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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Anti-Terrorism Bill (No. 2) 2005

No. , 2005

(Attorney-General)

**A Bill for an Act to amend the law relating to
terrorist acts, and for other purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **terrorist acts, and for other purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

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

6 **2 Commencement**

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

11

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.	
2. Schedule 1, items 1 to 21	The day after this Act receives the Royal Assent.	
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.	
4. Schedule 1, item 23	The day after this Act receives the Royal Assent.	
5. Schedule 2	The day on which this Act receives the Royal Assent.	
6. Schedules 3 to 6	The day after this Act receives the Royal Assent.	
7. Schedules 7 and 8	The 28th day after the day on which this Act receives the Royal Assent.	
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.	
9. Schedule 9, items 3 and 4	The day on which this Act receives the Royal Assent.	
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 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.	

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.	
12. Schedule 9, item 7	The day on which this Act receives the Royal Assent.	
13. Schedule 9, items 8 and 9	At the same time as the provision(s) covered by table item 8.	
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 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.	
15. Schedule 9, item 11	At the same time as the provision(s) covered by table item 10.	
16. Schedule 9, items 12 and 13	At the same time as the provision(s) covered by table item 14.	
17. Schedule 9, items 14 and 15	At the same time as the provision(s) covered by table item 8.	
18. Schedule 9, items 16 and 17	At the same time as the provision(s) covered by table item 14.	
19. Schedule 9, items 18 to 24	At the same time as the provision(s) covered by table item 8.	
20. Schedule 10, items 1 to 25	The day on which this Act receives the Royal Assent.	
21. Schedule 10, items 26 to 28	The day after this Act receives the Royal Assent.	
22. Schedule 10, items 29 to 32	The day on which this Act receives the Royal Assent.	

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

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

1 **3 Schedule(s)**

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

6 **4 Review of anti-terrorism laws**

- 7 (1) The Council of Australian Governments agreed on 27 September
8 2005 that the Council would, after 5 years, review the operation of:
9 (a) the amendments made by Schedules 1, 3, 4 and 5; and
10 (b) certain State laws.
- 11 (2) If a copy of the report in relation to the review is given to the
12 Attorney-General, the Attorney-General must cause a copy of the
13 report to be laid before each House of Parliament within 15 sitting
14 days after the Attorney-General receives the copy of the report.

1
2 **Schedule 1—Definition of terrorist**
3 **organisation etc.**
4

5 ***Crimes (Foreign Incursions and Recruitment) Act 1978***

6 **1 Paragraph 6(7)(b)**

7 Omit “, (c), (d) or (e)”.

8 ***Criminal Code Act 1995***

9 **2 Subsection 102.1(1) of the *Criminal Code***

10 Insert:

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

12 **3 Subsection 102.1(1) of the *Criminal Code* (definition of**
13 ***Hamas organisation*)**

14 Repeal the definition.

15 **4 Subsection 102.1(1) of the *Criminal Code* (definition of**
16 ***Hizballah organisation*)**

17 Repeal the definition.

18 **5 Subsection 102.1(1) of the *Criminal Code* (definition of**
19 ***Lashkar-e-Tayyiba organisation*)**

20 Repeal the definition.

21 **6 Subsection 102.1(1) of the *Criminal Code* (paragraph (a) of**
22 **the definition of *terrorist organisation*)**

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

24 **7 Subsection 102.1(1) of the *Criminal Code* (paragraph (b) of**
25 **the definition of *terrorist organisation*)**

26 Omit “(4); or”, substitute “(4).”.

27 **8 Subsection 102.1(1) of the *Criminal Code* (paragraphs (c),**
28 **(d) and (e) of the definition of *terrorist organisation*)**

1 Repeal the paragraphs.

2 **9 After subsection 102.1(1) of the *Criminal Code***

3 Insert:

4 *Definition of advocates*

5 (1A) In this Division, an organisation *advocates* the doing of a terrorist
6 act if:

- 7 (a) the organisation directly or indirectly counsels or urges the
8 doing of a terrorist act; or
9 (b) the organisation directly or indirectly provides instruction on
10 the doing of a terrorist act; or
11 (c) the organisation directly praises the doing of a terrorist act.

12 **10 Subsection 102.1(2) of the *Criminal Code***

13 Repeal the subsection, substitute:

14 *Terrorist organisation regulations*

15 (2) Before the Governor-General makes a regulation specifying an
16 organisation for the purposes of paragraph (b) of the definition of
17 *terrorist organisation* in this section, the Minister must be satisfied
18 on reasonable grounds that the organisation:

- 19 (a) is directly or indirectly engaged in, preparing, planning,
20 assisting in or fostering the doing of a terrorist act (whether
21 or not a terrorist act has occurred or will occur); or
22 (b) advocates the doing of a terrorist act (whether or not a
23 terrorist act has occurred or will occur).

24 **11 Paragraph 102.1(4)(b) of the *Criminal Code***

25 Repeal the paragraph, substitute:

- 26 (b) the Minister ceases to be satisfied of either of the following
27 (as the case requires):
28 (i) that the organisation is directly or indirectly engaged in,
29 preparing, planning, assisting in or fostering the doing
30 of a terrorist act (whether or not a terrorist act has
31 occurred or will occur);

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

4 **12 Subsection 102.1(6) of the *Criminal Code***

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

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

8 Repeal the subsections.

9 **14 Paragraph 102.1(17)(a) of the *Criminal Code***

10 Omit “, (c), (d) or (e)”.

11 **15 Paragraph 102.1(17)(b) of the *Criminal Code***

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

13 **16 Paragraph 102.1(17)(c) of the *Criminal Code***

14 Repeal the paragraph, substitute:

15 (c) the de-listing application is made on the grounds that there is
16 no basis for the Minister to be satisfied that the listed
17 organisation:

18 (i) is directly or indirectly engaged in, preparing, planning,
19 assisting in or fostering the doing of a terrorist act
20 (whether or not a terrorist act has occurred or will
21 occur); or

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

24 as the case requires;

25 **17 Subsection 102.1(18) of the *Criminal Code***

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

28 **18 Paragraph 102.5(2)(b) of the *Criminal Code***

29 Omit “, (c), (d) or (e)”.

30 **19 Paragraph 102.8(1)(b) of the *Criminal Code***

31 Omit “, (c), (d) or (e)”.

1 **20 Paragraph 102.8(2)(g) of the *Criminal Code***

2 Omit “, (c), (d) or (e)”.

3 **21 At the end of Division 106 of the *Criminal Code***

4 Add:

5 **106.2 Saving—regulations made for the purposes of paragraph (a)**
6 **of the definition of *terrorist organisation***

7 (1) If:

8 (a) regulations were made before commencement for the
9 purposes of paragraph (a) of the definition of *terrorist*
10 *organisation* in subsection 102.1(1), as in force before
11 commencement; and

12 (b) the regulations were in force immediately before
13 commencement;

14 the regulations continue to have effect, after commencement, as if
15 they had been made for the purposes of that paragraph, as in force
16 after commencement.

17 (2) In this section, *commencement* means the commencement of this
18 section.

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

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

23 Add:

24 **106.3 Application provision**

25 The amendments to this Code made by Schedule 1 to the
26 *Anti-Terrorism Act 2005* apply to offences committed:

27 (a) before the commencement of this section (but not before the
28 commencement of the particular section of the Code being
29 amended); and

30 (b) after the commencement of this section.

31 ***Customs Act 1901***

- 1 **23 Subparagraph 203DA(1)(c)(i)**
2 Omit “the terrorist act”, substitute “a terrorist act”.

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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

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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

1 (c) the funds will be used to facilitate or engage in more than one
2 terrorist act.

3 **103.3 Extended geographical jurisdiction for offences**

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

6 ***Financial Transaction Reports Act 1988***

7 **4 Subsection 16(6) (paragraph (a) of the definition of**
8 ***financing of terrorism offence*)**

9 Repeal the paragraph, substitute:

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

1
2 **Schedule 4—Control orders and preventative**
3 **detention orders**

4 **Part 1—Control orders and preventative detention**
5 **orders**

6 *Criminal Code Act 1995*

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

8 Insert:

9 *AFP member* means:

- 10 (a) a member of the Australian Federal Police (within the
11 meaning of the *Australian Federal Police Act 1979*); or
12 (b) a special member of the Australian Federal Police (within the
13 meaning of that Act).

14 **2 Subsection 100.1(1) of the *Criminal Code***

15 Insert:

16 *confirmed control order* means an order made under
17 section 104.16.

18 **3 Subsection 100.1(1) of the *Criminal Code***

19 Insert:

20 *continued preventative detention order* means an order made
21 under section 105.12.

22 **4 Subsection 100.1(1) of the *Criminal Code***

23 Insert:

24 *control order* means an interim control order or a confirmed
25 control order.

26 **5 Subsection 100.1(1) of the *Criminal Code***

27 Insert:

1 *corresponding State preventative detention law* means a law of a
2 State or Territory that is, or particular provisions of a law of a State
3 or Territory that are, declared by the regulations to correspond to
4 Division 105 of this Act.

5 **6 Subsection 100.1(1) of the *Criminal Code***

6 Insert:

7 *frisk search* means:

- 8 (a) a search of a person conducted by quickly running the hands
9 over the person's outer garments; and
10 (b) an examination of anything worn or carried by the person
11 that is conveniently and voluntarily removed by the person.

12 **7 Subsection 100.1(1) of the *Criminal Code***

13 Insert:

14 *identification material*, in relation to a person, means prints of the
15 person's hands, fingers, feet or toes, recordings of the person's
16 voice, samples of the person's handwriting or photographs
17 (including video recordings) of the person, but does not include
18 tape recordings made for the purposes of section 23U or 23V of the
19 *Crimes Act 1914*.

20 **8 Subsection 100.1(1) of the *Criminal Code***

21 Insert:

22 *initial preventative detention order* means an order made under
23 section 105.8.

24 **9 Subsection 100.1(1) of the *Criminal Code***

25 Insert:

26 *interim control order* means an order made under section 104.4,
27 104.7 or 104.9.

28 **10 Subsection 100.1(1) of the *Criminal Code***

29 Insert:

30 *issuing authority*:

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

5 **11 Subsection 100.1(1) of the *Criminal Code***

6 Insert:

7 *issuing court* means:

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

11 **12 Subsection 100.1(1) of the *Criminal Code***

12 Insert:

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

14 **13 Subsection 100.1(1) of the *Criminal Code***

15 Insert:

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

18 **14 Subsection 100.1(1) of the *Criminal Code***

19 Insert:

20 *listed terrorist organisation* means an organisation that is specified
21 by the regulations for the purposes of paragraph (b) of the
22 definition of *terrorist organisation* in section 102.1.

23 **15 Subsection 100.1(1) of the *Criminal Code***

24 Insert:

25 *ordinary search* means a search of a person or of articles in the
26 possession of a person that may include:

- 27 (a) requiring the person to remove his or her overcoat, coat or
28 jacket and any gloves, shoes or hat; and
29 (b) an examination of those items.

30 **16 Subsection 100.1(1) of the *Criminal Code***

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

1 Insert:

2 ***police officer*** means:

3 (a) an AFP member; or

4 (b) a member (however described) of a police force of a State or
5 Territory.

6 **17 Subsection 100.1(1) of the *Criminal Code***

7 Insert:

8 ***prescribed authority*** has the same meaning as in Division 3 of
9 Part III of the *Australian Security Intelligence Organisation Act*
10 1979.

11 **18 Subsection 100.1(1) of the *Criminal Code***

12 Insert:

13 ***preventative detention order*** means an order under section 105.8
14 or 105.12.

15 **19 Subsection 100.1(1) of the *Criminal Code***

16 Insert:

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

19 **20 Subsection 100.1(1) of the *Criminal Code***

20 Insert:

21 ***seizable item*** means anything that:

22 (a) would present a danger to a person; or

23 (b) could be used to assist a person to escape from lawful
24 custody; or

25 (c) could be used to contact another person or to operate a device
26 remotely.

27 **21 Subsection 100.1(1) of the *Criminal Code***

28 Insert:

29 ***senior AFP member*** means:

30 (a) the Commissioner of the Australian Federal Police; or

- 1 (b) a Deputy Commissioner of the Australian Federal Police; or
2 (c) an AFP member of, or above, the rank of Superintendent.

3 **22 Subsection 100.1(1) of the *Criminal Code***

4 Insert:

5 *superior court* means:

- 6 (a) the High Court; or
7 (b) the Federal Court of Australia; or
8 (c) the Family Court of Australia or of a State; or
9 (d) the Supreme Court of a State or Territory; or
10 (e) the District Court (or equivalent) of a State or Territory.

