that the defendant knew:
  (a) that the official was a Commonwealth public official; or
  (b) that the duties were duties as a Commonwealth public official.

General provisions

(9) For a person to be guilty of an offence against this section:

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(a) the person must have entered into an agreement with one or more other persons; and

(b) the person and at least one other party to the agreement must have intended to do the thing pursuant to the agreement; and

(c) the person or at least one other party to the agreement must have committed an overt act pursuant to the agreement.

(10) A person may be found guilty of an offence against this section even if:

(a) obtaining the gain, causing the loss, causing the risk of loss, or influencing the Commonwealth public official, as the case may be, is impossible; or

(b) the only other party to the agreement is a body corporate; or

(c) each other party to the agreement is a person who is not criminally responsible; or

(d) subject to subsection (11), all other parties to the agreement have been acquitted of the offence.

(11) A person cannot be found guilty of an offence against this section if:

(a) all other parties to the agreement have been acquitted of such an offence; and

(b) a finding of guilt would be inconsistent with their acquittal.

(12) A person cannot be found guilty of an offence against this section if, before the commission of an overt act pursuant to the agreement, the person:

(a) withdrew from the agreement; and

(b) took all reasonable steps to prevent the doing of the thing.

(13) A court may dismiss a charge of an offence against this section if the court thinks that the interests of justice require the court to do so.

(14) Proceedings for an offence against this section must not be commenced without the consent of the Director of Public Prosecutions. However, before the necessary consent has been given, a person may be:

(a) arrested for an offence against this section; or

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(b) charged with an offence against this section; or

(c) remanded in custody or released on bail in connection with an offence against this section.

135.5 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division.

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Part 7.4—False or misleading statements

Division 136—False or misleading statements in applications

136.1 False or misleading statements in applications

Knowledge

(1) A person commits an offence if:

(a) the person makes a statement (whether orally, in a document or in any other way); and

(b) the person does so knowing that the statement:

(i) is false or misleading; or

(ii) omits any matter or thing without which the statement is misleading; and

(c) the statement is made in, or in connection with:

(i) an application for a licence, permit or authority; or

(ii) an application for registration; or

(iii) an application or claim for a benefit; and

(d) any of the following subparagraphs applies:

(i) the statement is made to a Commonwealth entity;

(ii) the statement is made to a person who is exercising powers or performing functions under, or in connection with, a law of the Commonwealth;

(iii) the statement is made in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

(1A) Absolute liability applies to each of the subparagraph (1)(d)(i), (ii) and (iii) elements of the offence.

(2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the statement is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

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(3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the statement did not omit any matter or thing without which the statement is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3).

Recklessness

(4) A person commits an offence if:

(a) the person makes a statement (whether orally, in a document or in any other way); and

(b) the person does so reckless as to whether the statement:

(i) is false or misleading; or

(ii) omits any matter or thing without which the statement is misleading; and

(c) the statement is made in, or in connection with:

(i) an application for a licence, permit or authority; or

(ii) an application for registration; or

(iii) an application or claim for a benefit; and

(d) any of the following subparagraphs applies:

(i) the statement is made to a Commonwealth entity;

(ii) the statement is made to a person who is exercising powers or performing functions under, or in connection with, a law of the Commonwealth;

(iii) the statement is made in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 6 months.

(4A) Absolute liability applies to each of the subparagraph (4)(d)(i), (ii) and (iii) elements of the offence.

(5) Subsection (4) does not apply as a result of subparagraph (4)(b)(i) if the statement is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3).

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(6) Subsection (4) does not apply as a result of subparagraph (4)(b)(ii) if the statement did not omit any matter or thing without which the statement is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6). See subsection 13.3(3).

Alternative verdicts

(7) If, in a prosecution for an offence against subsection (1), the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against subsection (4), the trier of fact may find the defendant not guilty of the offence against subsection (1) but guilty of the offence against subsection (4), so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Geographical jurisdiction

(8) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1) or (4).

Definitions

(9) In this section:

benefit includes any advantage and is not limited to property.

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Division 137—False or misleading information or documents

137.1 False or misleading information

(1) A person commits an offence if:

(a) the person gives information to another person; and

(b) the person does so knowing that the information:

(i) is false or misleading; or

(ii) omits any matter or thing without which the information is misleading; and

(c) any of the following subparagraphs applies:

(i) the information is given to a Commonwealth entity;

(ii) the information is given to a person who is exercising powers or performing functions under, or in connection with, a law of the Commonwealth;

(iii) the information is given in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

(1A) Absolute liability applies to each of the subparagraph (1)(c)(i), (ii) and (iii) elements of the offence.

(2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the information is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

(3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the information did not omit any matter or thing without which the information is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3).

(4) Subsection (1) does not apply as a result of subparagraph (1)(c)(i) if, before the information was given by a person to the Commonwealth entity, the Commonwealth entity did not take

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reasonable steps to inform the person of the existence of the offence against subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (4). See subsection 13.3(3).

