



Anti-Terrorism Act (No. 2) 2005

No. 144, 2005

**An Act to amend the law relating to terrorist acts,
and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Anti-Terrorism Act (No. 2) 2005

No. 144, 2005

An Act to amend the law relating to terrorist acts, and for other purposes

[Assented to 14 December 2005]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Anti-Terrorism Act (No. 2) 2005*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	14 December 2005
2. Schedule 1, items 1 to 21	The day after this Act receives the Royal Assent.	15 December 2005
3. Schedule 1, item 22	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	16 February 2006 (see F2006L00345)
4. Schedule 1, item 23	The day after this Act receives the Royal Assent.	15 December 2005
5. Schedule 2	The day on which this Act receives the Royal Assent.	14 December 2005
6. Schedules 3 to 6	The day after this Act receives the Royal Assent.	15 December 2005
7. Schedules 7 and 8	The 28th day after the day on which this Act receives the Royal Assent.	11 January 2006
8. Schedule 9, items 1 and 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 12 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	Did not commence (see Act No. 170, 2006, Sch. 1 [item 2])
9. Schedule 9, items 3 and 4	The day on which this Act receives the Royal Assent.	14 December 2005
10. Schedule 9, item 5	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 12 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	Did not commence (see Act No. 170, 2006, Sch. 1 [item 3])

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
11. Schedule 9, item 6	At the same time as the provision(s) covered by table item 8.	Did not commence (see Act No. 170, 2006, Sch. 1 [item 4])
12. Schedule 9, item 7	The day on which this Act receives the Royal Assent.	14 December 2005
13. Schedule 9, items 8 and 9	At the same time as the provision(s) covered by table item 8.	Did not commence (see Act No. 170, 2006, Sch. 1 [item 5])
14. Schedule 9, item 10	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 12 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	Did not commence (see Act No. 170, 2006, Sch. 1 [item 6])
15. Schedule 9, item 11	At the same time as the provision(s) covered by table item 10.	Did not commence (see Act No. 170, 2006, Sch. 1 [item 7])
16. Schedule 9, items 12 and 13	At the same time as the provision(s) covered by table item 14.	Did not commence (see Act No. 170, 2006, Sch. 1 [item 8])
17. Schedule 9, items 14 and 15	At the same time as the provision(s) covered by table item 8.	Did not commence (see Act No. 170, 2006, Sch. 1 [item 9])
18. Schedule 9, items 16 and 17	At the same time as the provision(s) covered by table item 14.	Did not commence (see Act No. 170, 2006, Sch. 1 [item 10])

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
19. Schedule 9, items 18 to 24	At the same time as the provision(s) covered by table item 8.	Did not commence (see Act No. 170, 2006, Sch. 1 [item 11])
20. Schedule 10, items 1 to 25	The day on which this Act receives the Royal Assent.	14 December 2005
21. Schedule 10, items 26 to 28	The day after this Act receives the Royal Assent.	15 December 2005
22. Schedule 10, items 29 to 32	The day on which this Act receives the Royal Assent.	14 December 2005

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Review of anti-terrorism laws

- (1) The Council of Australian Governments agreed on 27 September 2005 that the Council would, after 5 years, review the operation of:
- (a) the amendments made by Schedules 1, 3, 4 and 5; and
 - (b) certain State laws.
- (2) If a copy of the report in relation to the review is given to the Attorney-General, the Attorney-General must cause a copy of the report to be laid before each House of Parliament within 15 sitting days after the Attorney-General receives the copy of the report.

Schedule 1—Definition of terrorist organisation etc.

Crimes (Foreign Incursions and Recruitment) Act 1978

1 Paragraph 6(7)(b)

Omit “, (c), (d) or (e)”.

Criminal Code Act 1995

2 Subsection 102.1(1) of the *Criminal Code*

Insert:

advocate has the meaning given by subsection (1A).

3 Subsection 102.1(1) of the *Criminal Code* (definition of *Hamas organisation*)

Repeal the definition.

4 Subsection 102.1(1) of the *Criminal Code* (definition of *Hizballah organisation*)

Repeal the definition.

5 Subsection 102.1(1) of the *Criminal Code* (definition of *Lashkar-e-Tayyiba organisation*)

Repeal the definition.

6 Subsection 102.1(1) of the *Criminal Code* (paragraph (a) of the definition of *terrorist organisation*)

Omit “the terrorist act”, substitute “a terrorist act”.

7 Subsection 102.1(1) of the *Criminal Code* (paragraph (b) of the definition of *terrorist organisation*)

Omit “(4); or”, substitute “(4).”.

8 Subsection 102.1(1) of the *Criminal Code* (paragraphs (c), (d) and (e) of the definition of *terrorist organisation*)

Repeal the paragraphs.

9 After subsection 102.1(1) of the *Criminal Code*

Insert:

Definition of advocates

- (1A) In this Division, an organisation *advocates* the doing of a terrorist act if:
- (a) the organisation directly or indirectly counsels 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 risk that such praise might have the effect of leading a person (regardless of his or her age or any mental impairment (within the meaning of section 7.3) that the person might suffer) to engage in a terrorist act.

10 Subsection 102.1(2) of the *Criminal Code*

Repeal the subsection, substitute:

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 (whether or not a terrorist act has occurred or will occur); or
 - (b) advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

11 Paragraph 102.1(4)(b) of the *Criminal Code*

Repeal the paragraph, substitute:

- (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 (whether or not a terrorist act has occurred or will occur);

- (ii) that the organisation advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur);

12 Subsection 102.1(6) of the *Criminal Code*

Omit “section 50 of the *Acts Interpretation Act 1901*”, substitute “section 15 of the *Legislative Instruments Act 2003*”.

13 Subsections 102.1(7) to (16) of the *Criminal Code*

Repeal the subsections.

14 Paragraph 102.1(17)(a) of the *Criminal Code*

Omit “, (c), (d) or (e)”.

15 Paragraph 102.1(17)(b) of the *Criminal Code*

Omit “, (9), (10A) or (10C), as the case requires,”.

16 Paragraph 102.1(17)(c) of the *Criminal Code*

Repeal the paragraph, substitute:

- (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 (whether or not a terrorist act has occurred or will occur); or
 - (ii) advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur);

as the case requires;

17 Subsection 102.1(18) of the *Criminal Code*

Omit “subsections (4), (9), (10A) and (10C)”, substitute “subsection (4)”.

18 Paragraph 102.5(2)(b) of the *Criminal Code*

Omit “, (c), (d) or (e)”.

19 Paragraph 102.8(1)(b) of the *Criminal Code*

Omit “, (c), (d) or (e)”.

20 Paragraph 102.8(2)(g) of the *Criminal Code*

Omit “, (c), (d) or (e)”.

21 At the end of Division 106 of the *Criminal Code*

Add:

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.

Note: The heading to section 106.1 of the *Criminal Code* is replaced by the heading “**Saving—regulations originally made for the purposes of paragraph (c) of the definition of *terrorist organisation***”.

22 At the end of Division 106 of the *Criminal Code*

Add:

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.

Customs Act 1901

23 Subparagraph 203DA(1)(c)(i)

Omit “the terrorist act”, substitute “a terrorist act”.

Schedule 2—Technical amendments

Criminal Code Act 1995

1 Division 104 of Part 5.4 of the *Criminal Code* (heading)

Repeal the heading, substitute:

Division 115—Harming Australians

2 Sections in Part 5.4 of the *Criminal Code*

The sections in Part 5.4 of the *Criminal Code* are renumbered in accordance with the following table:

Section renumbering in Part 5.4 of the <i>Criminal Code</i>		
Item	This section...	is renumbered as...
1	104.1	115.1
2	104.2	115.2
3	104.3	115.3
4	104.4	115.4
5	104.5	115.5
6	104.6	115.6
7	104.7	115.7
8	104.8	115.8
9	104.9	115.9

Schedule 3—Financing terrorism

Criminal Code Act 1995

1 Paragraphs 102.6(1)(a) and (2)(a) of the *Criminal Code*

Repeal the paragraphs, substitute:

- (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

Note: The heading to section 102.6 of the *Criminal Code* is altered by omitting “to or from” and substituting “to, from or for”.

2 Subsection 103.1(3) of the *Criminal Code*

Repeal the subsection.

3 At the end of Division 103 of the *Criminal Code*

Add:

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

- (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.