11 **23 Subsection 100.1(1) of the *Criminal Code***

12 Insert:

13 *tracking device* means any electronic device capable of being used
14 to determine or monitor the location of a person or an object or the
15 status of an object.

16 **24 After Division 103 of the *Criminal Code***

17 Insert:

18 **Division 104—Control orders**

19 **Subdivision A—Object of this Division**

20 **104.1 Object of this Division**

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

1 **Subdivision B—Making an interim control order**

2 **104.2 Attorney-General's consent to request an interim control**
3 **order**

- 4 (1) A senior AFP member must not request an interim control order in
5 relation to a person without the Attorney-General's written
6 consent.

7 Note: However, in urgent circumstances, a senior AFP member may request
8 an interim control order without first obtaining the Attorney-General's
9 consent (see Subdivision C).

- 10 (2) A senior AFP member may only seek the Attorney-General's
11 written consent to request an interim control order in relation to a
12 person if the member:
13 (a) considers on reasonable grounds that the order in the terms to
14 be requested would substantially assist in preventing a
15 terrorist act; or
16 (b) suspects on reasonable grounds that the person has provided
17 training to, or received training from, a listed terrorist
18 organisation.

- 19 (3) In seeking the Attorney-General's consent, the member must give
20 the Attorney-General a draft request that includes:
21 (a) a draft of the interim control order to be requested; and
22 (b) the following:
23 (i) a statement of the facts relating to why the order should
24 be made;
25 (ii) if the member is aware of any facts relating to why the
26 order should not be made—a statement of those facts;
27 and
28 (c) the following:
29 (i) an explanation as to why each of the obligations,
30 prohibitions and restrictions should be imposed on the
31 person;
32 (ii) if the member is aware of any facts relating to why any
33 of those obligations, prohibitions or restrictions should
34 not be imposed on the person—a statement of those
35 facts; and
36 (d) the following:

- 1 (i) the outcomes and particulars of all previous requests for
2 interim control orders (including the outcomes of the
3 hearings to confirm the orders) in relation to the person;
4 (ii) the outcomes and particulars of all previous applications
5 for variations of control orders made in relation to the
6 person;
7 (iii) the outcomes of all previous applications for
8 revocations of control orders made in relation to the
9 person;
10 (iv) the outcomes and particulars of all previous applications
11 for preventative detention orders in relation to the
12 person;
13 (v) information (if any) that the member has about any
14 periods for which the person has been detained under an
15 order made under a corresponding State preventative
16 detention law; and
17 (e) information (if any) that the member has about the person's
18 age.

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

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

- 23 (4) The Attorney-General's consent may be made subject to changes
24 being made to the draft request (including the draft of the interim
25 control order to be requested).
- 26 (5) To avoid doubt, a senior AFP member may seek the
27 Attorney-General's consent to request an interim control order in
28 relation to a person, even if such a request has previously been
29 made in relation to the person.

30 **104.3 Requesting the court to make an interim control order**

31 If the Attorney-General consents to the request under
32 section 104.2, the senior AFP member may request the interim
33 control order by giving an issuing court:

- 34 (a) a request:
35 (i) that is the same as the draft request, except for the
36 changes (if any) required by the Attorney-General; and

1 (ii) the information in which is sworn or affirmed by the
2 member; and

3 (b) a copy of the Attorney-General's consent.

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

6 **104.4 Making an interim control order**

7 (1) The issuing court may make an order under this section in relation
8 to the person, but only if:

9 (a) the senior AFP member has requested it in accordance with
10 section 104.3; and

11 (b) the court has received and considered such further
12 information (if any) as the court requires; and

13 (c) the court is satisfied on the balance of probabilities:

14 (i) that making the order would substantially assist in
15 preventing a terrorist act; or

16 (ii) that the person has provided training to, or received
17 training from, a listed terrorist organisation; and

18 (d) the court is satisfied on the balance of probabilities that each
19 of the obligations, prohibitions and restrictions to be imposed
20 on the person by the order is reasonably necessary, and
21 reasonably appropriate and adapted, for the purpose of
22 protecting the public from a terrorist act.

23 (2) In determining whether each of the obligations, prohibitions and
24 restrictions to be imposed on the person by the order is reasonably
25 necessary, and reasonably appropriate and adapted, the court must
26 take into account the impact of the obligation, prohibition or
27 restriction on the person's circumstances (including the person's
28 financial and personal circumstances).

29 (3) The court need not include in the order an obligation, prohibition
30 or restriction that was sought by the senior AFP member if the
31 court is not satisfied as mentioned in paragraph (1)(d) in respect of
32 that obligation, prohibition or restriction.

33 **104.5 Terms of an interim control order**

34 (1) If the issuing court makes the interim control order, the order must:

- 1 (a) state that the court is satisfied of the matters mentioned in
2 paragraphs 104.4(1)(c) and (d); and
3 (b) specify the name of the person to whom the order relates; and
4 (c) specify all of the obligations, prohibitions and restrictions
5 mentioned in subsection (3) that are to be imposed on the
6 person by the order; and
7 (d) state that the order does not begin to be in force until it is
8 served personally on the person; and
9 (e) specify a day on which the person may attend the court for
10 the court to:
11 (i) confirm (with or without variation) the interim control
12 order; or
13 (ii) declare the interim control order to be void; or
14 (iii) revoke the interim control order; and
15 (f) specify the period during which the confirmed control order
16 is to be in force, which must not end more than 12 months
17 after the day on which the interim control order is made; and
18 (g) state that the person's lawyer may attend a specified place in
19 order to obtain a copy of the interim control order.

20 Note 1: An interim control order made in relation to a person must be served
21 on the person at least 48 hours before the day specified as mentioned
22 in paragraph (1)(e) (see section 104.12).

23 Note 2: A confirmed control order that is made in relation to a 16- to
24 18-year-old must not end more than 3 months after the day on which
25 the interim control order is made (see section 104.28).

- 26 (2) Paragraph (1)(f) does not prevent the making of successive control
27 orders in relation to the same person.

28 *Obligations, prohibitions and restrictions*

- 29 (3) The obligations, prohibitions and restrictions that the court may
30 impose on the person by the order are the following:
31 (a) a prohibition or restriction on the person being at specified
32 areas or places;
33 (b) a prohibition or restriction on the person leaving Australia;
34 (c) a requirement that the person remain at specified premises
35 between specified times each day, or on specified days;
36 (d) a requirement that the person wear a tracking device;
37 (e) a prohibition or restriction on the person communicating or
38 associating with specified individuals;
-

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

- 1 (f) a prohibition or restriction on the person accessing or using
2 specified forms of telecommunication or other technology
3 (including the Internet);
- 4 (g) a prohibition or restriction on the person possessing or using
5 specified articles or substances;
- 6 (h) a prohibition or restriction on the person carrying out
7 specified activities (including in respect of his or her work or
8 occupation);
- 9 (i) a requirement that the person report to specified persons at
10 specified times and places;
- 11 (j) a requirement that the person allow himself or herself to be
12 photographed;
- 13 (k) a requirement that the person allow impressions of his or her
14 fingerprints to be taken;
- 15 (l) a requirement that the person participate in specified
16 counselling or education.

17 Note: Restrictions apply to the use of photographs or impressions of
18 fingerprints taken as mentioned in paragraphs (3)(j) and (k) (see
19 section 104.22).

20 *Communicating and associating*

- 21 (4) Subsection 102.8(4) applies to paragraph (3)(e) and the person's
22 communication or association in the same way as that subsection
23 applies to section 102.8 and a person's association.
- 24 (5) This section does not affect the person's right to contact,
25 communicate or associate with the person's lawyer unless the
26 person's lawyer is a specified individual as mentioned in
27 paragraph (3)(e). If the person's lawyer is so specified, the person
28 may contact, communicate or associate with any other lawyer who
29 is not so specified.

30 *Counselling and education*

- 31 (6) A person is required to participate in specified counselling or
32 education as mentioned in paragraph (3)(l) only if the person
33 agrees, at the time of the counselling or education, to participate in
34 the counselling or education.

1 **Subdivision C—Making an urgent interim control order**

2 **104.6 Requesting an urgent interim control order by electronic**
3 **means**

4 (1) A senior AFP member may request, by telephone, fax, email or
5 other electronic means, an issuing court to make an interim control
6 order in relation to a person if:

7 (a) the member considers it necessary to use such means because
8 of urgent circumstances; and

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

11 (2) The Attorney-General's consent under section 104.2 is not required
12 before the request is made.

13 Note: However, if the Attorney-General's consent is not obtained before the
14 member makes the request, the Attorney-General's consent must be
15 obtained within 4 hours of the member making the request (see
16 section 104.10).

17 (3) The issuing court may require communication by voice to the
18 extent that is practicable in the circumstances.

19 (4) The request must include the following:

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

25 (b) an explanation as to why the making of the interim control
26 order is urgent;

27 (c) if the Attorney-General's consent has been obtained before
28 making the request—a copy of the Attorney-General's
29 consent.

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

32 (5) The information and the explanation included in the request must
33 be sworn or affirmed by the member, but do not have to be sworn
34 or affirmed before the request is made.

35 Note: Subsection 104.7(5) requires the information and the explanation to be
36 sworn or affirmed within 24 hours.

1 **104.7 Making an urgent interim control order by electronic means**

- 2 (1) Before making an order in response to a request under
3 section 104.6, the issuing court must:
4 (a) consider the information and the explanation included in the
5 request; and
6 (b) receive and consider such further information (if any) as the
7 court requires.
- 8 (2) If the issuing court is satisfied that an order should be made
9 urgently, the court may complete the same form of order that
10 would be made under sections 104.4 and 104.5.

11 *Procedure after urgent interim control order is made*

- 12 (3) If the issuing court makes the order, the court must inform the
13 senior AFP member, by telephone, fax, email or other electronic
14 means, of:
15 (a) the terms of the order; and
16 (b) the day on which, and the time at which, it was completed.
- 17 (4) The member must then complete a form of order in terms
18 substantially corresponding to those given by the issuing court,
19 stating on the form:
20 (a) the name of the court; and
21 (b) the day on which, and the time at which, the order was
22 completed.
- 23 (5) Within 24 hours of being informed under subsection (3), the
24 member must give or transmit the following to the issuing court:
25 (a) the form of order completed by the member;
26 (b) if the information and the explanation included in the request
27 were not already sworn or affirmed—that information and
28 explanation duly sworn or affirmed;
29 (c) if the Attorney-General's consent was not obtained before
30 making the request—a copy of the Attorney-General's
31 consent.
- 32 (6) The issuing court must attach to the documents provided under
33 subsection (5) the form of order the court has completed.

1 **104.8 Requesting an urgent interim control order in person**

- 2 (1) A senior AFP member may request, in person, an issuing court to
3 make an interim control order in relation to a person without first
4 obtaining the Attorney-General's consent under section 104.2 if:
5 (a) the member considers it necessary to request the order
6 without the consent because of urgent circumstances; and
7 (b) the member either considers or suspects the matters
8 mentioned in subsection 104.2(2) on reasonable grounds.

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

- 11 (2) The request must include the following:
12 (a) all that is required under subsection 104.2(3) in respect of an
13 ordinary request for an interim control order (including
14 information that is sworn or affirmed by the member);
15 (b) an explanation that is sworn or affirmed as to why the
16 making of the interim control order without first obtaining
17 the Attorney-General's consent is urgent.

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

20 **104.9 Making an urgent interim control order in person**

- 21 (1) Before making an order in response to a request under
22 section 104.8, the issuing court must:
23 (a) consider the information and the explanation included in the
24 request; and
25 (b) receive and consider such further information (if any) as the
26 court requires.
- 27 (2) If the issuing court is satisfied that an order should be made
28 urgently, the court may make the same order that would be made
29 under sections 104.4 and 104.5.
- 30 (3) Within 24 hours of the order being made under subsection (2), the
31 member must:
32 (a) give or transmit a copy of the order to the issuing court; and
33 (b) either:
34 (i) give or transmit a copy of the Attorney-General's
35 consent to request the order to the court; or

- 1 (ii) notify the court in writing that the Attorney-General's
2 consent was not obtained.

3 Note: Section 104.10 deals with the Attorney-General's consent.

4 **104.10 Obtaining the Attorney-General's consent within 4 hours**

- 5 (1) If the Attorney-General's consent to request an interim control
6 order was not first sought before making a request under
7 section 104.6 or 104.8, the senior AFP member who made the
8 request must, in accordance with subsection 104.2(3), seek that
9 consent within 4 hours of making the request.