(5) Subsection (1) does not apply as a result of subparagraph (1)(c)(ii) if, before the information was given by a person (the ***first person***) to the person mentioned in that subparagraph (the ***second person***), the second person did not take reasonable steps to inform the first person of the existence of the offence against subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3).

(6) For the purposes of subsections (4) and (5), it is sufficient if the following form of words is used:

"Giving false or misleading information is a serious offence".

137.2 False or misleading documents

(1) A person commits an offence if:

(a) the person produces a document to another person; and

(b) the person does so knowing that the document is false or misleading; and

(c) the document is produced in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

(2) Subsection (1) does not apply if the document is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

(3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:

(a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and

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(b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3).

137.3 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division.

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Part 7.5—Unwarranted demands

Division 138—Preliminary

138.1 Unwarranted demand with menaces

(1) For the purposes of this Part, a person (the ***first person***) makes an ***unwarranted demand with menaces*** of another person if, and only if:

(a) the first person makes a demand with menaces of the other person; and

(b) the first person does not believe that he or she has reasonable grounds for making the demand; and

(c) the first person does not reasonably believe that the use of the menaces is a proper means of reinforcing the demand.

(2) This Part applies to a demand whether or not it is for property.

(3) This Part applies to a demand with menaces, whether or not the menaces relate to conduct to be engaged in by the person making the demand.

138.2 Menaces

(1) For the purposes of this Part, ***menaces*** includes:

(a) a threat (whether express or implied) of conduct that is detrimental or unpleasant to another person; or

(b) a general threat of detrimental or unpleasant conduct that is implied because of the status, office or position of the maker of the threat.

Threat against an individual

(2) For the purposes of this Part, a threat against an individual is taken not to be ***menaces*** unless:

(a) both:

(i) the threat would be likely to cause the individual to act unwillingly; and

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(ii) the maker of the threat is aware of the vulnerability of the individual to the threat; or

(b) the threat would be likely to cause a person of normal stability and courage to act unwillingly.

Threat against a person who is not an individual

(3) For the purposes of this Part, a threat against a person who is not an individual is taken not to be ***menaces*** unless:

(a) the threat would ordinarily cause an unwilling response; or

(b) the threat would be likely to cause an unwilling response because of a particular vulnerability of which the maker of the threat is aware.

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Division 139—Unwarranted demands

139.1 Unwarranted demands of a Commonwealth public official

A person commits an offence if:

(a) the person makes an unwarranted demand with menaces of another person; and

(b) the demand or the menaces are directly or indirectly related to:

(i) the other person's capacity as a Commonwealth public official; or

(ii) any influence the other person has in the other person's capacity as a Commonwealth public official; and

(c) the first-mentioned person does so with the intention of:

(i) obtaining a gain; or

(ii) causing a loss; or

(iii) influencing the official in the exercise of the official's duties as a Commonwealth public official.

Penalty: Imprisonment for 12 years.

139.2 Unwarranted demands made by a Commonwealth public official

A Commonwealth public official commits an offence if:

(a) the official makes an unwarranted demand with menaces of another person; and

(b) the demand or the menaces are directly or indirectly related to:

(i) the official's capacity as a Commonwealth public official; or

(ii) any influence the official has in the official's capacity as a Commonwealth public official; and

(c) the official does so with the intention of:

(i) obtaining a gain; or

(ii) causing a loss; or

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(iii) influencing another Commonwealth public official in the exercise of the other official's duties as a Commonwealth public official.

Penalty: Imprisonment for 12 years.

139.3 Geographical jurisdiction

Section 15.3 (extended geographical jurisdiction—category C) applies to each offence against this Division.

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Part 7.6—Bribery and related offences

Division 140—Preliminary

140.1 Definition

In this Part:

benefit includes any advantage and is not limited to property.

140.2 Obtaining

(1) For the purposes of this Part, a person is taken to have obtained a benefit for another person if the first-mentioned person induces a third person to do something that results in the other person obtaining the benefit.

(2) The definition of ***obtaining*** in section 130.1 does not apply to this Part.

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Division 141—Bribery

141.1 Bribery of a Commonwealth public official

Giving a bribe

(1) A person commits an offence if:
  (a) the person dishonestly:
    (i) provides a benefit to another person; or
    (ii) causes a benefit to be provided to another person; or
    (iii) offers to provide, or promises to provide, a benefit to another person; or
    (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
  (b) the person does so with the intention of influencing a public official (who may be the other person) in the exercise of the official's duties as a public official; and
  (c) the public official is a Commonwealth public official; and
  (d) the duties are duties as a Commonwealth public official.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew:
  (a) that the official was a Commonwealth public official; or
  (b) that the duties were duties as a Commonwealth public official.

Receiving a bribe

(3) A Commonwealth public official commits an offence if:
  (a) the official dishonestly:
    (i) asks for a benefit for himself, herself or another person; or
    (ii) receives or obtains a benefit for himself, herself or another person; or
    (iii) agrees to receive or obtain a benefit for himself, herself or another person; and

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(b) the official does so with the intention:
  (i) that the exercise of the official's duties as a Commonwealth public official will be influenced; or
  (ii) of inducing, fostering or sustaining a belief that the exercise of the official's duties as a Commonwealth public official will be influenced.