Financial Transaction Reports Act 1988

4 Subsection 16(6) (paragraph (a) of the definition of *financing of terrorism offence*)

Repeal the paragraph, substitute:

- (a) section 102.6 or Division 103 of the *Criminal Code*; or

Schedule 4—Control orders and preventative detention orders

Part 1—Control orders and preventative detention orders

Criminal Code Act 1995

1 Subsection 100.1(1) of the *Criminal Code*

Insert:

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).

2 Subsection 100.1(1) of the *Criminal Code*

Insert:

confirmed control order means an order made under section 104.16.

3 Subsection 100.1(1) of the *Criminal Code*

Insert:

continued preventative detention order means an order made under section 105.12.

4 Subsection 100.1(1) of the *Criminal Code*

Insert:

control order means an interim control order or a confirmed control order.

5 Subsection 100.1(1) of the *Criminal Code*

Insert:

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.

6 Subsection 100.1(1) of the *Criminal Code*

Insert:

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.

7 Subsection 100.1(1) of the *Criminal Code*

Insert:

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*.

8 Subsection 100.1(1) of the *Criminal Code*

Insert:

initial preventative detention order means an order made under section 105.8.

9 Subsection 100.1(1) of the *Criminal Code*

Insert:

interim control order means an order made under section 104.4, 104.7 or 104.9.

10 Subsection 100.1(1) of the *Criminal Code*

Insert:

issuing authority:

- (a) for initial preventative detention orders—means a senior AFP member; and
- (b) for continued preventative detention orders—means a person appointed under section 105.2.

11 Subsection 100.1(1) of the *Criminal Code*

Insert:

issuing court means:

- (a) the Federal Court of Australia; or
- (b) the Family Court of Australia; or
- (c) the Federal Magistrates Court.

12 Subsection 100.1(1) of the *Criminal Code*

Insert:

Judge means a Judge of a court created by the Parliament.

13 Subsection 100.1(1) of the *Criminal Code*

Insert:

lawyer means a person enrolled as a legal practitioner of a federal court or the Supreme Court of a State or Territory.

14 Subsection 100.1(1) of the *Criminal Code*

Insert:

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.

15 Subsection 100.1(1) of the *Criminal Code*

Insert:

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.

16 Subsection 100.1(1) of the *Criminal Code*

Insert:

police officer means:

- (a) an AFP member; or
- (b) a member (however described) of a police force of a State or Territory.

17 Subsection 100.1(1) of the *Criminal Code*

Insert:

prescribed authority has the same meaning as in Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*.

18 Subsection 100.1(1) of the *Criminal Code*

Insert:

preventative detention order means an order under section 105.8 or 105.12.

19 Subsection 100.1(1) of the *Criminal Code*

Insert:

prohibited contact order means an order made under section 105.15 or 105.16.

20 Subsection 100.1(1) of the *Criminal Code*

Insert:

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.

21 Subsection 100.1(1) of the *Criminal Code*

Insert:

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.

22 Subsection 100.1(1) of the *Criminal Code*

Insert:

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.

23 Subsection 100.1(1) of the *Criminal Code*

Insert:

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.

24 After Division 103 of the *Criminal Code*

Insert:

Division 104—Control orders

Subdivision A—Object of this Division

104.1 Object of this Division

The object of this Division is to allow obligations, prohibitions and restrictions to be imposed on a person by a control order for the purpose of protecting the public from a terrorist act.

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) considers 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 provided training to, or received training from, a listed terrorist organisation.
- (3) In seeking the Attorney-General’s consent, the member must give the Attorney-General a draft request that includes:
- (a) a draft of the interim control order to be requested; and
 - (b) 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
 - (c) the following:
 - (i) an explanation as to why each of the obligations, prohibitions and 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; and
 - (d) 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;
 - (ii) the outcomes and particulars of all previous applications for variations of control orders made in relation to the person;
 - (iii) the outcomes 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; and
- (e) information (if any) that the member has about the person's age; and
- (f) a summary of the grounds on which the order should be made.

Note 1: An interim control order cannot be requested in relation to a person who is under 16 years of age (see section 104.28).

Note 2: The member might commit an offence if the draft request is false or misleading (see sections 137.1 and 137.2).

- (3A) To avoid doubt, paragraph (3)(f) 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 Attorney-General's consent may be made subject to changes being made to the draft request (including 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.

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 the interim control order by giving an issuing court:

- (a) a request:
 - (i) that is the same as the draft request, except for the changes (if any) required by the Attorney-General; and
 - (ii) the information in which is sworn or affirmed by the member; and
- (b) 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).

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, or received training from, a listed terrorist organisation; 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 protecting the public from a terrorist act.
- (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.

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.
- (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;
 - (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;
 - (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 either considers or suspects the matters mentioned in subsection 104.2(2) on reasonable grounds.

- (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 4 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:

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

- (a) all that is required under subsection 104.2(3) in respect of an ordinary request for an interim control order (including, if the Attorney-General's consent has been obtained before making the request, the changes (if any) required by the Attorney-General);
- (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.

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 either considers or suspects the matters mentioned in subsection 104.2(2) on reasonable grounds.

Note: The Attorney-General's consent must be obtained within 4 hours of making the request (see section 104.10).

- (2) The request must include the following:
 - (a) all that is required under subsection 104.2(3) in respect of an ordinary request for an interim control order (including information that is sworn or affirmed by the member);
 - (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 4 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 request must, in accordance with subsection 104.2(3), seek that consent within 4 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 4 hours of the request being made, the order immediately ceases to be in force.

Note: However, the senior AFP member can vary the request and 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.

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); and
 - (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
 - (ii) a copy of the documents mentioned in paragraphs 104.2(3)(b) and (c); 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.

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
 - (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 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
 - (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

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 serve the declaration, the revocation or the confirmed control order personally on the person.

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.

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.

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.

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 considers on reasonable grounds that the varied control order in the terms to be sought would substantially assist in preventing a terrorist act.
- (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:

- (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).
- (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.

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 protecting the public from a terrorist act.
- (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.

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); 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.

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;
 - (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 any complaints relating to control orders made or referred to:
 - (i) the Commonwealth Ombudsman; or
 - (ii) the Internal Investigation Division of the Australian Federal Police.
- (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).

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 10 years after the day on which this Division commences ceases to be in force at that time.
- (2) A control order cannot be requested, made or confirmed after the end of 10 years after the day on which this Division commences.

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
 - (c) a person who is a Federal Magistrate; 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.

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 the person is satisfied that:
 - (a) 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
 - (b) making the order would substantially assist in preventing a terrorist act occurring; 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).
- (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 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.

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:

- (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 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.

- (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 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 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;
 - (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*).

(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;

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 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).

- (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) the name of the person in relation to whom it 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).

- (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.
- (8) The senior AFP member nominated under subsection 105.19(5) in relation to the initial preventative detention order must:
 - (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.

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)).

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

- (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:
 - (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).

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, Federal Magistrates, 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).

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

- (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 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, Federal Magistrate, 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, Federal Magistrates, 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) 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.

Schedule 4 Control orders and preventative detention orders

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- (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) the name of the person in relation to whom it 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.
- (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:
- (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.

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.
- (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 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.
- (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 continued preventative detention order is being applied for, the information in the application for the prohibited contact order must be sworn or affirmed by the AFP member.
- (4) If the issuing authority makes the preventative detention order, the issuing authority may 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.
- (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.

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.
- (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 the preventative detention order is a continued preventative detention order, the information in the application for the prohibited contact order must be sworn or affirmed by the AFP member.
- (4) The issuing authority may 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.
- (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.

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.

Prohibited contact order

(4) If:

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- (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.

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, a Federal Magistrate or a member of the Administrative Appeals Tribunal is conferred on the judge, Federal Magistrate 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:
 - (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 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.

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
- (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 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 section 34D 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 section 34D 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.

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 section 34D 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:
- (a) in accordance with a warrant under section 34D 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 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)).

- (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 complain to the Commonwealth Ombudsman under Part III of the *Complaints (Australian Federal Police) Act 1981* 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

- (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)).

- (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 complain to the Commonwealth Ombudsman under Part III of the *Complaints (Australian Federal Police) Act 1981* 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
- (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.

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, 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.

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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
 - (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.
- (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
 - (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, de facto spouse or same-sex 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.

105.36 Contacting Ombudsman etc.

- (1) The person being detained is entitled to contact the Commonwealth Ombudsman in accordance with the *Complaints (Australian Federal Police) Act 1981*.