- 10 (2) In any case, if the Attorney-General:
11 (a) refuses his or her consent to request the order; or
12 (b) has not given his or her consent to request the order;
13 within 4 hours of the request being made, the order immediately
14 ceases to be in force.

15 Note: However, the senior AFP member can vary the request and seek the
16 Attorney-General's consent to request a new interim control order in
17 relation to the person (see subsection 104.2(5)).

- 18 (3) If the order ceases to be in force under subsection (2), the senior
19 AFP member must, as soon as practicable:
20 (a) notify the court that the order has ceased to be in force; and
21 (b) if the order has been served on the person in relation to
22 whom it was made:
23 (i) annotate the order to indicate that it has ceased to be in
24 force; and
25 (ii) cause the annotated order to be served personally on the
26 person.

27 **104.11 Court to assume that exercise of power not authorised by**
28 **urgent interim control order**

29 If:

- 30 (a) it is material, in any proceedings, for a court to be satisfied
31 that an interim control order was duly made under
32 section 104.7; and
33 (b) the form of order completed by the relevant issuing court is
34 not produced in evidence;

1 the first-mentioned court is to assume, unless the contrary is
2 proved, that the order was not duly made.

3 **Subdivision D—Confirming an interim control order**

4 **104.12 Service, explanation and notification of an interim control**
5 **order**

6 *Service and explanation of an interim control order*

- 7 (1) As soon as practicable after an interim control order is made in
8 relation to a person, and at least 48 hours before the day specified
9 as mentioned in paragraph 104.5(1)(e), an AFP member:
- 10 (a) must serve personally on the person:
- 11 (i) the order; and
12 (ii) a summary of the grounds on which the order is made;
13 and
- 14 (b) must inform the person of the following:
- 15 (i) the effect of the order;
16 (ii) the period for which the order (if confirmed) is in force;
17 (iii) the effect of sections 104.13, 104.14, 104.18 and 104.27
18 (and section 104.22 if appropriate); and
- 19 (c) must ensure that the person understands the information
20 provided under paragraph (b) (taking into account the
21 person's age, language skills, mental capacity and any other
22 relevant factor).
- 23 (2) To avoid doubt, subparagraph (1)(a)(ii) does not require any
24 information to be included in the summary if the disclosure of that
25 information is likely to prejudice national security (within the
26 meaning of the *National Security Information (Criminal and Civil*
27 *Proceedings) Act 2004*).
- 28 (3) Paragraphs (1)(b) and (c) do not apply if the actions of the person
29 in relation to whom the interim control order has been made make
30 it impracticable for the AFP member to comply with those
31 paragraphs.
- 32 (4) A failure to comply with paragraph (1)(c) does not make the
33 control order ineffective to any extent.

1 *Notifying the Queensland public interest monitor of an interim*
2 *control order*

- 3 (5) If:
- 4 (a) the person in relation to whom the interim control order is
5 made is a resident of Queensland; or
- 6 (b) the issuing court that made the interim control order did so in
7 Queensland;
8 an AFP member must give to the Queensland public interest
9 monitor written notice of:
- 10 (c) the fact that an interim control order has been made in
11 relation to the person; and
- 12 (d) the day specified as mentioned in paragraph 104.5(1)(e); and
13 (e) the name of the court that made the order.

14 **104.13 Lawyer may request a copy of an interim control order**

- 15 (1) A lawyer of the person in relation to whom an interim control order
16 is made may attend the place specified in the order as mentioned in
17 paragraph 104.5(1)(g) in order to obtain:
- 18 (a) a copy of the order; and
19 (b) a copy of the summary of the grounds on which the order is
20 made.
- 21 (2) This section does not:
- 22 (a) require more than one person to give the lawyer a copy of the
23 order or summary; or
- 24 (b) entitle the lawyer to request or be given a copy of, or see, a
25 document other than the order and summary.

26 **104.14 Confirming an interim control order**

27 *Who may adduce evidence or make submissions*

- 28 (1) On the day specified as mentioned in paragraph 104.5(1)(e), the
29 following persons may adduce evidence (including by calling
30 witnesses or producing material), or make submissions, to the
31 issuing court in relation to the confirmation of an interim control
32 order:
- 33 (a) the senior AFP member who requested the interim control
34 order;

- 1 (b) one or more other AFP members;
2 (c) the person in relation to whom the interim control order is
3 made;
4 (d) one or more representatives of the person;
5 (e) if:
6 (i) the person is a resident of Queensland; or
7 (ii) the court made the interim control order in Queensland;
8 the Queensland public interest monitor (unless the monitor is
9 already a representative of the person).

10 (2) Subsection (1) does not otherwise limit the power of the court to
11 control proceedings in relation to the confirmation of an interim
12 control order.

- 13 (3) Before taking action under this section, the court must consider:
14 (a) the original request for the interim control order; and
15 (b) any evidence adduced, and any submissions made, under
16 subsection (1) in respect of the order.

17 *Failure of person or representative to attend*

- 18 (4) The court may confirm the order without variation if:
19 (a) the person in relation to whom the order is made, or a
20 representative of the person, fails to attend the court on the
21 specified day; and
22 (b) the court is satisfied on the balance of probabilities that the
23 order was properly served on the person.

24 *Attendance of person or representative*

- 25 (5) The court may take the action mentioned in subsection (6) or (7) if
26 the person in relation to whom the order is made, or a
27 representative of the person, attends the court on the specified day.
- 28 (6) The court may declare, in writing, the order to be void if the court
29 is satisfied that, at the time of making the order, there were no
30 grounds on which to make the order.
- 31 (7) Otherwise, the court may:
32 (a) revoke the order if, at the time of confirming the order, the
33 court is not satisfied as mentioned in paragraph 104.4(1)(c);
34 or

- 1 (b) confirm and vary the order by removing one or more
2 obligations, prohibitions or restrictions if, at the time of
3 confirming the order, the court is satisfied as mentioned in
4 paragraph 104.4(1)(c) but is not satisfied as mentioned in
5 paragraph 104.4(1)(d); or
6 (c) confirm the order without variation if, at the time of
7 confirming the order, the court is satisfied as mentioned in
8 paragraphs 104.4(1)(c) and (d).

9 Note: If the court confirms the interim control order, the court must make a
10 new order under section 104.16.

11 **104.15 When a declaration, or a revocation, variation or**
12 **confirmation of a control order, is in force**

- 13 (1) If the court declares the interim control order to be void under
14 section 104.14, the order is taken never to have been in force.
15 (2) If the court revokes the interim control order under section 104.14,
16 the order ceases to be in force when the court revokes the order.
17 (3) If the court confirms the interim control order (with or without
18 variation) under section 104.14 then:
19 (a) the interim control order ceases to be in force; and
20 (b) the confirmed control order begins to be in force;
21 when the court makes a corresponding order under section 104.16.

22 **104.16 Terms of a confirmed control order**

- 23 (1) If the issuing court confirms the interim control order under
24 section 104.14, the court must make a corresponding order that:
25 (a) states that the court is satisfied of the matters mentioned in
26 paragraphs 104.4(1)(c) and (d); and
27 (b) specifies the name of the person to whom the order relates;
28 and
29 (c) specifies all of the obligations, prohibitions and restrictions
30 mentioned in subsection 104.5(3) that are to be imposed on
31 the person by the order; and
32 (d) specifies the period during which the order is to be in force,
33 which must not end more than 12 months after the day on
34 which the interim control order was made; and

1 (e) states that the person's lawyer may attend a specified place in
2 order to obtain a copy of the confirmed control order.

3 Note: A confirmed control order that is made in relation to a 16- to
4 18-year-old must not end more than 3 months after the day on which
5 the interim control order was made (see section 104.28).

6 (2) Paragraph (1)(d) does not prevent the making of successive control
7 orders in relation to the same person.

8 **104.17 Service of a declaration, or a revocation, variation or**
9 **confirmation of a control order**

10 As soon as practicable after an interim control order is declared to
11 be void, revoked or confirmed (with or without variation) under
12 section 104.14, an AFP member must serve the declaration, the
13 revocation or the confirmed control order personally on the person.

14 **Subdivision E—Rights in respect of a control order**

15 **104.18 Application by the person for a revocation or variation of a**
16 **control order**

- 17 (1) A person in relation to whom a confirmed control order is made
18 may apply to an issuing court for the court to revoke or vary the
19 order under section 104.20.
- 20 (2) The person may make the application at any time after the order is
21 served on the person.
- 22 (3) The person must give written notice of both the application and the
23 grounds on which the revocation or variation is sought to the
24 following persons:
25 (a) the Commissioner of the Australian Federal Police;
26 (b) if:
27 (i) the person in relation to whom the order is made is a
28 resident of Queensland; or
29 (ii) the court will hear the application in Queensland;
30 the Queensland public interest monitor.
- 31 (4) The following persons may adduce additional evidence (including
32 by calling witnesses or producing material), or make additional

- 1 submissions, to the court in relation to the application to revoke or
2 vary the order:
- 3 (a) the Commissioner;
 - 4 (b) one or more other AFP members;
 - 5 (c) the person in relation to whom the order is made;
 - 6 (d) one or more representatives of the person;
 - 7 (e) if paragraph (3)(b) applies—the Queensland public interest
8 monitor (unless the monitor is a representative of the person).
- 9 (5) Subsection (4) does not otherwise limit the power of the court to
10 control proceedings in relation to an application to revoke or vary a
11 confirmed control order.

12 **104.19 Application by the AFP Commissioner for a revocation or**
13 **variation of a control order**

- 14 (1) While a confirmed control order is in force, the Commissioner of
15 the Australian Federal Police must cause an application to be made
16 to an issuing court:
- 17 (a) to revoke the order, under section 104.20, if the
18 Commissioner is satisfied that the grounds on which the
19 order was confirmed have ceased to exist; and
 - 20 (b) to vary the order, under that section, by removing one or
21 more obligations, prohibitions or restrictions, if the
22 Commissioner is satisfied that those obligations, prohibitions
23 or restrictions should no longer be imposed on the person.
- 24 (2) The Commissioner must cause written notice of both the
25 application and the grounds on which the revocation or variation is
26 sought to be given to the following persons:
- 27 (a) the person in relation to whom the order is made;
 - 28 (b) if:
 - 29 (i) the person in relation to whom the order is made is a
30 resident of Queensland; or
 - 31 (ii) the court will hear the application in Queensland;
32 the Queensland public interest monitor.
- 33 (3) The following persons may adduce additional evidence (including
34 by calling witnesses or producing material), or make additional
35 submissions, to the court in relation to the application to revoke or
36 vary the order:

- 1 (a) the Commissioner;
2 (b) one or more other AFP members;
3 (c) the person in relation to whom the order is made;
4 (d) one or more representatives of the person;
5 (e) if paragraph (2)(b) applies—the Queensland public interest
6 monitor (unless the monitor is a representative of the person).
- 7 (4) Subsection (3) does not otherwise limit the power of the court to
8 control proceedings in relation to an application to revoke or vary a
9 confirmed control order.

10 **104.20 Revocation or variation of a control order**

- 11 (1) If an application is made under section 104.18 or 104.19 in respect
12 of a confirmed control order, the court may:
13 (a) revoke the order if, at the time of considering the application,
14 the court is not satisfied as mentioned in paragraph
15 104.4(1)(c); or
16 (b) vary the order by removing one or more obligations,
17 prohibitions or restrictions if, at the time of considering the
18 application, the court is satisfied as mentioned in paragraph
19 104.4(1)(c) but is not satisfied as mentioned in paragraph
20 104.4(1)(d); or
21 (c) dismiss the application if, at the time of considering the
22 application, the court is satisfied as mentioned in paragraphs
23 104.4(1)(c) and (d).
- 24 (2) A revocation or variation begins to be in force when the court
25 revokes or varies the order.
- 26 (3) An AFP member must serve the revocation or variation personally
27 on the person as soon as practicable after a confirmed control order
28 is revoked or varied.

29 **104.21 Lawyer may request a copy of a control order**

- 30 (1) If a control order is varied under section 104.14, 104.20 or 104.24,
31 a lawyer of the person in relation to whom the control order is
32 made may attend the place specified in the order as mentioned in
33 paragraph 104.16(1)(e) or 104.25(d) in order to obtain:
34 (a) a copy of the varied order; and

1 (b) if the order is varied under section 104.24—a copy of the
2 summary of the grounds on which the additional obligations,
3 prohibitions and restrictions have been imposed on the
4 person.