Geographical jurisdiction

(4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1) or (3).

Penalty for individual

(5) An offence against subsection (1) or (3) committed by an individual is punishable on conviction by imprisonment for not more than 10 years, a fine not more than 10,000 penalty units, or both.

Penalty for body corporate

(6) An offence against subsection (1) or (3) committed by a body corporate is punishable on conviction by a fine not more than the greatest of the following:
  (a) 100,000 penalty units;
  (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the conduct constituting the offence—3 times the value of that benefit;
  (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the period (the ***turnover period***) of 12 months ending at the end of the month in which the conduct constituting the offence occurred.

(7) For the purposes of this section, the ***annual turnover*** of a body corporate, during the turnover period, is the sum of the values of all the supplies that the body corporate, and any body corporate

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related to the body corporate, have made, or are likely to make, during that period, other than the following supplies:

(a) supplies made from any of those bodies corporate to any other of those bodies corporate;

(b) supplies that are input taxed;

(c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*);

(d) supplies that are not made in connection with an enterprise that the body corporate carries on.

(8) Expressions used in subsection (7) that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning in that subsection as they have in that Act.

(9) The question whether 2 bodies corporate are related to each other is to be determined for the purposes of this section in the same way as for the purposes of the *Corporations Act 2001*.

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Division 142—Offences relating to bribery

142.1 Corrupting benefits given to, or received by, a Commonwealth public official

Giving a corrupting benefit

(1) A person commits an offence if:
  (a) the person dishonestly:
    (i) provides a benefit to another person; or
    (ii) causes a benefit to be provided to another person; or
    (iii) offers to provide, or promises to provide, a benefit to another person; or
    (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
  (b) the receipt, or expectation of the receipt, of the benefit would tend to influence a public official (who may be the other person) in the exercise of the official's duties as a public official; and
  (c) the public official is a Commonwealth public official; and
  (d) the duties are duties as a Commonwealth public official.

Penalty: Imprisonment for 5 years.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew:
  (a) that the official was a Commonwealth public official; or
  (b) that the duties were duties as a Commonwealth public official.

Receiving a corrupting benefit

(3) A Commonwealth public official commits an offence if:
  (a) the official dishonestly:
    (i) asks for a benefit for himself, herself or another person; or

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(ii) receives or obtains a benefit for himself, herself or another person; or

(iii) agrees to receive or obtain a benefit for himself, herself or another person; and

(b) the receipt, or expectation of the receipt, of the benefit would tend to influence a Commonwealth public official (who may be the first-mentioned official) in the exercise of the official's duties as a Commonwealth public official.

Penalty: Imprisonment for 5 years.

Benefit in the nature of a reward

(4) For the purposes of subsections (1) and (3), it is immaterial whether the benefit is in the nature of a reward.

142.2 Abuse of public office

(1) A Commonwealth public official commits an offence if:

(a) the official:

(i) exercises any influence that the official has in the official's capacity as a Commonwealth public official; or

(ii) engages in any conduct in the exercise of the official's duties as a Commonwealth public official; or

(iii) uses any information that the official has obtained in the official's capacity as a Commonwealth public official; and

(b) the official does so with the intention of:

(i) dishonestly obtaining a benefit for himself or herself or for another person; or

(ii) dishonestly causing a detriment to another person.

Penalty: Imprisonment for 5 years.

(2) A person commits an offence if:

(a) the person has ceased to be a Commonwealth public official in a particular capacity; and

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(b) the person uses any information that the person obtained in that capacity as a Commonwealth public official; and

(c) the person does so with the intention of:

(i) dishonestly obtaining a benefit for himself or herself or for another person; or

(ii) dishonestly causing a detriment to another person.

Penalty: Imprisonment for 5 years.

(3) Paragraph (2)(a) applies to a cessation by a person:

(a) whether or not the person continues to be a Commonwealth public official in some other capacity; and

(b) whether the cessation occurred before, at or after the commencement of this section.

142.3 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division.

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Part 7.7—Forgery and related offences

Division 143—Preliminary

143.1 Definitions

(1) In this Part:

document includes:

(a) any paper or other material on which there is writing; or

(b) any paper or other material on which there are marks, figures, symbols or perforations that are:

(i) capable of being given a meaning by persons qualified to interpret them; or

(ii) capable of being responded to by a computer, a machine or an electronic device; or

(c) any article or material (for example, a disk or a tape) from which information is capable of being reproduced with or without the aid of any other article or device.

false Commonwealth document has the meaning given by section 143.3.

false document has the meaning given by section 143.2.

information means information, whether in the form of data, text, sounds, images or in any other form.

(2) The following are examples of things covered by the definition of ***document*** in subsection (1):

(a) a credit card;

(b) a debit card;

(c) a card by means of which property can be obtained.