Note: Section 22 of the *Complaints (Australian Federal Police) Act 1981* provides for the manner in which a person who is in custody may make a complaint to the Commonwealth Ombudsman under 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 *Complaints (Australian Federal Police) Act 1981* 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

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- (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;
- 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.
- (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), (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
 - (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 officer or employee of the Australian Security Intelligence Organisation.
- (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 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
 - (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 *Complaints (Australian Federal Police) Act 1981* 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
- (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 *Complaints (Australian Federal Police) Act 1981* 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
 - (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
 - (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:
- (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 officer or employee of the Australian Security Intelligence Organisation must not question a person while the person is being detained under a preventative detention 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.

- (3) An AFP member, or an officer or employee of the Australian Security Intelligence Organisation, must not question a person while the person is being detained under an order made under a corresponding State preventative detention law.

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

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)).

- (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 Federal Magistrate 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 Federal Magistrate must have regard to:
- (a) the age, or any disability, of the person; and
 - (b) such other matters as the Federal Magistrate thinks fit.
- (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

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(b) subsection (8) or (9) is satisfied (but not both) and a Federal Magistrate orders that the material be taken.

In deciding whether to make such an order, the Federal Magistrate 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.

(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 officer or employee of the Australian Security Intelligence Organisation.

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.

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 Magistrate

- (1) A function of making an order conferred on a Federal Magistrate by section 105.43 is conferred on the Federal Magistrate 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 Federal Magistrate 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 Federal Magistrate 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 Magistrates Court.

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 any complaints in relation to the detention of a person under a preventative detention order made or referred during the year to:
 - (i) the Commonwealth Ombudsman; or
 - (ii) the Internal Investigation Division of the Australian Federal Police;
 - (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 Ombudsman functions and powers not affected

This Division does not affect a function or power of the Commonwealth Ombudsman under the *Complaints (Australian Federal Police) Act 1981*.

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).
- (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 Appeals 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.

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.

(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 10 years after the day on which this Division commences ceases to be in force at that time.

- (2) A preventative detention order, and a prohibited contact order, cannot be applied for, or made, after the end of 10 years after the day on which this Division commences.

Part 2—Consequential amendments

Administrative Decisions (Judicial Review) Act 1977

25 After paragraph (daa) of Schedule 1

Insert:

- (dab) decisions of the Attorney-General under section 104.2 of the *Criminal Code*;
- (dac) decisions under Division 105 of the *Criminal Code*;

Schedule 5—Powers to stop, question and search persons in relation to terrorist acts

Crimes Act 1914

1 Part IAA (heading)

Repeal the heading, substitute:

Part IAA—Search, information gathering, arrest and related powers

2 Subsection 3C(1)

Insert:

serious offence means an offence:

- (a) that is punishable by imprisonment for 2 years or more; and
- (b) that is one of the following:
 - (i) a Commonwealth offence;
 - (ii) an offence against a law of a State that has a federal aspect;
 - (iii) an offence against a law of a Territory; and
- (c) that is not a serious terrorism offence.

3 Subsection 3C(1)

Insert:

serious terrorism offence means:

- (a) a terrorism offence (other than offence against section 102.8, Division 104 or Division 105 of the *Criminal Code*); or
- (b) an offence against a law of a State:
 - (i) that has a federal aspect; and
 - (ii) that has the characteristics of a terrorism offence (other than such an offence that has the characteristics of an offence against section 102.8, Division 104 or Division 105 of the *Criminal Code*); or

- (c) an offence against a law of a Territory that has the characteristics of a terrorism offence (other than such an offence that has the characteristics of an offence against section 102.8, Division 104 or Division 105 of the *Criminal Code*).

4 Paragraph 3D(1)(a)

Omit “persons or”.

5 Paragraph 3D(1)(c)

After “conveyances”, insert “or persons”.

6 At the end of subsection 3D(1)

Add:

; or (e) the requesting of information or documents from persons.

7 Paragraph 3D(4)(a)

Omit “persons or”.

8 Paragraph 3D(4)(c)

After “conveyances”, insert “or persons”.

9 After paragraph 3D(4)(d)

Insert:

or (e) the requesting of information or documents from persons;

10 After Division 3 of Part IAA

Insert:

**Division 3A—Powers to stop, question and search persons
in relation to terrorist acts**

Subdivision A—Definitions

3UA Definitions

In this Division:

Commonwealth place means a Commonwealth place within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*.

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 (within the meaning of that Act); or
- (c) a member, however described, of a police force of a State or Territory.

prescribed security zone means a zone in respect of which a declaration under section 3UJ is in force.

serious offence related item means a thing that a police officer conducting a search under section 3UD reasonably suspects:

- (a) may be used in a serious offence; or
- (b) is connected with the preparation for, or the engagement of a person in, a serious offence; or
- (c) is evidence of, or relating to, a serious offence.

terrorism related item means a thing that a police officer conducting a search under section 3UD reasonably suspects:

- (a) may be used in a terrorist act; or
- (b) is connected with the preparation for, or the engagement of a person in, a terrorist act; or
- (c) is evidence of, or relating to, a terrorist act.

terrorist act has the same meaning as in subsection 100.1(1) of the *Criminal Code*.

vehicle includes any means of transport (and, without limitation, includes a vessel and an aircraft).

Subdivision B—Powers

3UB Application of Subdivision

A police officer may exercise the powers under this Subdivision in relation to a person if:

- (a) the person is in a Commonwealth place (other than a prescribed security zone) and the officer suspects on

reasonable grounds that the person might have just committed, might be committing or might be about to commit, a terrorist act; or

- (b) the person is in a Commonwealth place in a prescribed security zone.

3UC Requirement to provide name etc.

- (1) A police officer may request the person to provide the officer with the following details:

- (a) the person's name;
- (b) the person's residential address;
- (c) the person's reason for being in that particular Commonwealth place;
- (d) evidence of the person's identity.

- (2) If a police officer:

- (a) makes a request under subsection (1); and

- (b) informs the person:

- (i) of the officer's authority to make the request; and

- (ii) that it may be an offence not to comply with the request;

the person commits an offence if:

- (c) the person fails to comply with the request; or

- (d) the person gives a name or address that is false in a material particular.

Penalty: 20 penalty units.

Note: A more serious offence of obstructing a Commonwealth public official may also apply (see section 149.1 of the *Criminal Code*).

- (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) of the *Criminal Code*).

3UD Stopping and searching

- (1) A police officer may:

- (a) stop and detain the person for the purpose of conducting a search under paragraph (b); and

- (b) conduct one of the following searches for a terrorism related item:
- (i) an ordinary search or a frisk search of the person;
 - (ii) a search of any thing that is, or that the officer suspects on reasonable grounds to be, under the person's immediate control;
 - (iii) a search of any vehicle that is operated or occupied by the person;
 - (iv) a search of any thing that the person has, or that the officer suspects on reasonable grounds that the person has, brought into the Commonwealth place.

Conditions relating to conduct of search of person

- (2) A police officer who conducts a search of a person under this section must not use more force, or subject the person to greater indignity, than is reasonable and necessary in order to conduct the search.
- (3) A person must not be detained under this section for longer than is reasonably necessary for a search to be conducted under this section.

Other conditions relating to conduct of search of person or thing

- (4) In searching a thing (including a vehicle) under subsection (1), a police officer may use such force as is reasonable and necessary in the circumstances, but must not damage the thing by forcing it, or a part of it, open unless:
 - (a) the person has been given a reasonable opportunity to open the thing or part of it; or
 - (b) it is not possible to give that opportunity.

3UE Seizure of terrorism related items and serious offence related items

If a police officer:

- (a) conducts a search under section 3UD; and
- (b) finds, in the course of the search, a thing that is:
 - (i) a terrorism related item; or
 - (ii) a serious offence related item;

the officer may seize the thing.

3UF How seized things must be dealt with

Seizure notice to be served

- (1) A police officer who is for the time being responsible for a thing seized under section 3UE must, within 7 days after the day on which the thing was seized, serve a seizure notice on:
 - (a) the owner of the thing; or
 - (b) if the owner of the thing cannot be identified after reasonable inquiries—the person from whom the thing was seized.
- (2) Subsection (1) does not apply if:
 - (a) both:
 - (i) the owner of the thing cannot be identified after reasonable inquiries; and
 - (ii) the thing was not seized from a person; or
 - (b) it is not possible to serve the person required to be served under subsection (1).
- (3) A seizure notice must:
 - (a) identify the thing; and
 - (b) state the date on which the thing was seized; and
 - (c) state the ground or grounds on which the thing was seized; and
 - (d) state that, if the owner does not request the return of the thing within 90 days after the date of the notice, the thing is forfeited to the Commonwealth.