5 (2) This section does not:

- 6 (a) require more than one person to give the lawyer a copy of the
7 order or summary; or
8 (b) entitle the lawyer to request or be given a copy of, or see, a
9 document other than the order and summary.

10 **104.22 Treatment of photographs and impressions of fingerprints**

11 (1) A photograph, or an impression of fingerprints, taken as mentioned
12 in paragraph 104.5(3)(j) or (k) must only be used for the purpose of
13 ensuring compliance with the relevant control order.

14 (2) If:

- 15 (a) a period of 12 months elapses after the control order ceases to
16 be in force; and
17 (b) proceedings in respect of the control order have not been
18 brought, or have been brought and discontinued or
19 completed, within that period;

20 the photograph or the impression must be destroyed as soon as
21 practicable after the end of that period.

22 (3) A person commits an offence if:

- 23 (a) the person engages in conduct; and
24 (b) the conduct contravenes subsection (1).

25 Penalty: Imprisonment for 2 years.

26 **Subdivision F—Adding obligations, prohibitions or restrictions**
27 **to a control order**

28 **104.23 Application by the AFP Commissioner for addition of**
29 **obligations, prohibitions or restrictions**

30 (1) The Commissioner of the Australian Federal Police may cause an
31 application to be made to an issuing court to vary, under
32 section 104.24, a confirmed control order, by adding one or more
33 obligations, prohibitions or restrictions mentioned in subsection

1 104.5(3) to the order, if the Commissioner considers on reasonable
2 grounds that the varied control order in the terms to be sought
3 would substantially assist in preventing a terrorist act.

- 4 (2) The Commissioner must cause the court to be given:
- 5 (a) a copy of the additional obligations, prohibitions and
6 restrictions to be imposed on the person by the order; and
 - 7 (b) the following:
 - 8 (i) an explanation as to why each of those obligations,
9 prohibitions and restrictions should be imposed on the
10 person; and
 - 11 (ii) if the Commissioner is aware of any facts relating to
12 why any of those obligations, prohibitions or restrictions
13 should not be imposed on the person—a statement of
14 those facts; and
 - 15 (c) the outcomes and particulars of all previous applications
16 under this section for variations of the order; and
 - 17 (d) information (if any) that the Commissioner has about the
18 person's age.

19 Note 1: A control order cannot be made in relation to a person who is under
20 16 years of age (see section 104.28).

21 Note 2: An offence might be committed if the application is false or
22 misleading (see sections 137.1 and 137.2).

- 23 (3) The Commissioner must cause written notice of both the
24 application and the grounds on which the variation is sought to be
25 given to the following persons:
- 26 (a) the person in relation to whom the order is made;
 - 27 (b) if:
 - 28 (i) the person in relation to whom the order is made is a
29 resident of Queensland; or
 - 30 (ii) the court will hear the application in Queensland;
31 the Queensland public interest monitor.
- 32 (4) The following persons may adduce additional evidence (including
33 by calling witnesses or producing material), or make additional
34 submissions, to the court in relation to the application to vary the
35 order:
- 36 (a) the Commissioner;
 - 37 (b) one or more other AFP members;

- 1 (c) the person in relation to whom the order is made;
2 (d) one or more representatives of the person;
3 (e) if paragraph (3)(b) applies—the Queensland public interest
4 monitor (unless the monitor is a representative of the person).
- 5 (5) Subsection (4) does not otherwise limit the power of the court to
6 control proceedings in relation to an application to vary a
7 confirmed control order.

8 **104.24 Varying a control order**

- 9 (1) If an application is made under section 104.23, the issuing court
10 may vary the control order, but only if:
11 (a) an application has been made in accordance with
12 section 104.23; and
13 (b) the court is satisfied on the balance of probabilities that each
14 of the additional obligations, prohibitions and restrictions to
15 be imposed on the person by the order is reasonably
16 necessary, and reasonably appropriate and adapted, for the
17 purpose of protecting the public from a terrorist act.
- 18 (2) In determining whether each of the additional obligations,
19 prohibitions and restrictions to be imposed on the person by the
20 order is reasonably necessary, and reasonably appropriate and
21 adapted, the court must take into account the impact of the
22 obligation, prohibition or restriction on the person's circumstances
23 (including the person's financial and personal circumstances).
- 24 (3) The court need not include in the order an obligation, prohibition
25 or restriction that was sought if the court is not satisfied as
26 mentioned in paragraph (1)(b) in respect of that obligation,
27 prohibition or restriction.

28 **104.25 Terms of a varied control order**

- 29 If the issuing court varies the control order under section 104.24,
30 the following must be included in the order:
31 (a) a statement that the court is satisfied of the matter mentioned
32 in paragraph 104.24(1)(b); and
33 (b) the additional obligations, prohibitions and restrictions that
34 are to be imposed on the person by the varied order; and

- 1 (c) a statement that the variation of the order does not begin to
2 be in force until the varied order is served personally on the
3 person; and
4 (d) a statement that the person's lawyer may attend a specified
5 place in order to obtain a copy of the varied order.

6 **104.26 Service and explanation of a varied control order**

- 7 (1) As soon as practicable after a control order is varied under
8 section 104.24, an AFP member:
9 (a) must serve personally on the person:
10 (i) the varied order; and
11 (ii) a summary of the grounds on which the additional
12 obligations, prohibitions and restrictions have been
13 imposed on the person; and
14 (b) must inform the person that the order has been varied to
15 impose additional obligations, prohibitions and restrictions;
16 and
17 (c) must inform the person of the following:
18 (i) the effect of the additional obligations, prohibitions and
19 restrictions;
20 (ii) the effect of sections 104.18, 104.21 and 104.27 (and
21 section 104.22 if appropriate); and
22 (d) must ensure that the person understands the information
23 provided under paragraph (c) (taking into account the
24 person's age, language skills, mental capacity and any other
25 relevant factor).
- 26 (2) To avoid doubt, subparagraph (1)(a)(ii) does not require
27 information to be included in the summary if the disclosure of the
28 information is likely to prejudice national security (within the
29 meaning of the *National Security Information (Criminal and Civil*
30 *Proceedings) Act 2004*).
- 31 (3) Paragraphs (1)(c) and (d) do not apply if the actions of the person
32 in relation to whom the interim control order has been made make
33 it impracticable for the AFP member to comply with those
34 paragraphs.
- 35 (4) A failure to comply with paragraph (1)(d) does not make the
36 control order ineffective to any extent.
-

1 **Subdivision G—Contravening a control order**

2 **104.27 Offence for contravening a control order**

3 A person commits an offence if:

- 4 (a) a control order is in force in relation to the person; and
5 (b) the person contravenes the order.

6 Penalty: Imprisonment for 5 years.

7 **Subdivision H—Miscellaneous**

8 **104.28 Special rules for young people**

9 *Rule for persons under 16*

- 10 (1) A control order cannot be requested, made or confirmed in relation
11 to a person who is under 16 years of age.

12 *Rule for persons who are at least 16 but under 18*

- 13 (2) If an issuing court is satisfied that a person in relation to whom an
14 interim control order is being made or confirmed is at least 16 but
15 under 18, the period during which the confirmed control order is to
16 be in force must not end more than 3 months after the day on
17 which the interim control order is made by the court.
- 18 (3) Subsection (2) does not prevent the making of successive control
19 orders in relation to the same person.

20 **104.29 Reporting requirements**

- 21 (1) The Attorney-General must, as soon as practicable after each
22 30 June, cause to be prepared a report about the operation of this
23 Division during the year ended on that 30 June.
- 24 (2) Without limiting subsection (1), a report relating to a year must
25 include the following matters:
- 26 (a) the number of interim control orders made under:
- 27 (i) section 104.4; and
28 (ii) section 104.7; and
29 (iii) section 104.9;

- 1 (b) the number of control orders confirmed under section 104.14;
2 (c) the number of control orders declared to be void under
3 section 104.14;
4 (d) the number of control orders revoked under sections 104.14
5 and 104.20;
6 (e) the number of control orders varied under sections 104.14,
7 104.20 and 104.24;
8 (f) particulars of any complaints relating to control orders made
9 or referred to:
10 (i) the Commonwealth Ombudsman; or
11 (ii) the Internal Investigation Division of the Australian
12 Federal Police.
- 13 (3) The Attorney-General must cause copies of the report to be laid
14 before each House of the Parliament within 15 sitting days of that
15 House after the report is completed.

16 **104.30 Requirement to notify Attorney-General of declarations,**
17 **revocations or variations**

18 The Commissioner must cause:

- 19 (a) the Attorney-General to be notified in writing if:
20 (i) a control order is declared to be void under
21 section 104.14; or
22 (ii) a control order is revoked under section 104.14 or
23 104.20; or
24 (iii) a control order is varied under section 104.14, 104.20 or
25 104.24; and
26 (b) the Attorney-General to be given a copy of the varied order
27 (if appropriate).

28 **104.31 Queensland public interest monitor functions and powers not**
29 **affected**

30 This Division does not affect a function or power that the
31 Queensland public interest monitor, or a Queensland deputy public
32 interest monitor, has under a law of Queensland.

1 **104.32 Sunset provision**

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

7 **Division 105—Preventative detention orders**

8 **Subdivision A—Preliminary**

9 **105.1 Object**

10 The object of this Division is to allow a person to be taken into
11 custody and detained for a short period of time in order to:

- 12 (a) prevent an imminent terrorist act occurring; or
13 (b) preserve evidence of, or relating to, a recent terrorist act.

14 Note: Section 105.42 provides that, while a person is being detained under a
15 preventative detention order, the person may only be questioned for
16 very limited purposes.

17 **105.2 Issuing authorities for continued preventative detention**
18 **orders**

- 19 (1) The Minister may, by writing, appoint as an issuing authority for
20 continued preventative detention orders:
- 21 (a) a person who is a judge of a State or Territory Supreme
22 Court; or
23 (b) a person who is a Judge; or
24 (c) a person who is a Federal Magistrate; or
25 (d) a person who:
26 (i) has served as a judge in one or more superior courts for
27 a period of 5 years; and
28 (ii) no longer holds a commission as a judge of a superior
29 court; or
30 (e) a person who:
31 (i) holds an appointment to the Administrative Appeals
32 Tribunal as President or Deputy President; and

- 1 (ii) is enrolled as a legal practitioner of a federal court or of
2 the Supreme Court of a State or Territory; and
3 (iii) has been enrolled for at least 5 years.
- 4 (2) The Minister must not appoint a person unless:
5 (a) the person has, by writing, consented to being appointed; and
6 (b) the consent is in force.

7 **105.3 Police officer detaining person under a preventative detention**
8 **order**

- 9 If:
10 (a) a number of police officers are detaining, or involved in the
11 detention of, a person under a preventative detention order at
12 a particular time; and
13 (b) an obligation is expressed in this Division to be imposed on
14 the police officer detaining the person;
15 the obligation is imposed at that time on:
16 (c) if those police officers include only one AFP member—that
17 AFP member; or
18 (d) if those police officers include 2 or more AFP members—the
19 most senior of those AFP members; or
20 (e) if those police officers do not include an AFP member—the
21 most senior of those police officers.

22 Note: See also paragraph 105.27(2)(c).

23 **Subdivision B—Preventative detention orders**

24 **105.4 Basis for applying for, and making, preventative detention**
25 **orders**

- 26 (1) An AFP member may apply for a preventative detention order in
27 relation to a person only if the AFP member meets the
28 requirements of subsection (4) or (6).
- 29 (2) An issuing authority may make a preventative detention order in
30 relation to a person only if the issuing authority meets the
31 requirements of subsection (4) or (6).

32 Note: For the definition of *issuing authority*, see subsection 100.1(1) and
33 section 105.2.

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- 1 (3) The person in relation to whom the preventative detention order is
2 applied for, or made, is the *subject* for the purposes of this section.
- 3 (4) A person meets the requirements of this subsection if the person is
4 satisfied that:
- 5 (a) there are reasonable grounds to suspect that the subject:
6 (i) will engage in a terrorist act; or
7 (ii) possesses a thing that is connected with the preparation
8 for, or the engagement of a person in, a terrorist act; or
9 (iii) has done an act in preparation for, or planning, a
10 terrorist act; and
- 11 (b) making the order would substantially assist in preventing a
12 terrorist act occurring; and
- 13 (c) detaining the subject for the period for which the person is to
14 be detained under the order is reasonably necessary for the
15 purpose referred to in paragraph (b).
- 16 (5) A terrorist act referred to in subsection (4):
17 (a) must be one that is imminent; and
18 (b) must be one that is expected to occur, in any event, at some
19 time in the next 14 days.
- 20 (6) A person meets the requirements of this subsection if the person is
21 satisfied that:
- 22 (a) a terrorist act has occurred within the last 28 days; and
23 (b) it is necessary to detain the subject to preserve evidence of,
24 or relating to, the terrorist act; and
- 25 (c) detaining the subject for the period for which the person is to
26 be detained under the order is reasonably necessary for the
27 purpose referred to in paragraph (b).
- 28 (7) An issuing authority may refuse to make a preventative detention
29 order unless the AFP member applying for the order gives the
30 issuing authority any further information that the issuing authority
31 requests concerning the grounds on which the order is sought.