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143.2 False documents

(1) For the purposes of this Part, a document is a ***false document*** if, and only if:

(a) the document, or any part of the document:

(i) purports to have been made in the form in which it is made by a person who did not make it in that form; or

(ii) purports to have been made in the form in which it is made on the authority of a person who did not authorise its making in that form; or

(b) the document, or any part of the document:

(i) purports to have been made in the terms in which it is made by a person who did not make it in those terms; or

(ii) purports to have been made in the terms in which it is made on the authority of a person who did not authorise its making in those terms; or

(c) the document, or any part of the document:

(i) purports to have been altered in any respect by a person who did not alter it in that respect; or

(ii) purports to have been altered in any respect on the authority of a person who did not authorise its alteration in that respect; or

(d) the document, or any part of the document:

(i) purports to have been made or altered by a person who did not exist; or

(ii) purports to have been made or altered on the authority of a person who did not exist; or

(e) the document, or any part of the document, purports to have been made or altered on a date on which, at a time at which, at a place at which, or otherwise in circumstances in which, it was not made or altered.

(2) For the purposes of this Part, a person is taken to ***make*** a false document if the person alters a document so as to make it a false document (whether or not it was already a false document before the alteration).

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(3) This section has effect as if a document that purports to be a true copy of another document were the original document.

143.3 False Commonwealth documents

(1) For the purposes of this Part, a document is a ***false Commonwealth document*** if, and only if:

(a) the document, or any part of the document:

(i) purports to have been made in the form in which it is made by a Commonwealth entity, or a Commonwealth public official, who did not make it in that form; or

(ii) purports to have been made in the form in which it is made on the authority of a Commonwealth entity, or a Commonwealth public official, who did not authorise its making in that form; or

(b) the document, or any part of the document:

(i) purports to have been made in the terms in which it is made by a Commonwealth entity, or a Commonwealth public official, who did not make it in those terms; or

(ii) purports to have been made in the terms in which it is made on the authority of a Commonwealth entity, or a Commonwealth public official, who did not authorise its making in those terms; or

(c) the document, or any part of the document:

(i) purports to have been altered in any respect by a Commonwealth entity, or a Commonwealth public official, who did not alter it in that respect; or

(ii) purports to have been altered in any respect on the authority of a Commonwealth entity, or a Commonwealth public official, who did not authorise its alteration in that respect; or

(d) the document, or any part of the document:

(i) purports to have been made or altered by a Commonwealth entity, or a Commonwealth public official, who did not exist; or

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(ii) purports to have been made or altered on the authority of a Commonwealth entity, or a Commonwealth public official, who did not exist; or

(e) the document, or any part of the document, purports to have been made or altered by a Commonwealth entity, or a Commonwealth public official, on a date on which, at a time at which, at a place at which, or otherwise in circumstances in which, it was not made or altered.

(2) For the purposes of this Part, a person is taken to ***make*** a false Commonwealth document if the person alters a document so as to make it a false Commonwealth document (whether or not it was already a false Commonwealth document before the alteration).

(3) This section has effect as if a document that purports to be a true copy of another document were the original document.

(4) A reference in this section to a ***Commonwealth public official*** is a reference to a person in the person's capacity as a Commonwealth public official.

143.4 Inducing acceptance of false documents

If it is necessary for the purposes of this Part to prove an intent to induce a person in the person's capacity as a public official to accept a false document as genuine, it is not necessary to prove that the defendant intended so to induce a particular person in the person's capacity as a public official.

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Division 144—Forgery

144.1 Forgery

(1) A person commits an offence if:

(a) the person makes a false document with the intention that the person or another will use it:

(i) to dishonestly induce a third person in the third person's capacity as a public official to accept it as genuine; and

(ii) if it is so accepted, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the capacity is a capacity as a Commonwealth public official.

Penalty: Imprisonment for 10 years.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the capacity was a capacity as a Commonwealth public official.

(3) A person commits an offence if:

(a) the person makes a false document with the intention that the person or another will use it:

(i) to dishonestly cause a computer, a machine or an electronic device to respond to the document as if the document were genuine; and

(ii) if it is so responded to, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the response is in connection with the operations of a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the response was in connection with the operations of a Commonwealth entity.

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(5) A person commits an offence if:

(a) the person makes a false document with the intention that the person or another will use it:

(i) to dishonestly induce a third person to accept it as genuine; and

(ii) if it is so accepted, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

(6) In a prosecution for an offence against subsection (5), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.

(7) A person commits an offence if:

(a) the person makes a false document with the intention that the person or another will use it:

(i) to dishonestly cause a computer, a machine or an electronic device to respond to the document as if the document were genuine; and

(ii) if it is so responded to, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

(8) In a prosecution for an offence against subsection (7), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.

(9) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1), (3), (5) or (7).

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Division 145—Offences relating to forgery

145.1 Using forged document

(1) A person commits an offence if:

(a) the person knows that a document is a false document and uses it with the intention of:

(i) dishonestly inducing another person in the other person's capacity as a public official to accept it as genuine; and

(ii) if it is so accepted, dishonestly obtaining a gain, dishonestly causing a loss, or dishonestly influencing the exercise of a public duty or function; and

(b) the capacity is a capacity as a Commonwealth public official.