Return of thing seized

- (4) The owner of a thing seized under section 3UE may request the return of the thing.
- (5) A police officer who is for the time being responsible for a thing seized under section 3UE must return the thing to its owner if:
 - (a) the owner requests the return of the thing; and
 - (b) neither subsection (6) nor (7) applies.
- (6) This subsection applies if the police officer suspects, on reasonable grounds that, if the thing is returned to the owner, the thing is

likely to be used by the owner or another person in the commission of a terrorist act or serious offence.

- (7) This subsection applies if the thing is evidence of, or relating to, a terrorist act or serious offence.

Forfeiture of thing seized

- (8) A thing is forfeited to the Commonwealth if the owner of the thing does not request its return:
- (a) before the end of the 90th day after the date of the seizure notice in relation to the thing; or
 - (b) if subsection (2) applied in relation to the thing so that a seizure notice was not served—before the end of the 90th day after the day on which the thing was seized.

Application to magistrate

- (9) If:
- (a) the owner of a thing requests the return of the thing:
 - (i) within 90 days after the date of the seizure notice in relation to the thing; or
 - (ii) if subsection (2) applied in relation to the thing so that a seizure notice was not served—within 90 days after the day on which the thing was seized; and
 - (b) the thing has not been returned to the owner by the end of the 90th day;
- the police officer who is for the time being responsible for the thing must, before the end of the 95th day:
- (c) return the thing to the owner; or
 - (d) apply to a magistrate for an order under section 3UG.

3UG Application to magistrate

- (1) If subsection 3UF(9) applies, the police officer may apply to a magistrate for an order in relation to the thing.
- (2) The magistrate must, in determining an application by a police officer under subsection (1), allow the owner of the thing to appear and be heard.

- (3) If the magistrate is satisfied that the thing is evidence of, or relating to, a terrorist act or serious offence, the magistrate must order that the thing be retained by the police officer for the period specified in the order.
- (4) If the magistrate is satisfied that there are reasonable grounds to suspect that, if the thing is returned to the owner, the thing is likely to be used by the owner or another person in the commission of a terrorist act or serious offence, the magistrate may make any of the following orders:
 - (a) that the thing be retained by the police officer for the period specified in the order;
 - (b) that the thing is forfeited to the Commonwealth;
 - (c) that the thing is to be sold and the proceeds given to the owner;
 - (d) that the thing is to be otherwise sold or disposed of.
- (5) If the magistrate is not satisfied as mentioned in subsection (3) or (4), the magistrate must order that the thing be returned to the owner.

3UH Relationship of Subdivision to other laws

- (1) The powers conferred, and duties imposed, by this Subdivision on police officers are in addition to, and not in derogation of, any other powers conferred, or duties imposed, by any other law of the Commonwealth or the law of a State or Territory.
- (2) This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or the law of a State or Territory in so far as it is capable of operating concurrently with this Subdivision.

Subdivision C—Prescribed security zones

3UI Applications for declarations

A police officer may apply to the Minister for a declaration that a Commonwealth place be declared as a prescribed security zone.

3UJ Minister may make declarations

Declaration

- (1) The Minister may declare, in writing, a Commonwealth place to be a prescribed security zone if he or she considers that a declaration would assist:
 - (a) in preventing a terrorist act occurring; or
 - (b) in responding to a terrorist act that has occurred.

Declaration has effect

- (2) A declaration under this section has effect accordingly.

Duration of declaration

- (3) A declaration ceases to have effect at the end of 28 days after it is made, unless the declaration is revoked by the Minister before then.

Revocation of declaration

- (4) The Minister must revoke a declaration, in writing, if he or she is satisfied that:
 - (a) in the case of a declaration made on the ground mentioned in paragraph (1)(a)—there is no longer a terrorism threat that justifies the declaration being continued; or
 - (b) in the case of a declaration made on the ground mentioned in paragraph (1)(b)—the declaration is no longer required.

Gazettal and publication of declaration

- (5) If a declaration of a Commonwealth place as a prescribed security zone under this section is made or revoked, the Minister must arrange for:
 - (a) a statement to be prepared that:
 - (i) states that the declaration has been made or revoked, as the case may be; and
 - (ii) identifies the prescribed security zone; and
 - (b) the statement to be:
 - (i) broadcast by a television or radio station so as to be capable of being received within the place; and

- (ii) published in the *Gazette*; and
- (iii) published on the Internet.

Effect of failure to publish

- (6) A failure to comply with subsection (5) does not make the declaration or its revocation ineffective to any extent.

Declaration or revocation not legislative instruments

- (7) A declaration or revocation made under this section is not a legislative instrument.

Subdivision D—Sunset provision

3UK Sunset provision

- (1) A police officer must not exercise powers or perform duties under this Division (other than under sections 3UF and 3UG) after the end of 10 years after the day on which the Division commences.
- (2) A declaration under section 3UJ that is in force at the end of 10 years after the day on which this Division commences ceases to be in force at that time.
- (3) A police officer cannot apply for, and the Minister cannot make, a declaration under section 3UJ after the end of 10 years after the day on which this Division commences.

Schedule 6—Power to obtain information and documents

Crimes Act 1914

1 After Division 4A of Part IAA

Insert:

Division 4B—Power to obtain information and documents

Subdivision A—Definitions

3ZQL Definitions

In this Division:

authorised AFP officer means:

- (a) the Commissioner; or
- (b) a Deputy Commissioner; or
- (c) a senior executive AFP employee who:
 - (i) is a member of the Australian Federal Police; and
 - (ii) is authorised in writing by the Commissioner for the purposes of this paragraph.

Federal Magistrate has the meaning given by the *Federal Magistrates Act 1999*.

Subdivision B—Power to request information or documents about terrorist acts from operators of aircraft or ships

3ZQM Power to request information or documents about terrorist acts from operators of aircraft or ships

- (1) This section applies if an authorised AFP officer believes on reasonable grounds that an operator of an aircraft or ship has information or documents (including in electronic form) that are

relevant to a matter that relates to the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

- (2) The officer may:
- (a) ask the operator questions relating to the aircraft or ship, or its cargo, crew, passengers, stores or voyage, that are relevant to the matter; or
 - (b) request the operator to produce documents relating to the aircraft or ship, or its cargo, crew, passengers, stores or voyage:
 - (i) that are relevant to the matter; and
 - (ii) that are in the possession or under the control of the operator.
- (3) A person who is asked a question or requested to produce a document under subsection (2) must answer the question or produce the document as soon as practicable.

Offence

- (4) A person commits an offence if:
- (a) the person is an operator of an aircraft or ship; and
 - (b) the person is asked a question or requested to produce a document under subsection (2); and
 - (c) the person fails to answer the question or produce the document.

Penalty: 60 penalty units.

- (5) Subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (6) It is a defence to a prosecution for an offence against subsection (4) if the person charged had a reasonable excuse for:
- (a) failing to answer the question; or
 - (b) failing to produce the document.

Definitions

- (7) In this section:

operator has the meaning given by section 4 of the *Customs Act 1901*.

terrorist act has the meaning given by section 100.1 of the *Criminal Code*.

Subdivision C—Power to obtain documents relating to serious terrorism and non-terrorism offences

3ZQN Power to obtain documents relating to serious terrorism offences

- (1) This section applies if an authorised AFP officer considers on reasonable grounds that a person has documents (including in electronic form) that are relevant to, and will assist, the investigation of a serious terrorism offence.
- (2) The officer may give the person a written notice requiring the person to produce documents that:
 - (a) relate to one or more of the matters set out in section 3ZQP, as specified in the notice; and
 - (b) are in the possession or under the control of the person.
- (3) The notice must:
 - (a) specify the name of the person to whom the notice is given; and
 - (b) specify the matters to which the documents to be produced relate; and
 - (c) specify the manner in which the documents are to be produced; and
 - (d) specify the place at which the documents are to be produced; and
 - (e) state that the person must comply with the notice as soon as practicable; and
 - (f) set out the effect of section 3ZQS (offence for failure to comply); and
 - (g) if the notice specifies that information about the notice must not be disclosed—set out the effect of section 3ZQT (offence for disclosing existence or nature of a notice).

3ZQO Power to obtain documents relating to serious offences

- (1) An authorised AFP officer may apply to a Federal Magistrate for a notice under this section in respect of a person if the AFP officer

considers on reasonable grounds that the person has documents (including in electronic form) that are relevant to, and will assist, the investigation of a serious offence.