32 **105.5 No preventative detention order in relation to person under 16**
33 **years of age**

- 34 (1) A preventative detention order cannot be applied for, or made, in
35 relation to a person who is under 16 years of age.
-

1 Note: See also section 105.39 and subsections 105.43(4) to (9) and (11) for
2 the special rules for people who are under 18 years of age.

3 (2) If:

4 (a) a person is being detained under a preventative detention
5 order or a purported preventative detention order; and

6 (b) the police officer who is detaining the person is satisfied on
7 reasonable grounds that the person is under 16 years of age;

8 the police officer must:

9 (c) if the police officer is an AFP member—release the person,
10 as soon as practicable, from detention under the order or
11 purported order; or

12 (d) if the police officer is not an AFP member—inform a senior
13 AFP member, as soon as practicable, of the police officer's
14 reasons for being satisfied that the person is under 16 years of
15 age.

16 (3) If:

17 (a) a senior AFP member is informed by a police officer under
18 paragraph (2)(d); and

19 (b) the senior AFP member is satisfied on reasonable grounds
20 that the person being detained is under 16 years of age;

21 the senior AFP member must arrange to have the person released,
22 as soon as practicable, from detention under the order or purported
23 order.

24 **105.6 Restrictions on multiple preventative detention orders**

25 *Preventative detention orders under this Division*

26 (1) If:

27 (a) an initial preventative detention order is made in relation to a
28 person on the basis of assisting in preventing a terrorist act
29 occurring within a particular period; and

30 (b) the person is taken into custody under the order;
31 another initial preventative detention order cannot be applied for,
32 or made, in relation to the person on the basis of assisting in
33 preventing the same terrorist act occurring within that period.

34 Note: It will be possible to apply for, and make, another initial preventative
35 detention order in relation to the person on the basis of preserving
36 evidence of, or relating to, the terrorist act if it occurs.

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1 (2) If:
2 (a) an initial preventative detention order is made in relation to a
3 person on the basis of assisting in preventing a terrorist act
4 occurring within a particular period; and
5 (b) the person is taken into custody under the order;
6 another initial preventative detention order cannot be applied for,
7 or made, in relation to the person on the basis of assisting in
8 preventing a different terrorist act occurring within that period
9 unless the application, or the order, is based on information that
10 became available to be put before an issuing authority only after
11 the initial preventative detention order referred to in paragraph (a)
12 was made.

13 (3) If:
14 (a) an initial preventative detention order is made in relation to a
15 person on the basis of preserving evidence of, or relating to, a
16 terrorist act; and
17 (b) the person is taken into custody under the order;
18 another initial preventative detention order cannot be applied for,
19 or made, in relation to the person on the basis of preserving
20 evidence of, or relating to, the same terrorist act.

21 *Detention orders under corresponding State preventative detention*
22 *laws*

23 (4) If:
24 (a) an order for a person's detention is made under a
25 corresponding State preventative detention law on the basis
26 of assisting in preventing a terrorist act occurring within a
27 particular period; and
28 (b) the person is taken into custody under that order;
29 an initial preventative detention order cannot be applied for, or
30 made, under this Division in relation to the person on the basis of
31 assisting in preventing the same terrorist act occurring within that
32 period.

33 (5) If:
34 (a) an order for a person's detention is made under a
35 corresponding State preventative detention law on the basis
36 of assisting in preventing a terrorist act occurring within a
37 particular period; and

1 (b) the person is taken into custody under that order;
2 an initial preventative detention order cannot be applied for, or
3 made, under this Division in relation to the person on the basis of
4 assisting in preventing a different terrorist act occurring within that
5 period unless the application, or the order, is based on information
6 that became available to be put before an issuing authority only
7 after the order referred to in paragraph (a) was made.

8 (6) If:

9 (a) an order for a person's detention is made under a
10 corresponding State preventative detention law on the basis
11 of preserving evidence of, or relating to, a terrorist act; and
12 (b) the person is taken into custody under that order;
13 an initial preventative detention order cannot be applied for, or
14 made, under this Division in relation to the person on the basis of
15 preserving evidence of, or relating to, the same terrorist act.

16 **105.7 Application for initial preventative detention order**

17 (1) An AFP member may apply to an issuing authority for an initial
18 preventative detention order in relation to a person.

19 Note 1: Senior AFP members are issuing authorities for initial preventative
20 detention orders (see the definition of *issuing authority* in subsection
21 100.1(1)).

22 Note 2: For the definition of *senior AFP member*, see subsection 100.1(1).

23 (2) The application must:

- 24 (a) be made in writing; and
25 (b) set out the facts and other grounds on which the AFP member
26 considers that the order should be made; and
27 (c) specify the period for which the person is to be detained
28 under the order and set out the facts and other grounds on
29 which the AFP member considers that the person should be
30 detained for that period; and
31 (d) set out the information (if any) that the applicant has about
32 the person's age; and
33 (e) set out the following:
34 (i) the outcomes and particulars of all previous applications
35 for preventative detention orders in relation to the
36 person;

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- 1 (ii) the outcomes and particulars of all previous requests for
2 interim control orders (including the outcomes of the
3 hearings to confirm the orders) in relation to the person;
4 (iii) the outcomes and particulars of all previous applications
5 for variations of control orders made in relation to the
6 person;
7 (iv) the outcomes of all previous applications for
8 revocations of control orders made in relation to the
9 person;
10 (f) set out the information (if any) that the applicant has about
11 any periods for which the person has been detained under an
12 order made under a corresponding State preventative
13 detention law.

14 Note: Sections 137.1 and 137.2 create offences for providing false or
15 misleading information or documents.

16 (3) If:

- 17 (a) an initial preventative detention order is made in relation to a
18 person on the basis of assisting in preventing a terrorist act
19 occurring within a particular period; and
20 (b) the person is taken into custody under the order; and
21 (c) an application is made for another initial preventative
22 detention order in relation to the person on the basis of
23 assisting in preventing a different terrorist act occurring
24 within that period;

25 the application must also identify the information on which the
26 application is based that became available to be put before an
27 issuing authority only after the initial preventative detention order
28 referred to in paragraph (a) was made.

29 Note: See subsection 105.6(2).

30 (4) If:

- 31 (a) an order for a person's detention is made under a
32 corresponding State preventative detention law on the basis
33 of assisting in preventing a terrorist act occurring within a
34 particular period; and
35 (b) the person is taken into custody under that order; and
36 (c) an application is made for an initial preventative detention
37 order in relation to the person on the basis of assisting in
38 preventing a different terrorist act occurring within that
39 period;
-

1 the application must also identify the information on which the
2 application is based that became available to be put before an
3 issuing authority only after the order referred to in paragraph (a)
4 was made.

5 Note: See subsection 105.6(5).

6 **105.8 Senior AFP member may make initial preventative detention**
7 **order**

- 8 (1) On application by an AFP member, an issuing authority may make
9 an initial preventative detention order under this section in relation
10 to a person.

11 Note 1: Senior AFP members are issuing authorities for initial preventative
12 detention orders (see the definition of *issuing authority* in subsection
13 100.1(1)).

14 Note 2: For the definition of *senior AFP member*, see subsection 100.1(1).

- 15 (2) Subsection (1) has effect subject to sections 105.4, 105.5 and
16 105.6.
- 17 (3) An initial preventative detention order under this section is an
18 order that the person specified in the order may be:
19 (a) taken into custody; and
20 (b) detained during the period that:
21 (i) starts when the person is first taken into custody under
22 the order; and
23 (ii) ends a specified period of time after the person is first
24 taken into custody under the order.
- 25 (4) The order must be in writing.
- 26 (5) The period of time specified in the order under
27 subparagraph (3)(b)(ii) must not exceed 24 hours.
- 28 (6) An initial preventative detention order under this section must set
29 out:
30 (a) the name of the person in relation to whom it is made; and
31 (b) the period during which the person may be detained under
32 the order; and
33 (c) the date on which, and the time at which, the order is made;
34 and

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1 (d) the date and time after which the person may not be taken
2 into custody under the order.

3 Note: Paragraph (d)—see subsection 105.9(2).

4 (7) If the person in relation to whom the order is made is:

5 (a) under 18 years of age; or

6 (b) incapable of managing his or her affairs;

7 the order may provide that the period each day for which the
8 person is entitled to have contact with another person under
9 subsection 105.39(2) is the period of more than 2 hours that is
10 specified in the order.

11 **105.9 Duration of initial preventative detention order**

12 (1) An initial preventative detention order in relation to a person starts
13 to have effect when it is made.

14 Note: The order comes into force when it is made and authorises the person
15 to be taken into custody (see paragraph 105.8(3)(a)). The period for
16 which the person may then be detained under the order only starts to
17 run when the person is first taken into custody under the order (see
18 subparagraph 105.8(3)(b)(i)).

19 (2) An initial preventative detention order in relation to a person
20 ceases to have effect at the end of the period of 48 hours after the
21 order is made if the person has not been taken into custody under
22 the order within that period.

23 (3) If the person is taken into custody under the order within 48 hours
24 after the order is made, the order ceases to have effect when
25 whichever of the following first occurs:

26 (a) the end of:

27 (i) the period specified in the order as the period during
28 which the person may be detained under the order; or

29 (ii) if that period is extended or further extended under
30 section 105.10—that period as extended or further
31 extended;

32 (b) the revocation of the order under section 105.17.

33 Note 1: The order does not cease to have effect merely because the person is
34 released from detention under the order.

35 Note 2: An AFP member may apply under section 105.11 for a continued
36 preventative detention order in relation to the person to allow the

1 person to continue to be detained for up to 48 hours after the person is
2 first taken into custody under the initial preventative detention order.

3 **105.10 Extension of initial preventative detention order**

4 (1) If:

5 (a) an initial preventative detention order is made in relation to a
6 person; and

7 (b) the order is in force in relation to the person;

8 an AFP member may apply to an issuing authority for initial
9 preventative detention orders for an extension, or a further
10 extension, of the period for which the order is to be in force in
11 relation to the person.

12 (2) The application must:

13 (a) be made in writing; and

14 (b) set out the facts and other grounds on which the AFP member
15 considers that the extension, or further extension, is
16 reasonably necessary for the purpose for which the order was
17 made; and

18 (c) set out the outcomes and particulars of all previous
19 applications for extensions, or further extensions, of the
20 order.

21 Note: Paragraph (b)—see subsections 105.4(4) and (6) for the purpose for
22 which a preventative detention order may be made.

23 (3) The issuing authority may extend, or further extend, the period for
24 which the order is to be in force in relation to the person if the
25 issuing authority is satisfied that detaining the person under the
26 order for the period as extended, or further extended, is reasonably
27 necessary for the purpose for which the order was made.

28 (4) The extension, or further extension, must be made in writing.

29 (5) The period as extended, or further extended, must end no later than
30 24 hours after the person is first taken into custody under the order.

31 **105.11 Application for continued preventative detention order**

32 (1) If an initial preventative detention order is in force in relation to a
33 person in relation to a terrorist act, an AFP member may apply to
34 an issuing authority for continued preventative detention orders for

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1 a continued preventative detention order in relation to the person in
2 relation to the terrorist act.

3 Note: Certain judges, Federal Magistrates, AAT members and retired judges
4 are issuing authorities for continued preventative detention orders (see
5 the definition of *issuing authority* in subsection 100.1(1) and
6 section 105.2).

7 (2) The application must:

8 (a) be made in writing; and

9 (b) set out the facts and other grounds on which the AFP member
10 considers that the order should be made; and

11 (c) specify the period for which the person is to continue to be
12 detained under the order and set out the facts and other
13 grounds on which the AFP member considers that the person
14 should continue to be detained for that period; and

15 (d) set out the information (if any) that the applicant has about
16 the person's age; and

17 (e) set out the following:

18 (i) the outcomes and particulars of all previous applications
19 for preventative detention orders in relation to the
20 person;

21 (ii) the outcomes and particulars of all previous requests for
22 interim control orders (including the outcomes of the
23 hearings to confirm the orders) in relation to the person;

24 (iii) the outcomes and particulars of all previous applications
25 for variations of control orders made in relation to the
26 person;

27 (iv) the outcomes of all previous applications for
28 revocations of control orders made in relation to the
29 person;

30 (f) set out the information (if any) that the applicant has about
31 any periods for which the person has been detained under an
32 order made under a corresponding State preventative
33 detention law.