Penalty: Imprisonment for 10 years.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the capacity was a capacity as a Commonwealth public official.

(3) A person commits an offence if:

(a) the person knows that a document is a false document and uses it with the intention of:

(i) dishonestly causing a computer, a machine or an electronic device to respond to the document as if the document were genuine; and

(ii) if it is so responded to, dishonestly obtaining a gain, dishonestly causing a loss, or dishonestly influencing the exercise of a public duty or function; and

(b) the response is in connection with the operations of a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the response was in connection with the operations of a Commonwealth entity.

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(5) A person commits an offence if:

(a) the person knows that a document is a false document and uses it with the intention of:

(i) dishonestly inducing another person to accept it as genuine; and

(ii) if it is so accepted, dishonestly obtaining a gain, dishonestly causing a loss, or dishonestly influencing the exercise of a public duty or function; and

(b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

(6) In a prosecution for an offence against subsection (5), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.

(7) A person commits an offence if:

(a) the person knows that a document is a false document and uses it with the intention of:

(i) dishonestly causing a computer, a machine or an electronic device to respond to the document as if the document were genuine; and

(ii) if it is so responded to, dishonestly obtaining a gain, dishonestly causing a loss, or dishonestly influencing the exercise of a public duty or function; and

(b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

(8) In a prosecution for an offence against subsection (7), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.

145.2 Possession of forged document

(1) A person commits an offence if:

(a) the person knows that a document is a false document and has it in his or her possession with the intention that the person or another will use it:

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(i) to dishonestly induce a third person in the third person's capacity as a public official to accept it as genuine; and

(ii) if it is so accepted, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the capacity is a capacity as a Commonwealth public official.

Penalty: Imprisonment for 10 years.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the capacity was a capacity as a Commonwealth public official.

(3) A person commits an offence if:

(a) the person knows that a document is a false document and has it in his or her possession with the intention that the person or another will use it:

(i) to dishonestly cause a computer, a machine or an electronic device to respond to the document as if the document were genuine; and

(ii) if it is so responded to, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the response is in connection with the operations of a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the response was in connection with the operations of a Commonwealth entity.

(5) A person commits an offence if:

(a) the person knows that a document is a false document and has it in his or her possession with the intention that the person or another will use it:

(i) to dishonestly induce a third person to accept it as genuine; and

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(ii) if it is so accepted, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

(6) In a prosecution for an offence against subsection (5), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.

(7) A person commits an offence if:

(a) the person knows that a document is a false document and has it in his or her possession with the intention that the person or another will use it:

(i) to dishonestly cause a computer, a machine or an electronic device to respond to the document as if the document were genuine; and

(ii) if it is so responded to, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

(8) In a prosecution for an offence against subsection (7), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.

145.3 Possession, making or adaptation of devices etc. for making forgeries

(1) A person commits an offence if:

(a) the person knows that a device, material or other thing is designed or adapted for the making of a false document (whether or not the device, material or thing is designed or adapted for another purpose); and

(b) the person has the device, material or thing in his or her possession with the intention that the person or another person will use it to commit an offence against section 144.1.

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Penalty: Imprisonment for 10 years.

(2) A person commits an offence if:

(a) the person makes or adapts a device, material or other thing; and

(b) the person knows that the device, material or other thing is designed or adapted for the making of a false document (whether or not the device, material or thing is designed or adapted for another purpose); and

(c) the person makes or adapts the device, material or thing with the intention that the person or another person will use it to commit an offence against section 144.1.

Penalty: Imprisonment for 10 years.

(3) A person commits an offence if:

(a) the person knows that a device, material or other thing is designed or adapted for the making of a false Commonwealth document (whether or not the device, material or thing is designed or adapted for another purpose); and

(b) the person has the device, material or thing in his or her possession; and

(c) the person does not have a reasonable excuse for having the device, material or thing in his or her possession.

Penalty: Imprisonment for 2 years.

Note: A defendant bears an evidential burden in relation to the matter in paragraph (3)(c). See subsection 13.3(3).

(4) A person commits an offence if:

(a) the person makes or adapts a device, material or other thing; and

(b) the person knows that the device, material or other thing is designed or adapted for the making of a false Commonwealth document (whether or not the device, material or thing is designed or adapted for another purpose).

Penalty: Imprisonment for 2 years.

Note: See also section 10.5 (lawful authority).

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145.4 Falsification of documents etc.

(1) A person commits an offence if:

(a) the person dishonestly damages, destroys, alters, conceals or falsifies a document; and

(b) the document is:

(i) kept, retained or issued for the purposes of a law of the Commonwealth; or

(ii) made by a Commonwealth entity or a person in the capacity of a Commonwealth public official; or

(iii) held by a Commonwealth entity or a person in the capacity of a Commonwealth public official; and

(c) the first-mentioned person does so with the intention of:

(i) obtaining a gain; or

(ii) causing a loss.

Penalty: Imprisonment for 7 years.

(1A) Absolute liability applies to the paragraph (1)(b) element of the offence.