- (2) If the Magistrate is satisfied on the balance of probabilities, by information on oath or by affirmation, that:
- (a) the person has documents (including in electronic form) that are relevant to, and will assist, the investigation of a serious offence; and
 - (b) giving the person a notice under this section is reasonably necessary, and reasonably appropriate and adapted, for the purpose of investigating the offence;
- the Magistrate may give the person a written notice requiring the person to produce documents that:
- (c) relate to one or more of the matters set out in section 3ZQP, as specified in the notice; and
 - (d) are in the possession or under the control of the person.
- (3) The Magistrate must not give the notice unless the authorised AFP officer or some other person has given to the Magistrate, either orally or by affidavit, such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the notice is being sought.
- (4) The notice must:
- (a) specify the name of the person to whom the notice is given; and
 - (b) specify the matters to which the documents to be produced relate; and
 - (c) specify the manner in which the documents are to be produced; and
 - (d) specify the place at which the documents are to be produced; and
 - (e) state that the person must comply with the notice within 14 days after the day on which the notice is given; and
 - (f) set out the effect of section 3ZQS (offence for failure to comply); and
 - (g) if the notice specifies that information about the notice must not be disclosed—set out the effect of section 3ZQT (offence for disclosing existence or nature of a notice).

3ZQP Matters to which documents must relate

A document to be produced under a notice under section 3ZQN or 3ZQO must relate to one or more of the following matters:

- (a) determining whether an account is held by a specified person with a specified financial institution, and details relating to the account (including details of any related accounts);
- (b) determining whether a specified person is a signatory to an account with a specified financial institution, and details relating to the account (including details of any related accounts);
- (c) determining whether a transaction has been conducted by a specified financial institution on behalf of a specified person, and details relating to the transaction (including details relating to other parties to the transaction);
- (d) determining whether a specified person travelled or will travel between specified dates or specified locations, and details relating to the travel (including details relating to other persons travelling with the specified person);
- (e) determining whether assets have been transferred to or from a specified person between specified dates, and details relating to the transfers (including details relating to the names of any other persons to or from whom the assets were transferred);
- (f) determining whether an account is held by a specified person in respect of a specified utility (such as gas, water or electricity), and details relating to the account (including the names of any other persons who also hold the account);
- (g) determining who holds an account in respect of a specified utility (such as gas, water or electricity) at a specified place, and details relating to the account;
- (h) determining whether a telephone account is held by a specified person, and details relating to the account (including:
 - (i) details in respect of calls made to or from the relevant telephone number; or
 - (ii) the times at which such calls were made or received; or
 - (iii) the lengths of such calls; or
 - (iv) the telephone numbers to which such calls were made and from which such calls were received);

- (i) determining who holds a specified telephone account, and details relating to the account (including details mentioned in paragraph (h));
- (j) determining whether a specified person resides at a specified place;
- (k) determining who resides at a specified place.

3ZQQ Powers conferred on Federal Magistrates in their personal capacity

- (1) A power conferred on a Federal Magistrate by section 3ZQO is conferred on the Magistrate in a personal capacity and not as a court or a member of a court.
- (2) A Federal Magistrate need not accept the power conferred.
- (3) A Federal Magistrate exercising a power conferred by section 3ZQO has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the Magistrate is a member.

3ZQR Documents must be produced

- (1) A person is not excused from producing a document under section 3ZQN or 3ZQO on the ground that to do so:
 - (a) would contravene any other law; or
 - (b) might tend to incriminate the person or otherwise expose the person to a penalty or other liability; or
 - (c) would disclose material that is protected against disclosure by legal professional privilege or any other duty of confidence; or
 - (d) would be otherwise contrary to the public interest.
- (2) However, neither:
 - (a) the production of the document; nor
 - (b) any information, document or thing obtained as a direct or indirect consequence of producing the document;is admissible in evidence against the person in proceedings other than proceedings for an offence against section 137.1, 137.2 or 149.1 of the *Criminal Code* that relates to this Act.

- (3) A person is not liable to any penalty by reason of his or her producing a document when required to do so under section 3ZQN or 3ZQO.
- (4) The fact that a person is not excused under subsection (1) from producing a document does not otherwise affect a claim of legal professional privilege that anyone may make in relation to that document.

3ZQS Offence for failure to comply with notice under section 3ZQN or 3ZQO

A person commits an offence if:

- (a) the person is given a notice under section 3ZQN or 3ZQO; and
- (b) the person fails to comply with the notice.

Penalty: 30 penalty units.

3ZQT Offence for disclosing existence or nature of notice

- (1) A person commits an offence if:
 - (a) the person is given a notice under section 3ZQN or 3ZQO; and
 - (b) the notice specifies that information about the notice must not be disclosed; and
 - (c) the person discloses the existence or nature of the notice.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (2) Subsection (1) does not apply if:
 - (a) the person discloses the information to another person in order to obtain a document that is required by the notice in order to comply with it, and that other person is directed not to inform the person to whom the document relates about the matter; or
 - (b) the disclosure is made to obtain legal advice or legal representation in relation to the notice; or
 - (c) the disclosure is made for the purposes of, or in the course of, legal proceedings.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Schedule 7—Sedition

Crimes Act 1914

1 Paragraph 4J(7)(b)

Omit “section 80.1 or 91.1”, substitute “Division 80 or section 91.1”.

2 Sections 24A to 24E

Repeal the sections.

3 Paragraph 30A(1)(b)

Omit “as defined in section 24A”, substitute “(see subsection (3))”.

4 At the end of section 30A

Add:

(3) In this section:

sedition intention means an intention to use force or violence to effect any of the following purposes:

- (a) to bring the Sovereign into hatred or contempt;
- (b) to urge disaffection against the following:
 - (i) the Constitution;
 - (ii) the Government of the Commonwealth;
 - (iii) either House of the Parliament;
- (c) to urge another person to attempt to procure a change, otherwise than by lawful means, to any matter established by law of the Commonwealth;
- (d) to promote feelings of ill-will or hostility between different groups so as to threaten the peace, order and good government of the Commonwealth.

Criminal Code Act 1995

5 Part 5.1 of the *Criminal Code* (heading)

Repeal the heading, substitute:

Part 5.1—Treason and sedition

6 Division 80 of the *Criminal Code* (heading)

Repeal the heading, substitute:

Division 80—Treason and sedition

7 Before section 80.1 of the *Criminal Code*

Insert:

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.

8 Subsection 80.1(1A) of the *Criminal Code* (note)

Omit “Note”, substitute “Note 1”.

9 At the end of subsection 80.1(1A) of the *Criminal Code*

Add:

Note 2: There is a defence in section 80.3 for acts done in good faith.

10 Subsections 80.1(3), (4), (6) and (7) of the *Criminal Code*

Repeal the subsections.

11 Subsection 80.1(8) of the *Criminal Code* (definition of *organisation*)

Repeal the definition.

12 At the end of Division 80 of the *Criminal Code*

Add:

80.2 Sedition

Urging the overthrow of the Constitution or Government

- (1) A person commits an offence if the person urges another person to overthrow by force or violence:
- (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.

Penalty: Imprisonment for 7 years.

- (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-mentioned person urges the other person to overthrow.

Urging interference in Parliamentary elections

- (3) A person commits an offence if the person urges another person to interfere by force or violence with lawful processes for an election of a member or members of a House of the Parliament.

Penalty: Imprisonment for 7 years.

- (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 that the first-mentioned person urges the other person to interfere with.

Urging violence within the community

- (5) A person commits an offence if:
- (a) the person urges a group or groups (whether distinguished by race, religion, nationality or political opinion) to use force or violence against another group or other groups (as so distinguished); and

- (b) the use of the force or violence would threaten the peace, order and good government of the Commonwealth.

Penalty: Imprisonment for 7 years.

- (6) Recklessness applies to the element of the offence under subsection (5) that it is a group or groups that are distinguished by race, religion, nationality or political opinion that the first-mentioned person urges the other person to use force or violence against.

Urging a person to assist the enemy

- (7) A person commits an offence if:
 - (a) the person urges another person to engage in conduct; and
 - (b) the first-mentioned person intends the conduct to assist an organisation or country; and
 - (c) the organisation or country is:
 - (i) at war with the Commonwealth, whether or not the existence of a state of war has been declared; and
 - (ii) specified by Proclamation made for the purpose of paragraph 80.1(1)(e) to be an enemy at war with the Commonwealth.