34 Note: Sections 137.1 and 137.2 create offences for providing false or
35 misleading information or documents.

36 (3) Subparagraph (2)(e)(i) does not require the application to set out
37 details in relation to the application that was made for the initial
38 preventative detention order in relation to which the continued
39 preventative detention order is sought.

- 1 (4) The information in the application must be sworn or affirmed by
2 the AFP member.

3 **105.12 Judge, Federal Magistrate, AAT member or retired judge**
4 **may make continued preventative detention order**

- 5 (1) On application by an AFP member, an issuing authority may make
6 a continued preventative detention order under this section in
7 relation to a person if:
8 (a) an initial preventative detention order is in force in relation to
9 the person; and
10 (b) the person has been taken into custody under the order
11 (whether or not the person is being detained under the order).

12 Note: Certain judges, Federal Magistrates, AAT members and retired judges
13 are issuing authorities for continued preventative detention orders (see
14 the definition of *issuing authority* in subsection 100.1(1) and
15 section 105.2).

- 16 (2) Subsection (1) has effect subject to sections 105.4, 105.5 and
17 105.6. Section 105.4 requires the issuing authority to consider
18 afresh the merits of making the order and to be satisfied, after
19 taking into account relevant information (including any
20 information that has become available since the initial preventative
21 detention order was made), of the matters referred to in subsection
22 105.4(4) or (6) before making the order.

- 23 (3) A continued preventative detention order under this section is an
24 order that the person specified in the order may be detained during
25 a further period that:
26 (a) starts at the end of the period during which the person may be
27 detained under the initial preventative detention order; and
28 (b) ends a specified period of time after the person is first taken
29 into custody under the initial preventative detention order.

- 30 (4) The order must be in writing.

- 31 (5) The period of time specified under paragraph (3)(b) must not
32 exceed 48 hours.

- 33 (6) A continued preventative detention order under this section must
34 set out:

- 35 (a) the name of the person in relation to whom it is made; and
-

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- 1 (b) the further period during which the person may be detained
2 under the order; and
3 (c) the date on which, and the time at which, the order is made.
- 4 (7) If the person in relation to whom the order is made is:
5 (a) under 18 years of age; or
6 (b) incapable of managing his or her affairs;
7 the order may provide that the period each day for which the
8 person is entitled to have contact with another person under
9 subsection 105.39(2) is the period of more than 2 hours that is
10 specified in the order.

11 **105.13 Duration of continued preventative detention order**

- 12 (1) A continued preventative detention order in relation to a person
13 starts to have effect when it is made.
- 14 Note: The order comes into force when it is made. The period for which the
15 person may be detained under the order, however, only starts to run
16 when the period during which the person may be detained under the
17 initial preventative detention order ends (see paragraph 105.12(3)(a)).
- 18 (2) A continued preventative detention order in relation to a person
19 ceases to have effect when whichever of the following first occurs:
20 (a) the end of:
21 (i) the period specified in the order as the further period
22 during which the person may be detained; or
23 (ii) if that period is extended or further extended under
24 section 105.14—that period as extended or further
25 extended;
26 (b) the revocation of the order under section 105.17.
- 27 Note: The order does not cease to have effect merely because the person is
28 released from detention under the order.

29 **105.14 Extension of continued preventative detention order**

- 30 (1) If:
31 (a) an initial preventative detention order is made in relation to a
32 person; and
33 (b) a continued preventative detention order is made in relation
34 to the person in relation to that initial preventative detention
35 order; and
-

1 (c) the continued preventative detention order is in force in
2 relation to the person;
3 an AFP member may apply to an issuing authority for continued
4 preventative detention orders for an extension, or a further
5 extension, of the period for which the continued preventative
6 detention order is to be in force in relation to the person.

- 7 (2) The application must:
8 (a) be made in writing; and
9 (b) set out the facts and other grounds on which the AFP member
10 considers that the extension, or further extension, is
11 reasonably necessary for the purpose for which the order was
12 made; and
13 (c) set out the outcomes and particulars of all previous
14 applications for extensions, or further extensions, of the
15 continued preventative detention order.

16 Note: Paragraph (b)—see subsections 105.4(4) and (6) for the purpose for
17 which a preventative detention order may be made.

- 18 (3) The information in the application must be sworn or affirmed by
19 the AFP member.
20 (4) The issuing authority may extend, or further extend, the period for
21 which the continued preventative detention order is to be in force
22 in relation to the person if the issuing authority is satisfied that
23 detaining the person under the order for the period as extended, or
24 further extended, is reasonably necessary for the purpose for which
25 the order was made.
26 (5) The extension, or further extension, must be made in writing.
27 (6) The period as extended, or further extended, must end no later than
28 48 hours after the person is first taken into custody under the initial
29 preventative detention order.

30 **105.15 Prohibited contact order (person in relation to whom**
31 **preventative detention order is being sought)**

- 32 (1) An AFP member who applies to an issuing authority for a
33 preventative detention order in relation to a person (the *subject*)
34 may also apply for a prohibited contact order under this section in
35 relation to the subject's detention under the preventative detention
36 order.

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- 1 (2) The application must set out:
2 (a) the terms of the order sought; and
3 (b) the facts and other grounds on which the AFP member
4 considers that the order should be made.
- 5 (3) If a continued preventative detention order is being applied for, the
6 information in the application for the prohibited contact order must
7 be sworn or affirmed by the AFP member.
- 8 (4) If the issuing authority:
9 (a) makes the preventative detention order; and
10 (b) is satisfied that making the prohibited contact order will
11 assist in achieving the purpose of the preventative detention
12 order;
13 the issuing authority may make a prohibited contact order under
14 this section that the subject is not, while being detained under the
15 preventative detention order, to contact a person specified in the
16 prohibited contact order.
- 17 Note: Paragraph (b)—see subsections 105.4(4) and (6) for the purpose for
18 which a preventative detention order may be made.
- 19 (5) The prohibited contact order must be in writing.

20 **105.16 Prohibited contact order (person in relation to whom**
21 **preventative detention order is already in force)**

- 22 (1) If a preventative detention order is in force in relation to a person
23 (the *subject*), an AFP member may apply to an issuing authority
24 for preventative detention orders of that kind for a prohibited
25 contact order under this section in relation to the subject's
26 detention under the preventative detention order.
- 27 (2) The application must set out:
28 (a) the terms of the order sought; and
29 (b) the facts and other grounds on which the AFP member
30 considers that the order should be made.
- 31 (3) If the preventative detention order is a continued preventative
32 detention order, the information in the application for the
33 prohibited contact order must be sworn or affirmed by the AFP
34 member.

- 1 (4) If the issuing authority is satisfied that making the prohibited
2 contact order will assist in achieving the purpose for which the
3 preventative detention order was made, the issuing authority may
4 make a prohibited contact order under this section that the subject
5 is not, while being detained under the preventative detention order,
6 to contact a person specified in the prohibited contact order.

7 Note: See subsections 105.4(4) and (6) for the purpose for which a
8 preventative detention order may be made.

- 9 (5) The prohibited contact order must be in writing.

10 **105.17 Revocation of preventative detention order or prohibited**
11 **contact order**

12 *Preventative detention order*

- 13 (1) If:

- 14 (a) a preventative detention order is in force in relation to a
15 person; and
16 (b) the police officer who is detaining the person under the order
17 is satisfied that the grounds on which the order was made
18 have ceased to exist;

19 the police officer must:

- 20 (c) if the police officer is an AFP member—apply to an issuing
21 authority for preventative detention orders of that kind for the
22 revocation of the order; or
23 (d) if the police officer is not an AFP member—inform a senior
24 AFP member of the police officer's reasons for being
25 satisfied that the grounds on which the order was made have
26 ceased to exist.

- 27 (2) If:

- 28 (a) a senior AFP member is informed by a police officer under
29 paragraph (1)(d); and
30 (b) the senior AFP member is satisfied that the grounds on which
31 the preventative detention order was made have ceased to
32 exist;

33 the senior AFP member must apply to an issuing authority for
34 preventative detention orders of that kind for the revocation of the
35 order.

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- 1 (3) If:
2 (a) a preventative detention order is in force in relation to a
3 person; and
4 (b) an issuing authority for preventative detention orders of that
5 kind is satisfied, on application by an AFP member, that the
6 grounds on which the order was made have ceased to exist;
7 the issuing authority must revoke the order.

8 *Prohibited contact order*

- 9 (4) If:
10 (a) a prohibited contact order is in force in relation to a person's
11 detention under a preventative detention order; and
12 (b) the police officer who is detaining the person under the
13 preventative detention order is satisfied that the grounds on
14 which the prohibited contact order was made have ceased to
15 exist;
16 the police officer must:
17 (c) if the police officer is an AFP member—apply to an issuing
18 authority for preventative detention orders of that kind for the
19 revocation of the prohibited contact order; or
20 (d) if the police office is not an AFP member—inform a senior
21 AFP member of the police officer's reasons for being
22 satisfied that the grounds on which the prohibited contact
23 order was made have ceased to exist.

- 24 (5) If:
25 (a) a senior AFP member is informed by a police officer under
26 paragraph (4)(d); and
27 (b) the senior AFP member is satisfied that the grounds on which
28 the prohibited contact order was made in relation to the
29 person's detention under the preventative detention order
30 have ceased to exist;
31 the senior AFP member must apply to an issuing authority for
32 preventative detention orders of that kind for the revocation of the
33 prohibited contact order.

- 34 (6) If:
35 (a) a prohibited contact order is in force in relation to a person's
36 detention under a preventative detention order; and

- 1 (b) an issuing authority for preventative detention orders of that
2 kind is satisfied, on application by an AFP member, that the
3 grounds on which the prohibited contact order was made
4 have ceased to exist;
5 the issuing authority must revoke the prohibited contact order.

6 **105.18 Status of person making continued preventative detention**
7 **order**

- 8 (1) An issuing authority who makes:
9 (a) a continued preventative detention order; or
10 (b) a prohibited contact order in relation to a person's detention
11 under a continued preventative detention order;
12 has, in the performance of his or her duties under this Subdivision,
13 the same protection and immunity as a Justice of the High Court.
- 14 (2) A function of:
15 (a) making or revoking a continued preventative detention order;
16 or
17 (b) extending, or further extending, the period for which a
18 continued preventative detention order is to be in force; or
19 (c) making or revoking a prohibited contact order in relation to a
20 person's detention under a continued preventative detention
21 order;
22 that is conferred on a judge, a Federal Magistrate or a member of
23 the Administrative Appeals Tribunal is conferred on the judge,
24 Federal Magistrate or member of the Administrative Appeals
25 Tribunal in a personal capacity and not as a court or a member of a
26 court.

27 **Subdivision C—Carrying out preventative detention orders**

28 **105.19 Power to detain person under preventative detention order**

29 *General powers given by preventative detention order*

- 30 (1) While a preventative detention order is in force in relation to a
31 person:
32 (a) any police officer may take the person into custody; and
33 (b) any police officer may detain the person.

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- 1 (2) A police officer, in taking a person into custody under and in
2 detaining a person under a preventative detention order, has the
3 same powers and obligations as the police officer would have if the
4 police officer were arresting the person, or detaining the person, for
5 an offence.
- 6 (3) In subsection (2):
- 7 *offence* means:
- 8 (a) if the police officer is an AFP member—an offence against a
9 law of the Commonwealth; or
- 10 (b) if the police officer is not an AFP member—an offence
11 against a law of the State or Territory of whose police force
12 the police officer is a member.
- 13 (4) Subsection (2) does not apply to the extent to which particular
14 powers, and the obligations associated with those powers, are
15 provided for in this Subdivision or Subdivision D or E.
- 16 *Nominated senior AFP member*
- 17 (5) If a preventative detention order is made in relation to person, the
18 Commissioner of the Australian Federal Police must nominate a
19 senior AFP member (the *nominated senior AFP member*) to
20 oversee the exercise of powers under, and the performance of
21 obligations in relation to, the preventative detention order.
- 22 (6) The nominated senior AFP member must be someone who was not
23 involved in the making of the application for the preventative
24 detention order.
- 25 (7) The nominated senior AFP member must:
- 26 (a) oversee the exercise of powers under, and the performance of
27 obligations in relation to, the preventative detention order;
28 and
- 29 (b) without limiting paragraph (a), ensure that the provisions of
30 section 105.17 (which deals with revocation of preventative
31 detention orders and prohibited contact orders) are complied
32 with in relation to the preventative detention order; and
- 33 (c) receive and consider any representations that are made under
34 subsection (8).
- 35 (8) The following persons:
-

- 1 (a) the person being detained under the preventative detention
2 order;
- 3 (b) a lawyer acting for that person in relation to the preventative
4 detention order;
- 5 (c) a person with whom that person has contact under subsection
6 105.39(2);
- 7 are entitled to make representations to the nominated senior AFP
8 member in relation to:
- 9 (d) the exercise of powers under, and the performance of
10 obligations in relation to, the preventative detention order;
11 and
- 12 (e) without limiting paragraph (a), compliance with the
13 provisions of section 105.17 (which deals with revocation of
14 preventative detention orders and prohibited contact orders)
15 in relation to the preventative detention order; and
- 16 (f) the person's treatment in connection with the person's
17 detention under the preventative detention order.
- 18 (9) The Commissioner of the Australian Federal Police may, in
19 writing, delegate to a senior AFP member the Commissioner's
20 powers under subsection (5).