(2) A person commits an offence if:

(a) the person dishonestly damages, destroys, alters, conceals or falsifies a document; and

(b) the person does so with the intention of:

(i) obtaining a gain from another person; or

(ii) causing a loss to another person; and

(c) the other person is a Commonwealth entity.

Penalty: Imprisonment for 7 years.

(3) In a prosecution for an offence against subsection (2), it is not necessary to prove that the defendant knew that the other person was a Commonwealth entity.

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145.5 Giving information derived from false or misleading documents

(1) A person commits an offence if:

(a) the person dishonestly gives information to another person; and

(b) the information was derived, directly or indirectly, from a document that, to the knowledge of the first-mentioned person, is false or misleading in a material particular; and

(c) the document is:

(i) kept, retained or issued for the purposes of a law of the Commonwealth; or

(ii) made by a Commonwealth entity or a person in the capacity of a Commonwealth public official; or

(iii) held by a Commonwealth entity or a person in the capacity of a Commonwealth public official; and

(d) the first-mentioned person does so with the intention of:

(i) obtaining a gain; or

(ii) causing a loss.

Penalty: Imprisonment for 7 years.

(1A) Absolute liability applies to the paragraph (1)(c) element of the offence.

(2) A person commits an offence if:

(a) the person dishonestly gives information to another person; and

(b) the information was derived, directly or indirectly, from a document that, to the knowledge of the first-mentioned person, is false or misleading in a material particular; and

(c) the first-mentioned person does so with the intention of:

(i) obtaining a gain from another person; or

(ii) causing a loss to another person; and

(d) the other person is a Commonwealth entity.

Penalty: Imprisonment for 7 years.

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(3) In a prosecution for an offence against subsection (2), it is not necessary to prove that the defendant knew that the other person was a Commonwealth entity.

145.6 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division.

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Part 7.8—Causing harm to, and impersonation and obstruction of, Commonwealth public officials

Division 146—Preliminary

146.1 Definitions

In this Part:

Commonwealth law enforcement officer means a person who is:

(a) a member or special member of the Australian Federal Police; or

(aa) the Integrity Commissioner (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*); or

(ab) a staff member of ACLEI (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*); or

(b) a member of the Board of the Australian Crime Commission established under section 7B of the *Australian Crime Commission Act 2002*; or

(ba) an examiner (within the meaning of that Act); or

(c) a member of the staff of the ACC (within the meaning of that Act); or

(d) the Australian Border Force Commissioner (within the meaning of the *Australian Border Force Act 2015*); or

(e) a person who is an APS employee in the Department administered by the Minister administering the *Australian Border Force Act 2015* and who is in the Australian Border Force (within the meaning of that Act).

fear includes apprehension.

harm means:

(a) physical harm (whether temporary or permanent); or

(b) harm to a person's mental health (whether temporary or permanent);

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but does not include being subjected to a force or impact that is within the limits of what is reasonably acceptable as incidental to:

(c) social interaction; or

(d) life in the community.

harm to a person's mental health includes significant psychological harm to the person, but does not include a reference to ordinary emotional reactions (for example, distress, grief, fear or anger).

physical harm includes:

(a) unconsciousness; and

(b) pain; and

(c) disfigurement; and

(d) infection with a disease; and

(e) any physical contact with a person that the person might reasonably object to in the circumstances (whether or not the person was aware of it at the time).

serious harm means any harm (including the cumulative effect of more than one harm) that:

(a) endangers, or is likely to endanger, a person's life; or

(b) is, or is likely to be, significant and longstanding.

146.2 Causing harm

For the purposes of this Part, a person's conduct is taken to cause harm if it substantially contributes to harm.

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Division 147—Causing harm to Commonwealth public officials

147.1 Causing harm to a Commonwealth public official etc.

Causing harm to a Commonwealth public official

(1) A person (the ***first person***) commits an offence if:

(a) the first person engages in conduct; and

(b) the first person's conduct causes harm to a public official; and

(c) the first person intends that his or her conduct cause harm to the official; and

(d) the harm is caused without the consent of the official; and

(e) the first person engages in his or her conduct because of:

(i) the official's status as a public official; or

(ii) any conduct engaged in by the official in the official's capacity as a public official; and

(ea) the public official is a Commonwealth public official; and

(eb) if subparagraph (e)(i) applies—the status mentioned in that subparagraph was status as a Commonwealth public official; and

(ec) if subparagraph (e)(ii) applies—the conduct mentioned in that subparagraph was engaged in by the official in the official's capacity as a Commonwealth public official.

Penalty:

(f) if the official is a Commonwealth judicial officer or a Commonwealth law enforcement officer—imprisonment for 13 years; or

(g) in any other case—imprisonment for 10 years.

(1A) Absolute liability applies to the paragraphs (1)(ea), (eb) and (ec) elements of the offence.

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(1B) If:

(a) a person is charged with an offence against subsection (1); and

(b) the public official concerned is a Commonwealth judicial officer or a Commonwealth law enforcement officer;

a court of summary jurisdiction may, with the consent of the defendant and the prosecutor and if the court is satisfied that it is proper to do so, determine the charge summarily.