Penalty: Imprisonment for 7 years.

Urging a person to assist those engaged in armed hostilities

- (8) A person commits an offence if:
 - (a) the person urges another person to engage in conduct; and
 - (b) the first-mentioned person intends the conduct to assist an organisation or country; and
 - (c) the organisation or country is engaged in armed hostilities against the Australian Defence Force.

Penalty: Imprisonment for 7 years.

Defence

- (9) Subsections (7) and (8) do not apply to engagement in conduct 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 (9). See subsection 13.3(3).

Note 2: There is a defence in section 80.3 for acts done in good faith.

80.3 Defence for acts done in good faith

- (1) Sections 80.1 and 80.2 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
 - (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 80.1(1)(e) 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.

80.4 Extended geographical jurisdiction for offences

Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this Division.

80.5 Attorney-General's consent required

- (1) Proceedings for an offence against this Division must not be commenced without the Attorney-General's written consent.
- (2) Despite subsection (1):
- (a) a person may be arrested for an offence against this Division; or
 - (b) a warrant for the arrest of a person for such an offence may be issued and executed;
- and the person may be charged, and may be remanded in custody or on bail, but:
- (c) no further proceedings may be taken until that consent has been obtained; and

- (d) the person must be discharged if proceedings are not continued within a reasonable time.

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.

Migration Act 1958

13 Subparagraph 203(1)(c)(i)

Omit “24C,”.

14 Subparagraph 203(1)(c)(ia)

Omit “section 80.1”, substitute “Division 80”.

Surveillance Devices Act 2004

15 Subparagraph 30(1)(a)(v)

Repeal the subparagraph.

16 Subparagraph 30(1)(a)(vi)

Omit “, 80.1”.

17 Subparagraph 30(1)(a)(vii)

Repeal the subparagraph.

18 Subparagraph 30(1)(a)(viii)

After “Division”, insert “72, 80, 101, 102, 103 or”.

Schedule 8—Optical surveillance devices at airports and on board aircraft

Aviation Transport Security Act 2004

1 Title

Omit “**related**”, substitute “**other**”.

2 At the end of subsection 3(1)

Add:

Note: Division 10 of Part 4 has additional purposes (see section 74J).

3 Section 4 (at the end of the paragraph relating to Part 4)

Add “It also allows the Minister to determine a code regulating and authorising the use of optical surveillance devices at airports and on board aircraft.”.

4 Section 9

Insert:

optical surveillance device has the same meaning as in the *Surveillance Devices Act 2004*.

5 At the end of Part 4

Add:

Division 10—Optical surveillance devices

74J Purposes of this Division

In addition to the purposes of this Act, the purposes of this Division include the following:

- (a) preventing and detecting contraventions of, or offences against:
 - (i) this Act; or
 - (ii) any other law of the Commonwealth;
- at airports or on board aircraft;

(b) safeguarding Commonwealth interests.

74K Minister may determine code

- (1) For the purposes of this Division, the Minister may, by legislative instrument, determine a code that regulates and authorises, despite any law of a State or a Territory, the use of optical surveillance devices by aviation industry participants:
 - (a) at a security controlled airport; or
 - (b) on board an aircraft that:
 - (i) is at a security controlled airport; or
 - (ii) is a prescribed aircraft; or
 - (c) in a vehicle that:
 - (i) is on board an aircraft covered by paragraph (b); or
 - (ii) is at a security controlled airport.
- (2) The code may also regulate and authorise the use or disclosure of a signal, image or other information obtained by the use of the optical surveillance devices.
- (3) Regulations made for the purposes of this section may prescribe penalties for offences against the code. The penalties must not exceed 50 penalty units.

Schedule 9—Financial transaction reporting

Financial Transaction Reports Act 1988

1 Subsection 3(1)

Insert:

bearer negotiable instrument means a document that is:

- (a) a bill of exchange; or
- (b) a cheque; or
- (c) a promissory note; or
- (d) a traveller's cheque; or
- (e) a money order, postal order or similar order; or
- (f) a negotiable instrument not covered by any of the above paragraphs.

For the purposes of determining whether a document is covered by paragraph (e) or (f), it is immaterial that the document is incomplete because the document does not specify:

- (g) an amount to be paid; or
- (h) a payee.

2 Subsection 3(1)

Insert:

bill of exchange has the same meaning as in paragraph 51(xvi) of the Constitution, but does not include a cheque unless the cheque is a cheque that an ADI, bank or other institution draws on itself.

3 Subsection 3(1) (definition of *non-reportable currency transfer*)

Repeal the definition.

4 Subsection 3(1)

Insert:

non-reportable transfer, in relation to currency, means a transfer of currency out of Australia or into Australia in respect of which a report under section 15 is not required.

5 Subsection 3(1)

Insert:

prescribed particulars means particulars prescribed by the regulations for the purposes of sections 24E and 24F.

6 Subsection 3(1)

Insert:

promissory note has the same meaning as in paragraph 51(xvi) of the Constitution.

7 After section 3

Insert:

3A Translation of foreign currency to Australian currency

In determining, for the purposes of this Act, whether an amount of foreign currency (including an amount in which a bearer negotiable instrument or other document is denominated) is not less than an Australian dollar amount, the amount of foreign currency is to be translated to Australian currency at the exchange rate applicable at the relevant time.

8 Division 1A of Part II (heading)

Repeal the heading, substitute:

Division 1A—Reports about transfers of currency and bearer negotiable instruments

9 At the end of Division 1A of Part II

Add:

15AA Reports in relation to bearer negotiable instruments taken into or out of Australia

(1) If, under section 33AA:

(a) a person produces to an officer a bearer negotiable instrument that the person has with him or her; or

-
- (b) an officer conducts an examination or search and finds a bearer negotiable instrument with a person;
the officer may request the person to prepare a report for the Director.
- (2) The report must:
- (a) be in the approved form; and
 - (b) contain the reportable details in relation to the matter being reported; and
 - (c) be signed by the person giving the report.
- (3) The report must be given to an officer as soon as possible after the request is made.
- (4) A person commits an offence if:
- (a) the person is requested to prepare a report; and
 - (b) the person:
 - (i) fails to comply with the request; or
 - (ii) fails to give the report as required by subsection (3).

Penalty: Imprisonment for 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on an individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act.

- (5) The officer must, as soon as practicable after receiving the report, forward the report to the Director.
- (6) In this section:
- officer** means:
- (a) a police officer; or
 - (b) a customs officer.

reportable details, in relation to a matter being reported, means the details of the matter that are referred to in Schedule 3AA.

10 After Division 3 of Part II

Insert:

Division 3A—Customer information to be included in international funds transfer instructions

17FA Customer information in international funds transfer instructions transmitted out of Australia

- (1) If:
- (a) a cash dealer in Australia is the sender of an international funds transfer instruction transmitted out of Australia; and
 - (b) at least one of the following applies:
 - (i) the cash dealer is acting on behalf of, or at the request of, another person who is not an ADI;
 - (ii) the cash dealer is not an ADI;

the instruction must also include customer information relating to the instruction.

Note: Failure to include the customer information relating to the instruction is an offence (see paragraph 28(1)(a)).

- (2) For the purposes of this section:
- (a) if a cash dealer transmits an instruction on behalf of, or at the request of, another person, the cash dealer is taken to be the sender of the instruction; and
 - (b) if a person, not being a cash dealer, transmits an instruction on behalf of, or at the request of, a cash dealer, the cash dealer is taken to be the sender of the instruction.

- (3) In this section:

customer information, in relation to an international funds transfer instruction transmitted out of Australia, means the following information about the ordering customer on whose behalf, or at whose request, a cash dealer sends the instruction:

- (a) the ordering customer's name and full business or residential address (not being a post office box);
- (b) either:
 - (i) the number of the ordering customer's account with the cash dealer; or
 - (ii) if the customer does not have an account with the cash dealer—the identification code assigned to the instruction by the cash dealer.

financial organisation means an organisation that transmits, receives, handles or executes international funds transfer instructions.

ordering customer means a person or organisation (including a financial organisation) on whose behalf, or at whose request, an international funds transfer instruction is sent.

17FB Customer information in international funds transfer instructions transmitted into Australia

Application

- (1) This section applies if:
 - (a) a cash dealer in Australia is the recipient of two or more international funds transfer instructions transmitted into Australia by a particular ordering organisation; and
 - (b) at least one of the international funds transfer instructions does not include customer information relating to the instruction.