21 **105.20 Endorsement of order with date and time person taken into**
22 **custody**

23 As soon as practicable after a person is first taken into custody
24 under an initial preventative detention order, the police officer who
25 is detaining the person under the order must endorse on the order
26 the date on which, and time at which, the person is first taken into
27 custody under the order.

28 **105.21 Requirement to provide name etc.**

- 29 (1) If a police officer believes on reasonable grounds that a person
30 whose name or address is, or whose name and address are,
31 unknown to the police officer may be able to assist the police
32 officer in executing a preventative detention order, the police
33 officer may request the person to provide his or her name or
34 address, or name and address, to the police officer.
- 35 (2) If a police officer:

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- 1 (a) makes a request of a person under subsection (1); and
2 (b) informs the person of the reason for the request; and
3 (c) if the police officer is not in uniform—shows the person
4 evidence that the police officer is a police officer; and
5 (d) complies with subsection (4) if the person makes a request
6 under that subsection;
7 the person must not:
8 (e) refuse or fail to comply with the request; or
9 (f) give a name or address that is false in a material particular.

10 Penalty: 20 penalty units.

- 11 (3) Subsection (2) does not apply if the person has a reasonable
12 excuse.

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

- 15 (4) If a police officer who makes a request of a person under
16 subsection (1) is requested by the person to provide to the person
17 any of the following:

- 18 (a) his or her name;
19 (b) the address of his or her place of duty;
20 (c) his or her identification number if he or she has an
21 identification number;
22 (d) his or her rank if he or she does not have an identification
23 number;

24 the police officer must not:

- 25 (e) refuse or fail to comply with the request; or
26 (f) give a name, address, number or rank that is false in a
27 material particular.

28 Penalty: 5 penalty units.

29 **105.22 Power to enter premises**

- 30 (1) Subject to subsection (2), if:
31 (a) a preventative detention order is in force in relation to a
32 person; and
33 (b) a police officer believes on reasonable grounds that the
34 person is on any premises;

1 the police officer may enter the premises, using such force as is
2 necessary and reasonable in the circumstances and with such
3 assistance from other police officers as is necessary, at any time of
4 the day or night for the purpose of searching the premises for the
5 person or taking the person into custody.

6 (2) A police officer must not enter a dwelling house under
7 subsection (1) at any time during the period commencing at 9 pm
8 on a day and ending at 6 am on the following day unless the police
9 officer believes on reasonable grounds that:

- 10 (a) it would not be practicable to take the person into custody,
11 either at the dwelling house or elsewhere, at another time; or
12 (b) it is necessary to do so in order to prevent the concealment,
13 loss or destruction of evidence of, or relating to, a terrorist
14 act.

15 (3) In subsection (2):

16 *dwelling house* includes a conveyance, and a room in a hotel,
17 motel, boarding house or club, in which people ordinarily retire for
18 the night.

19 **105.23 Power to conduct a frisk search**

20 A police officer who takes a person into custody under a
21 preventative detention order, or who is present when the person is
22 taken into custody, may, if the police officer suspects on
23 reasonable grounds that it is prudent to do so in order to ascertain
24 whether the person is carrying any seizable items:

- 25 (a) conduct a frisk search of the person at, or soon after, the time
26 when the person is taken into custody; and
27 (b) seize any seizable items found as a result of the search.

28 **105.24 Power to conduct an ordinary search**

29 A police officer who takes a person into custody under a
30 preventative detention order, or who is present when the person is
31 taken into custody, may, if the police officer suspects on
32 reasonable grounds that the person is carrying:

- 33 (a) evidence of, or relating to, a terrorist act; or
34 (b) a seizable item;

1 conduct an ordinary search of the person at, or soon after, the time
2 when the person is taken into custody, and seize any such thing
3 found as a result of the search.

4 **105.25 Warrant under section 34D of the *Australian Security***
5 ***Intelligence Organisation Act 1979***

- 6 (1) This section applies if:
- 7 (a) a person is being detained under a preventative detention
 - 8 order; and
 - 9 (b) a warrant under section 34D of the *Australian Security*
 - 10 *Intelligence Organisation Act 1979* is in force in relation to
 - 11 the person; and
 - 12 (c) a copy of the warrant is given to the police officer who is
 - 13 detaining the person under the preventative detention order.
- 14 (2) The police officer must take such steps as are necessary to ensure
- 15 that the person may be dealt with in accordance with the warrant.
- 16 (3) Without limiting subsection (2), the police officer may, under
- 17 section 105.26, release the person from detention under the
- 18 preventative detention order so that the person may be dealt with in
- 19 accordance with the warrant.

20 Note: If the police officer is not an AFP member, the police officer will need

21 to obtain the approval of a senior AFP member before releasing the

22 person from detention (see subsection 105.26(2)).

- 23 (4) To avoid doubt, the fact that the person is released from detention
- 24 under the preventative detention order so that the person may be:
- 25 (a) questioned before a prescribed authority under the warrant;
 - 26 or
 - 27 (b) detained under the warrant in connection with that
 - 28 questioning;
- 29 does not extend the period for which the preventative detention
- 30 order remains in force in relation to the person.

31 Note: See paragraph 105.26(7)(a).

32 **105.26 Release of person from preventative detention**

- 33 (1) The police officer who is detaining a person under a preventative
- 34 detention order may release the person from detention under the
- 35 order.

1 Note: A person may be released, for example, so that the person may be
2 arrested and otherwise dealt with under the provisions of Division 4 of
3 Part IAA, and Part IC, of the *Crimes Act 1914*.

4 (2) If the police officer detaining the person under the order is not an
5 AFP member:

6 (a) the police officer must not release the person from detention
7 without the approval of a senior AFP member; and

8 (b) the senior AFP member must approve the person's release if
9 the person is being released so that the person may be dealt
10 with in accordance with a warrant under section 34D of the
11 *Australian Security Intelligence Organisation Act 1979*.

12 (3) The police officer who releases the person from detention under
13 the preventative detention order must give the person a written
14 statement that the person is being released from that detention. The
15 statement must be signed by the police officer.

16 (4) Subsection (3) does not apply if the police officer releases the
17 person from detention so that the person may be dealt with:

18 (a) in accordance with a warrant under section 34D of the
19 *Australian Security Intelligence Organisation Act 1979*; or

20 (b) under the provisions of Division 4 of Part IAA, and Part IC,
21 of the *Crimes Act 1914*.

22 (5) To avoid doubt, a person may be taken to have been released from
23 detention under a preventative detention order even if:

24 (a) the person is informed that he or she is being released from
25 detention under the order; and

26 (b) the person is taken into custody on some other basis
27 immediately after the person is informed that he or she is
28 being released from detention under the order.

29 (6) To avoid doubt, a person is taken not to be detained under a
30 preventative detention order during a period during which the
31 person is released from detention under the order.

32 Note: During this period, the provisions of this Division that apply to a
33 person who is being detained under a preventative detention order (for
34 example, section 105.34 which deals with the people the person may
35 contact) do not apply to the person.

36 (7) To avoid doubt:

37 (a) the release of the person under subsection (1) from detention
38 under the preventative detention order does not extend the

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- 1 period for which the preventative detention order remains in
2 force; and
3 (b) a person released under subsection (1) from detention under a
4 preventative detention order may again be taken into custody
5 and detained under the order at any time while the order
6 remains in force in relation to the person.

7 Note: Paragraph (a)—this means that the time for which the person may be
8 detained under the order continues to run while the person is released.

9 **105.27 Arrangement for detainee to be held in State or Territory**
10 **prison or remand centre**

- 11 (1) A senior AFP member may arrange for a person (the *subject*) who
12 is being detained under a preventative detention order to be
13 detained under the order at a prison or remand centre of a State or
14 Territory.
- 15 (2) If an arrangement is made under subsection (1):
16 (a) the preventative detention order is taken to authorise the
17 person in charge of the prison or remand centre to detain the
18 subject at the prison or remand centre while the order is in
19 force in relation to the subject; and
20 (b) section 105.33 applies in relation to the subject's detention
21 under the order at the prison or remand centre as if:
22 (i) the person in charge of that prison or remand centre; or
23 (ii) any other person involved in the subject's detention at
24 that prison or remand centre;
25 were a person exercising authority under the order or
26 implementing or enforcing the order; and
27 (c) the senior AFP member who makes the arrangement is taken,
28 while the subject is detained at the prison or remand centre,
29 to be the AFP member detaining the subject for the purposes
30 of Subdivisions D and E of this Division.
- 31 (3) The arrangement under subsection (1) may include provision for
32 the Commonwealth meeting the expenses of the subject's detention
33 at the prison or remand centre.

1 **Subdivision D—Informing person detained about preventative**
2 **detention order**

3 **105.28 Effect of initial preventative detention order to be explained**
4 **to person detained**

- 5 (1) As soon as practicable after a person is first taken into custody
6 under an initial preventative detention order, the police officer who
7 is detaining the person under the order must inform the person of
8 the matters covered by subsection (2).

9 Note 1: A contravention of this subsection may be an offence under
10 section 105.45.

11 Note 2: A contravention of this subsection does not affect the lawfulness of
12 the person's detention under the order (see subsection 105.31(5)).

- 13 (2) The matters covered by this subsection are:
14 (a) the fact that the preventative detention order has been made
15 in relation to the person; and
16 (b) the period during which the person may be detained under
17 the order; and
18 (c) the restrictions that apply to the people the person may
19 contact while the person is being detained under the order;
20 and
21 (d) the fact that an application may be made under
22 section 105.11 for an order that the person continue to be
23 detained for a further period; and
24 (e) any right the person has to complain to the Commonwealth
25 Ombudsman under Part III of the *Complaints (Australian*
26 *Federal Police) Act 1981* in relation to:
27 (i) the application for, or the making of, the preventative
28 detention order; or
29 (ii) the treatment of the person by an AFP member in
30 connection with the person's detention under the order;
31 and
32 (f) any right the person has to complain to an officer or authority
33 of a State or Territory in relation to the treatment of the
34 person by a member of the police force of that State or
35 Territory in connection with the person's detention under the
36 order; and

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- 1 (g) the fact that the person may seek from a federal court a
2 remedy relating to:
3 (i) the order; or
4 (ii) the treatment of the person in connection with the
5 person's detention under the order; and
6 (h) the person's entitlement under section 105.37 to contact a
7 lawyer; and
8 (i) the name and work telephone number of the senior AFP
9 member who has been nominated under subsection 105.19(5)
10 to oversee the exercise of powers under, and the performance
11 of obligations in relation to, the order.

12 Note: Paragraph (g)—see section 105.51.

- 13 (3) Paragraph (2)(c) does not require the police officer to inform the
14 person being detained of:
15 (a) the fact that a prohibited contact order has been made in
16 relation to the person's detention; or
17 (b) the name of a person specified in a prohibited contact order
18 that has been made in relation to the person's detention.

19 **105.29 Effect of continued preventative detention order to be**
20 **explained to person detained**

- 21 (1) As soon as practicable after a continued preventative detention
22 order (the *continued order*) is made in relation to a person, the
23 police officer who is detaining the person must inform the person
24 of the matters covered by subsection (2).

25 Note 1: A contravention of this subsection may be an offence under
26 section 105.45.

27 Note 2: A contravention of this subsection does not affect the lawfulness of
28 the person's detention under the order (see subsection 105.31(5)).