(1C) If a court of summary jurisdiction convicts a person of an offence against subsection (1) in accordance with subsection (1B), the penalty that the court may impose is a sentence of imprisonment not exceeding 2 years or a fine not exceeding 120 penalty units, or both.

Causing harm to a former Governor-General, former Minister or former Parliamentary Secretary

(2) A person (the ***first person***) commits an offence if:

(a) the first person engages in conduct; and

(b) the first person's conduct causes harm to another person; and

(c) the other person is a former Governor-General, a former Minister or a former Parliamentary Secretary; and

(d) the first person intends that his or her conduct cause harm to the other person; and

(e) the harm is caused without the consent of the other person; and

(f) the first person engages in his or her conduct because of:

(i) the other person's status as a former Governor-General, former Minister or former Parliamentary Secretary; or

(ii) any conduct engaged in by the other person in the other person's former capacity as a Governor-General, Minister or Parliamentary Secretary.

Penalty: Imprisonment for 10 years.

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147.2 Threatening to cause harm to a Commonwealth public official etc.

Threatening to cause serious harm

(1) A person (the ***first person***) commits an offence if:

(a) the first person makes to another person (the ***second person***) a threat to cause serious harm to the second person or to a third person; and

(b) the second person or the third person is a public official; and

(c) the first person:

(i) intends the second person to fear that the threat will be carried out; or

(ii) is reckless as to causing the second person to fear that the threat will be carried out; and

(d) the first person makes the threat because of:

(i) the official's status as a public official; or

(ii) any conduct engaged in by the official in the official's capacity as a public official; and

(da) the official is a Commonwealth public official; and

(db) if subparagraph (d)(i) applies—the status mentioned in that subparagraph was status as a Commonwealth public official; and

(dc) if subparagraph (d)(ii) applies—the conduct mentioned in that subparagraph was engaged in by the official in the official's capacity as a Commonwealth public official.

Penalty:

(e) if the official is a Commonwealth judicial officer or a Commonwealth law enforcement officer—imprisonment for 9 years; or

(f) in any other case—imprisonment for 7 years.

(1A) Absolute liability applies to the paragraphs (1)(da), (db) and (dc) elements of the offence.

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Threatening to cause harm

(2) A person (the ***first person***) commits an offence if:

(a) the first person makes to another person (the ***second person***) a threat to cause harm to the second person or to a third person; and

(b) the second person or the third person is a public official; and

(c) the first person:

(i) intends the second person to fear that the threat will be carried out; or

(ii) is reckless as to causing the second person to fear that the threat will be carried out; and

(d) the first person makes the threat because of:

(i) the official's status as a public official; or

(ii) any conduct engaged in by the official in the official's capacity as a public official; and

(e) the official is a Commonwealth public official; and

(f) if subparagraph (d)(i) applies—the status mentioned in that subparagraph was status as a Commonwealth public official; and

(g) if subparagraph (d)(ii) applies—the conduct mentioned in that subparagraph was engaged in by the official in the official's capacity as a Commonwealth public official.

Penalty: Imprisonment for 2 years

(2A) Absolute liability applies to the paragraphs (2)(e), (f) and (g) elements of the offence.

Threatening to cause serious harm to a former Governor-General, former Minister or former Parliamentary Secretary

(3) A person (the ***first person***) commits an offence if:

(a) the first person makes to another person (the ***second person***) a threat to cause serious harm to the second person or to a third person; and

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(b) the second person or the third person is a former Governor-General, a former Minister or a former Parliamentary Secretary; and

(c) the first person:

(i) intends the second person to fear that the threat will be carried out; or

(ii) is reckless as to causing the second person to fear that the threat will be carried out; and

(d) the first person makes the threat because of:

(i) the second or third person's status as a former Governor-General, a former Minister or a former Parliamentary Secretary; or

(ii) any conduct engaged in by the second or third person in the second or third person's former capacity as a Governor-General, a Minister or a Parliamentary Secretary.

Penalty: Imprisonment for 7 years.

Threats

(4) For the purposes of this section, a ***threat*** may be:

(a) express or implied; or

(b) conditional or unconditional.

Unnecessary to prove that a threatened person actually feared harm

(5) In a prosecution for an offence against this section, it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

147.3 Geographical jurisdiction

Section 15.3 (extended geographical jurisdiction—category C) applies to each offence against this Division.

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Division 148—Impersonation of Commonwealth public officials

148.1 Impersonation of an official by a non-official

(1) A person other than a Commonwealth public official commits an offence if:

(a) on a particular occasion, the person impersonates another person in that other person's capacity as a Commonwealth public official; and

(b) the first-mentioned person does so knowing it to be in circumstances when the official is likely to be on duty; and

(c) the first-mentioned person does so with intent to deceive.

Penalty: Imprisonment for 2 years.

(2) A person other than a Commonwealth public official commits an offence if:

(a) the person falsely represents himself or herself to be a Commonwealth public official in a particular capacity; and

(b) the person does so in the course of doing an act, or attending a place, in the assumed capacity of such an official.