Direction to cash dealer

- (2) The Director may direct, in writing, the cash dealer to request the ordering organisation to include, in all future international funds transfer instructions the ordering organisation transmits to the cash dealer, customer information relating to the instructions. The direction must state that the cash dealer must comply with the direction within 14 days after the date of the direction.

Offence

- (3) A person commits an offence if:
 - (a) the person is given a direction under subsection (2); and
 - (b) the person fails to comply with the direction within 14 days after the date of the direction.

Penalty: Imprisonment for 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could

be imposed by the court on an individual convicted of the same offence.

Report by cash dealer

- (4) The cash dealer must report, in writing, to the Director on the ordering organisation's response, or lack of response, to the cash dealer's request within:
- (a) 28 days after the date of the direction; or
 - (b) such further time as is allowed by the Director.

Note: Failure to report to the Director is an offence (see paragraph 28(1)(a)).

- (5) To avoid doubt, a cash dealer may make available funds received from an international funds transfer instruction even if the instruction transmitted to the cash dealer did not include customer information relating to the instruction.

Definitions

- (6) In this section:

customer information, in relation to an international funds transfer instruction transmitted into Australia, means the following information about the ordering customer on whose behalf, or at whose request, an ordering organisation sends the instruction:

- (a) the ordering customer's name;
- (b) any one of the following:
 - (i) the ordering customer's full business or residential address (not being a post office box);
 - (ii) the ordering customer's date and place of birth;
 - (iii) a unique identification number given to the ordering customer by a foreign government;
 - (iv) the identification number given to the ordering customer by the ordering organisation;
- (c) either:
 - (i) the number of the ordering customer's account with the ordering organisation; or
 - (ii) if the ordering customer does not have an account with the ordering organisation—the identification code assigned to the instruction by the ordering organisation.

financial organisation means an organisation that transmits, receives, handles or executes international funds transfer instructions.

ordering customer means a person or organisation (including a financial organisation) on whose behalf, or at whose request, an international funds transfer instruction is sent.

ordering organisation, in relation to an international funds transfer instruction, means the financial organisation:

- (a) that the ordering customer originally asked to send the instruction; or
- (b) that initiated the sending of the instruction on its own behalf.

11 After Part IIIA

Insert:

Part IIIB—Register of Providers of Remittance Services

24E Advice by certain cash dealers to the Director

- (1) If a person carries on a business mentioned in subparagraph (k)(ib) or paragraph (l) of the definition of **cash dealer**, the person must advise the Director, in writing, of:
 - (a) the person's name and all prescribed particulars; and
 - (b) the fact that the person carries on such a business.
- (2) A person commits an offence if:
 - (a) the person carries on a business mentioned in subparagraph (k)(ib) or paragraph (l) of the definition of **cash dealer**; and
 - (b) the person fails to comply with subsection (1):
 - (i) if the person starts to carry on the business on or after the day on which this section commences—within 30 days of starting to carry on the business; and
 - (ii) in any other case—within 30 days after the day on which this section commences.

Penalty: Imprisonment for 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

24F Register of Providers of Remittance Services

- (1) The Director must maintain a register, to be known as the Register of Providers of Remittance Services, in which the Director is to include:
 - (a) the names; and
 - (b) prescribed particulars;of cash dealers who carry on a business mentioned in subparagraph (k)(ib) or paragraph (l) of the definition of *cash dealer*.
- (2) The register may be maintained by electronic means.

Requirement to provide name and prescribed particulars

- (3) For the purposes of ensuring that the register is accurate and complete, if:
 - (a) an authorised officer has reason to believe that a person carries on a business mentioned in subparagraph (k)(ib) or paragraph (l) of the definition of *cash dealer*; and
 - (b) the Director does not have the name, and all prescribed particulars, of the person;the authorised officer:
 - (c) may, either orally or in writing, require the person to give the authorised officer the person's name and all prescribed particulars; and
 - (d) if paragraph (c) applies—must, either orally or in writing, inform the person of the effect of subsection (4).

Offence

- (4) A person commits an offence if:
 - (a) the person is required to give information under paragraph (3)(c); and

- (b) the person fails to give the information within 14 days after the day on which the request for information is made.

Penalty: Imprisonment for 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

12 Paragraph 28(1)(a)

Omit “to the Director”.

13 Subsection 29(1)

Omit “to the Director”.

14 Paragraph 29(3)(a)

After “section 15”, insert “or 15AA”.

15 Paragraph 29(3)(a)

After “section 33”, insert “or 33AA”.

16 After paragraph 29(4)(b)

Insert:

- (ba) causing a cash dealer to include customer information relating to an international funds transfer instruction under section 17FA that is false or misleading in a material particular; or

17 Subsection 30(1)

Omit “to the Director”.

18 After section 33

Insert:

33AA Questioning and search powers in relation to bearer negotiable instruments

Officer may ask questions about bearer negotiable instruments

- (1) Any person who is about to leave Australia must, if requested to do so by an officer:
 - (a) declare whether or not the person has with him or her any bearer negotiable instruments; and
 - (b) declare the amount payable under each bearer negotiable instrument that the person has with him or her; and
 - (c) produce to the officer each bearer negotiable instrument that the person has with him or her.
- (2) Any person who arrives in Australia must, if requested to do so by an officer:
 - (a) declare whether or not the person has with him or her any bearer negotiable instruments; and
 - (b) declare the amount payable under each bearer negotiable instrument that the person has with him or her; and
 - (c) produce to the officer each bearer negotiable instrument that the person has with him or her.

Officer may copy bearer negotiable instruments

- (3) If a person produces a bearer negotiable instrument to an officer, the officer may make a copy of the bearer negotiable instrument. Once copied, the officer must return the bearer negotiable instrument to the person.

Application of subsections (5) and (6)

- (4) Subsections (5) and (6) apply only if:
 - (a) an officer has asked a person questions under subsection (1) or (2); and
 - (b) the officer has reasonable grounds to suspect that the person has made a declaration that is false or misleading (a **false declaration**).

Officer may conduct searches

- (5) The officer may, with such assistance as is reasonable and necessary, examine an article which the person has with him or her if the person:
- (a) is about to leave Australia or has arrived in Australia; or
 - (b) is about to board or leave, or has boarded or left, any ship or aircraft;
- for the purpose of finding out whether the person has with him or her any bearer negotiable instruments in respect of which a false declaration has been made.
- (6) The officer may, with such assistance as is reasonable and necessary, search the person if:
- (a) the person is about to leave Australia, or has arrived in Australia, or the person is about to board or leave, or has boarded or left, any ship or aircraft; and
 - (b) the officer has reasonable grounds to suspect that there is on the person, or in clothing being worn by the person, a bearer negotiable instrument in respect of which a false declaration has been made;
- for the purpose of finding out whether the person has with him or her any such bearer negotiable instrument.
- (7) A customs officer may only exercise the powers under subsection (6) if the customs officer is one in respect of whom a declaration under section 219ZA of the *Customs Act 1901* is in force.
- (8) A person must not be searched under subsection (6) except by a person of the same sex.

Officer may conduct searches on board a ship or aircraft

- (9) The officer, and any person assisting the officer, may:
- (a) board any ship or aircraft; or
 - (b) go onto or enter any prescribed place;
- for the purpose of exercising the powers conferred by subsection (1), (2), (5), (6) or (10).

Officer may seize bearer negotiable instrument

- (10) If, in the course of an examination or search under subsection (5) or (6), an officer finds a bearer negotiable instrument in respect of which a false declaration has been made, the officer may seize it.
- (11) If a person produces a bearer negotiable instrument to an officer in respect of which a false declaration has been made, the officer may seize it.

Offence

- (12) A person commits an offence if the person contravenes subsection (1) or (2).

Penalty: Imprisonment for one year.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on an individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act.

Definitions

- (13) In this section:

officer and *prescribed place* have the same respective meanings as in section 33.

Note: The heading to section 33 is altered by adding at the end “**in relation to currency**”.

19 Subsection 33A(1)

After “section 15”, insert “or 15AA”.

20 Subsection 33A(5)

Repeal the subsection, substitute:

- (5) In this section:

offence against section 15 or 15AA includes an offence against section 6 of the *Crimes Act 1914* or section 11.1, 11.4 or 11.5 of the *Criminal Code* that relates to an offence against section 15 or 15AA of this Act, as the case requires.

officer has the same meaning as in section 33.

21 After Schedule 3

Insert:

Schedule 3AA—Reportable details for purposes of section 15AA

Note: See subsection 15AA(6).

For the purposes of section 15AA, the following are the reportable details in respect of bearer negotiable instruments:

1. The amount payable under each bearer negotiable instrument.
2. Whether the bearer negotiable instrument is denominated in Australian currency or foreign currency and, if foreign currency, which foreign currency.
3. If the person making the report is to carry the bearer negotiable instruments into or out of Australia:
 - (a) the name, address, date of birth and occupation (or, where appropriate, the business or principal activity) of the person; and
 - (b) the international travel document number and country of issue of the international travel document or international travel documents held by the person; and
 - (c) if the person is not an Australian resident—that person's address while in Australia; and
 - (d) the name of the city in Australia from which the person is to depart or at which the person will arrive; and
 - (e) the name of the foreign country and the city in that country from which the bearer negotiable instruments are being imported or to which the bearer negotiable instruments are being exported; and
 - (f) if the person is to carry the bearer negotiable instruments on behalf of another person:

- (i) the name, address and occupation (or, where appropriate, business or principal activity) of that person; and
- (ii) the name and address, and occupation, business or principal activity of the person to whom the bearer negotiable instruments are to be delivered; and
- (g) the day on which the person is to enter or leave Australia and the number of the flight or the name of the vessel on which the person is entering or leaving.

4. If a person is to carry the bearer negotiable instruments out of Australia—the name and address of that person.

Proceeds of Crime Act 2002

22 Subsection 29(3)

After “section 15,” insert “15AA,”.

23 Section 338 (after subparagraph (c)(i) of the definition of *serious offence*)

Insert:

- (ia) section 15AA (reports in respect of bearer negotiable instruments); or

Surveillance Devices Act 2004

24 Subsection 6(1) (paragraph (c) of the definition of *relevant offence*)

After “section 15” insert “, 15AA”.

Schedule 10—ASIO powers etc.

Australian Security Intelligence Organisation Act 1979

1 Section 4

Insert:

data storage device means a thing (for example, a disk or file server) containing (whether temporarily or permanently), or designed to contain (whether temporarily or permanently), data for use by a computer.

2 After section 22

Insert:

23 Requesting information or documents from operators of aircraft or vessels

- (1) For the purposes of carrying out the Organisation's functions, an authorised officer or employee may:
 - (a) ask an operator of an aircraft or vessel questions relating to the aircraft or vessel, or its cargo, crew, passengers, stores or voyage; or
 - (b) request an operator of an aircraft or vessel to produce documents relating to the aircraft or vessel, or its cargo, crew, passengers, stores or voyage, that are in the possession or under the control of the operator.
- (2) A person who is asked a question or requested to produce a document under subsection (1) must answer the question or produce the document as soon as practicable.

Offence

- (3) A person commits an offence if:
 - (a) the person is an operator of an aircraft or vessel; and
 - (b) the person is asked a question or requested to produce a document under subsection (1); and
 - (c) the person fails to answer the question or produce the document.

Penalty: 60 penalty units.

- (4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (5) It is a defence to a prosecution for an offence against subsection (3) if the person charged had a reasonable excuse for:

- (a) failing to answer the question; or
- (b) failing to produce the document.

- (6) The Director-General, or a senior officer of the Organisation appointed by the Director-General in writing to be an authorising officer for the purposes of this subsection, may authorise, in writing, an officer or employee of the Organisation, or a class of such officers or employees, for the purposes of this section.

- (7) In this section:

authorised officer or employee means an officer or employee who is authorised under subsection (6) for the purposes of this section.

operator has the meaning given by section 4 of the *Customs Act 1901*.

senior officer of the Organisation means an officer of the Organisation who holds or performs the duties of an office that is:

- (a) equivalent to a position occupied by an SES employee; or
- (b) designated as an office of Coordinator by the Director-General under section 85.

3 Paragraphs 25(4)(d) and (4A)(c)

Omit “for such time as is reasonable”.

4 After subsection 25(4B)

Insert:

Time period for retaining records and other things

- (4C) A record or other thing retained as mentioned in paragraph (4)(d) or (4A)(c) may be retained:

- (a) if returning the record or thing would be prejudicial to security—only until returning the record or thing would no longer be prejudicial to security; and

(b) otherwise—for only such time as is reasonable.

5 Paragraph 25(5)(a)

After “or other electronic equipment” (first occurring), insert “, or a data storage device, brought to or”.

6 Paragraph 25(5)(a)

Omit “or other electronic equipment” (second and third occurring), substitute “, equipment or device”.

7 Paragraph 25(5)(b)

Omit “or other electronic equipment”, substitute “, equipment or device”.

8 Subparagraph 25(5)(b)(iii)

Omit “a storage device”, substitute “any data storage device”.

9 Subparagraph 25(5)(b)(iii)

Omit “the storage device”, substitute “the device”.

10 Subsection 25(6)

Omit “of the computer or other electronic equipment by other persons”, substitute “by other persons of a computer or other electronic equipment, or a data storage device, found on the subject premises”.

11 Subsection 25(6)

Omit “or other electronic equipment” (second occurring), substitute “, equipment or device”.

12 Subsection 25(10)

Omit “28 days”, substitute “90 days”.

13 Before paragraph 25A(4)(a)

Insert:

(aa) entering specified premises for the purposes of doing the things mentioned in this subsection;

14 At the end of paragraph 25A(4)(a)

Add:

or (iv) a data storage device;

15 After subsection 25A(5)

Insert:

Authorisation of entry measures

(5A) The warrant must:

- (a) authorise the use of any force that is necessary and reasonable to do the things specified in the warrant; and
- (b) state whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night.

16 Subsection 27(4)

Omit “90 days”, substitute “6 months”.

17 Subsection 27AA(9)

Omit “90 days”, substitute “6 months”.

18 Paragraph 27A(3)(a)

Omit “28 days”, substitute “90 days”.

19 Paragraph 27A(3)(b)

Omit “or 26C(3)—6 months; or”, substitute “, 26C(3), 27(2) or (3) or 27AA(5) or (8)—6 months;”.

20 Paragraph 27A(3)(c)

Repeal the paragraph.

21 Paragraph 34G(5)(b)

Omit “in a material particular”.

22 After subsection 34G(5)

Insert:

(5A) Subsection (5) does not apply 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 (5A) (see subsection 13.3(3) of the *Criminal Code*).

23 Paragraphs 34N(1)(a) and (c)

Omit “for such time as is reasonable”.

24 At the end of section 34N

Add:

- (3) A record or other thing, or an item, retained as mentioned in paragraph (1)(a) or (c) may be retained:
 - (a) if returning the record, thing or item would be prejudicial to security—only until returning the record, thing or item would no longer be prejudicial to security; and
 - (b) otherwise—for only such time as is reasonable.

25 Application of items

- (1) The amendments made by items 1, 3 to 20, 23 and 24 apply to warrants issued after this item commences.
- (2) The amendments made by items 21 and 22 apply to statements made after this item commences.

26 Section 35

Before “In this Part”, insert “(1)”.

27 Section 35 (at the end of the definition of *prescribed administrative action*)

Add:

Note: An obligation, prohibition or restriction imposed by a control order is not prescribed administrative action (see subsection (2)).

28 At the end of section 35

Add:

- (2) To avoid doubt, an obligation, prohibition or restriction imposed on a person by a control order made under Division 104 of the *Criminal Code* is not prescribed administrative action.

Customs Act 1901**29 After subparagraph 186A(1)(b)(ii)**

Insert:

- or (iii) the performance of functions under section 17 of the *Australian Security Intelligence Organisation Act 1979*;
or
- (iv) the performance of functions under section 6 of the *Intelligence Services Act 2001*; or
- (v) security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*);

Customs Administration Act 1985

30 After paragraph 16(9)(i)

Insert:

- (ia) a purpose relating to the performance of functions under section 17 of the *Australian Security Intelligence Organisation Act 1979*;
- (ib) a purpose relating to the performance of functions under section 6 of the *Intelligence Services Act 2001*;

Migration Act 1958

31 Paragraph 202(1)(a)

Omit “the security of the Commonwealth, of a State or of an internal or external Territory”, substitute “security”.

32 Subsection 202(6)

Insert:

security has the meaning given by section 4 of the *Australian Security Intelligence Organisation Act 1979*.

*[Minister's second reading speech made in—
House of Representatives on 3 November 2005
Senate on 30 November 2005]*

(175/05)