Penalty: Imprisonment for 2 years.

(2A) For the purposes of subsection (2), it is immaterial whether that capacity as a Commonwealth public official exists or is fictitious.

(3) A person other than a Commonwealth public official commits an offence if:

(a) the person:

(i) impersonates another person in that other person's capacity as a Commonwealth public official; or

(ii) falsely represents himself or herself to be a Commonwealth public official in a particular capacity; and

(b) the first-mentioned person does so with the intention of:

(i) obtaining a gain; or

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(ii) causing a loss; or

(iii) influencing the exercise of a public duty or function; and

(c) if subparagraph (a)(i) applies—the first-mentioned person also does so with intent to deceive.

Penalty: Imprisonment for 5 years.

(3A) For the purposes of subparagraph (3)(a)(ii), it is immaterial whether that capacity as a Commonwealth public official exists or is fictitious.

(4) The definition of ***duty*** in section 130.1 does not apply to this section.

(5) To avoid doubt, for the purposes of this section:

(a) ***impersonation*** does not include conduct engaged in solely for satirical purposes; and

(b) ***false representation*** does not include conduct engaged in solely for satirical purposes.

148.2 Impersonation of an official by another official

(1) A Commonwealth public official commits an offence if:

(a) on a particular occasion, the official impersonates another person in that other person's capacity as a Commonwealth public official; and

(b) the first-mentioned official does so knowing it to be in circumstances when the other official is likely to be on duty; and

(c) the first-mentioned official does so with intent to deceive.

Penalty: Imprisonment for 2 years.

(2) A Commonwealth public official commits an offence if:

(a) the official falsely represents himself or herself to be a Commonwealth public official in a particular capacity; and

(b) the official does so in the course of doing an act, or attending a place, in the assumed capacity of such an official.

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Penalty: Imprisonment for 2 years.

(2A) For the purposes of subsection (2), it is immaterial whether that capacity as a Commonwealth public official exists or is fictitious.

(3) A Commonwealth public official commits an offence if:

(a) the official:

(i) impersonates another person in the other person's capacity as a Commonwealth public official; or

(ii) falsely represents himself or herself to be a Commonwealth public official in a particular capacity; and

(b) the first-mentioned official does so with the intention of:

(i) obtaining a gain; or

(ii) causing a loss; or

(iii) influencing the exercise of a public duty or function; and

(c) if subparagraph (a)(i) applies—the first-mentioned official also does so with intent to deceive.

Penalty: Imprisonment for 5 years.

(3A) For the purposes of subparagraph (3)(a)(ii), it is immaterial whether that capacity as a Commonwealth public official exists or is fictitious.

(4) The definition of ***duty*** in section 130.1 does not apply to this section.

(5) To avoid doubt, for the purposes of this section:

(a) ***impersonation*** does not include conduct engaged in solely for satirical purposes; and

(b) ***false representation*** does not include conduct engaged in solely for satirical purposes.

148.3 Geographical jurisdiction

Section 15.3 (extended geographical jurisdiction—category C) applies to each offence against this Division.

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Division 149—Obstruction of Commonwealth public officials

149.1 Obstruction of Commonwealth public officials

(1) A person commits an offence if:

(a) the person knows that another person is a public official; and

(b) the first-mentioned person obstructs, hinders, intimidates or resists the official in the performance of the official's functions; and

(c) the official is a Commonwealth public official; and

(d) the functions are functions as a Commonwealth public official.

Penalty: Imprisonment for 2 years.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew:

(a) that the official was a Commonwealth public official; or

(b) that the functions were functions as a Commonwealth public official.

(3) For the purposes of this section, it is immaterial whether the defendant was aware that the public official was performing the official's functions.

(4) Section 15.3 (extended geographical jurisdiction—category C) applies to an offence against subsection (1).

(5) The definition of ***duty*** in section 130.1 does not apply to this section.

(6) In this section:

function:

(a) in relation to a person who is a public official—means any authority, duty, function or power that is conferred on the person as a public official; or

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(b) in relation to a person who is a Commonwealth public official—means any authority, duty, function or power that is conferred on the person as a Commonwealth public official.

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Part 7.20—Miscellaneous

Division 261—Miscellaneous

261.1 Saving of other laws

This Chapter is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

261.2 Contempt of court

This Chapter does not limit the power of a court to punish a contempt of the court.

261.3 Ancillary offences

To avoid doubt, subsection 11.6(2) does not apply to the following provisions:

(a) subsection 131.1(2) (theft);
(b) subsection 132.1(2) (receiving);
(c) subsection 132.2(2) (robbery);
(d) subsection 132.3(2) (aggravated robbery);
(e) subsections 132.4(2), (5) and (9) (burglary);
(f) subsection 132.5(2) (aggravated burglary);
(g) the definitions of ***aggravated burglary***, ***aggravated robbery***, ***burglary***, ***receiving***, ***robbery*** and ***theft*** in the Dictionary.

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