- 29 (2) The matters covered by this subsection are:
30 (a) the fact that the continued order has been made in relation to
31 the person; and
32 (b) the further period during which the person may continue to
33 be detained under the continued order; and
34 (c) the restrictions that apply to the people the person may
35 contact while the person is being detained under the
36 continued order; and

- 1 (d) any right the person has to complain to the Commonwealth
2 Ombudsman under Part III of the *Complaints (Australian*
3 *Federal Police) Act 1981* in relation to:
4 (i) the application for the continued order; or
5 (ii) the treatment of the person by an AFP member in
6 connection with the person's detention under the
7 continued order; and
8 (e) any right the person has to complain to an officer or authority
9 of a State or Territory about the treatment of the person by a
10 member of the police force of that State or Territory in
11 connection with the person's detention under the continued
12 order; and
13 (f) the fact that the person may seek from a federal court a
14 remedy relating to:
15 (i) the continued order; or
16 (ii) the treatment of the person in connection with the
17 person's detention under the continued order; and
18 (g) the person's entitlement under section 105.37 to contact a
19 lawyer; and
20 (h) the name and work telephone number of the senior AFP
21 member who has been nominated under subsection 105.19(5)
22 to oversee the exercise of powers under, and the performance
23 of obligations in relation to, the continued order.

24 Note: Paragraph (f)—see section 105.51.

- 25 (3) Paragraph (2)(c) does not require the police officer to inform the
26 person being detained of:
27 (a) the fact that a prohibited contact order has been made in
28 relation to the person's detention; or
29 (b) the name of a person specified in a prohibited contact order
30 that has been made in relation to the person's detention.

31 **105.30 Person being detained to be informed of extension of**
32 **preventative detention order**

33 If a preventative detention order is extended, or further extended,
34 under section 105.10 or 105.14, the police officer detaining the
35 person under the order must inform the person of the extension, or
36 further extension, as soon as practicable after the extension, or
37 further extension, is made.

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1 Note 1: A contravention of this subsection may be an offence under
2 section 105.45.

3 Note 2: A contravention of this subsection does not affect the lawfulness of
4 the person's detention under the order (see subsection 105.31(5)).

5 **105.31 Compliance with obligations to inform**

6 (1) Subsection 105.28(1) or 105.29(1) or section 105.30 does not apply
7 if the actions of the person being detained under the preventative
8 detention order make it impracticable for the police officer to
9 comply with that subsection.

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

12 (2) The police officer detaining the person under the preventative
13 detention order complies with subsection 105.28(1) or 105.29(1) if
14 the police officer informs the person in substance of the matters
15 covered by subsection 105.28(2) or 105.29(2) (even if this is not
16 done in language of a precise or technical nature).

17 (3) The police officer who is detaining the person under the
18 preventative detention order must arrange for the assistance of an
19 interpreter in complying with subsection 105.28(1) or 105.29(1) or
20 section 105.30 if the police officer has reasonable grounds to
21 believe that the person is unable, because of inadequate knowledge
22 of the English language or a physical disability, to communicate
23 with reasonable fluency in that language.

24 (4) Without limiting subsection (3), the assistance of the interpreter
25 may be provided by telephone.

26 (5) The lawfulness of a person's detention under a preventative
27 detention order is not affected by a failure to comply with
28 subsection 105.28(1) or 105.29(1), section 105.30 or subsection (3)
29 of this section.

30 **105.32 Copy of preventative detention order and summary of**
31 **grounds**

32 (1) As soon as practicable after a person is first taken into custody
33 under an initial preventative detention order, the police officer who
34 is detaining the person under the order must give the person:
35 (a) a copy of the order; and

- 1 (b) a summary of the grounds on which the order is made.
- 2 (2) To avoid doubt, paragraph (1)(b) does not require information to
3 be included in the summary if the disclosure of the information is
4 likely to prejudice national security (within the meaning of the
5 *National Security Information (Criminal and Civil Proceedings)*
6 *Act 2004*).
- 7 (3) Despite subsection 105.19(2), a police officer does not need to
8 have a copy of the order with him or her, or to produce a copy of
9 the order to the person being taken into custody, when the police
10 officer takes the person into custody.
- 11 (4) As soon as practicable after a continued preventative detention
12 order is made in relation to a person in relation to whom an initial
13 preventative detention order is in force, the police officer who is
14 detaining the person under the initial preventative detention order,
15 or the continued preventative detention order, must give the person
16 a copy of the continued preventative detention order.
- 17 (5) As soon as practicable after a preventative detention order is
18 extended, or further extended, under section 105.10 or 105.14, the
19 police officer who is detaining the person under the preventative
20 detention order must give the person a copy of the extension or
21 further extension.
- 22 (6) A person who is being detained under a preventative detention
23 order may request a police officer who is detaining the person to
24 arrange for a copy of:
25 (a) the order; or
26 (b) the summary given to the person under paragraph (1)(b); or
27 (c) any extension or further extension of the order under
28 section 105.10 or 105.14;
29 to be given to a lawyer acting for the person in relation to the
30 order.
- 31 Note 1: Section 105.37 deals with the person's right to contact a lawyer and
32 the obligation of the police officer detaining the person to give the
33 person assistance to choose a lawyer.
- 34 Note 2: Section 105.40 prevents the person from contacting a lawyer who is
35 specified in a prohibited contact order.

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- 1 (7) The police officer must make arrangements for a copy of the order,
2 the summary or the extension or further extension, to be given to
3 the lawyer as soon as practicable after the request is made.
- 4 (8) Without limiting subsection (7), the copy of the order, the
5 summary or the extension, may be faxed or emailed to the lawyer.
- 6 (9) To avoid doubt, subsection (7) does not entitle the lawyer to be
7 given a copy of, or see, a document other than the order, the
8 summary or the extension or further extension.
- 9 (10) Nothing in this section requires a copy of a prohibited contact
10 order to be given to a person.
- 11 (11) The police officer who gives:
12 (a) the person being detained under an initial preventative
13 detention order; or
14 (b) a lawyer acting for the person;
15 a copy of the initial preventative detention order under this section
16 must endorse on the copy the date on which, and time at which, the
17 person was first taken into custody under the order.
- 18 (12) The lawfulness of a person's detention under a preventative
19 detention order is not affected by a failure to comply with
20 subsection (1), (4), (5), (7) or (11).

21 **Subdivision E—Treatment of person detained**

22 **105.33 Humane treatment of person being detained**

23 A person being taken into custody, or being detained, under a
24 preventative detention order:

- 25 (a) must be treated with humanity and with respect for human
26 dignity; and
27 (b) must not be subjected to cruel, inhuman or degrading
28 treatment;

29 by anyone exercising authority under the order or implementing or
30 enforcing the order.

31 Note: A contravention of this section may be an offence under
32 section 105.45.

1 **105.34 Restriction on contact with other people**

2 Except as provided by sections 105.35, 105.36, 105.37 and 105.39,
3 while a person is being detained under a preventative detention
4 order, the person:

- 5 (a) is not entitled to contact another person; and
6 (b) may be prevented from contacting another person.

7 Note 1: This section will not apply to the person if the person is released from
8 detention under the order (even though the order may still be in force
9 in relation to the person).

10 Note 2: A person's entitlement to contact other people under sections 105.35,
11 105.37 and 105.39 may be subject to a prohibited contact order made
12 under section 105.15 or 105.16 (see section 105.40).

13 **105.35 Contacting family members etc.**

14 (1) The person being detained is entitled to contact:

- 15 (a) one of his or her family members; and
16 (b) if he or she:
17 (i) lives with another person and that other person is not a
18 family member of the person being detained; or
19 (ii) lives with other people and those other people are not
20 family members of the person being detained;
21 that other person or one of those other people; and
22 (c) if he or she is employed—his or her employer; and
23 (d) if he or she employs people in a business—one of the people
24 he or she employs in that business; and
25 (e) if he or she engages in a business together with another
26 person or other people—that other person or one of those
27 other people; and
28 (f) if the police officer detaining the person being detained
29 agrees to the person contacting another person—that person;
30 by telephone, fax or email but solely for the purposes of letting the
31 person contacted know that the person being detained is safe but is
32 not able to be contacted for the time being.

33 (2) To avoid doubt, the person being detained is not entitled, under
34 subsection (1), to disclose:

- 35 (a) the fact that a preventative detention order has been made in
36 relation to the person; or
37 (b) the fact that the person is being detained; or

1 (c) the period for which the person is being detained.

2 (3) In this section:

3 ***family member*** of a person means:

- 4 (a) the person's spouse, de facto spouse or same-sex partner; or
5 (b) a parent, step-parent or grandparent of the person; or
6 (c) a child, step-child or grandchild of the person; or
7 (d) a brother, sister, step-brother or step-sister of the person; or
8 (e) a guardian or carer of the person.

9 **105.36 Contacting Ombudsman etc.**

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

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

16 (2) If the person being detained has the right, under a law of a State or
17 Territory, to complain to an officer or authority of the State or
18 Territory about the treatment of the person by a member of the
19 police force of that State or Territory in connection with the
20 person's detention under the order, the person is entitled to contact
21 that officer or authority to make a complaint in accordance with
22 that law.

23 **105.37 Contacting lawyer**

24 (1) The person being detained is entitled to contact a lawyer but solely
25 for the purpose of:

- 26 (a) obtaining advice from the lawyer about the person's legal
27 rights in relation to:
28 (i) the preventative detention order; or
29 (ii) the treatment of the person in connection with the
30 person's detention under the order; or
31 (b) arranging for the lawyer to act for the person in relation to,
32 and instructing the lawyer in relation to, proceedings in a
33 federal court for a remedy relating to:
34 (i) the preventative detention order; or

- 1 (ii) the treatment of the person in connection with the
2 person's detention under the order; or
- 3 (c) arranging for the lawyer to act for the person in relation to,
4 and instructing the lawyer in relation to, a complaint to the
5 Commonwealth Ombudsman under the *Complaints*
6 *(Australian Federal Police) Act 1981* in relation to:
7 (i) the application for, or the making of, the preventative
8 detention order; or
9 (ii) the treatment of the person by an AFP member in
10 connection with the person's detention under the order;
11 or
- 12 (d) arranging for the lawyer to act for the person in relation to,
13 and instructing the lawyer in relation to, a complaint to an
14 officer or authority of a State or Territory about the treatment
15 of the person by a member of the police force of that State or
16 Territory in connection with the person's detention under the
17 order; or
- 18 (e) arranging for the lawyer to act for the person in relation to an
19 appearance, or hearing, before a court that is to take place
20 while the person is being detained under the order.
- 21 (2) The form of contact that the person being detained is entitled to
22 have with a lawyer under subsection (1) includes:
23 (a) being visited by the lawyer; and
24 (b) communicating with the lawyer by telephone, fax or email.
- 25 (3) If:
26 (a) the person being detained asks to be allowed to contact a
27 particular lawyer under subsection (1); and
28 (b) either:
29 (i) the person is not entitled to contact that lawyer because
30 of section 105.40 (prohibited contact order); or
31 (ii) the person is not able to contact that lawyer;
32 the police officer who is detaining the person must give the person
33 reasonable assistance to choose another lawyer for the person to
34 contact under subsection (1).
- 35 (4) In recommending lawyers to the person being detained as part of
36 giving the person assistance under subsection (3), the police officer
37 who is detaining the person may give priority to lawyers who have

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1 been given a security clearance at an appropriate level by the
2 Department.

3 (5) Despite subsection (4) but subject to section 105.40, the person
4 being detained is entitled under this section to contact a lawyer
5 who does not have a security clearance of the kind referred to in
6 subsection (4).

7 **105.38 Monitoring contact under section 105.35 or 105.37**

8 (1) The contact the person being detained has with another person
9 under section 105.35 or 105.37 may take place only if it is
10 conducted in such a way that the contact, and the content and
11 meaning of the communication that takes place during the contact,
12 can be effectively monitored by a police officer exercising
13 authority under the preventative detention order.

14 (2) The contact may take place in a language other than English only if
15 the content and meaning of the communication that takes place
16 during the contact can be effectively monitored with the assistance
17 of an interpreter.

18 (3) Without limiting subsection (2), the interpreter referred to in that
19 subsection may be a police officer.

20 (4) If the person being detained indicates that he or she wishes the
21 contact to take place in a language other than English, the police
22 officer who is detaining the person must:

23 (a) arrange for the services of an appropriate interpreter to be
24 provided if it is reasonably practicable to do so during the
25 period during which the person is being detained; and

26 (b) if it is reasonably practicable to do so—arrange for those
27 services to be provided as soon as practicable.

28 (5) Any communication between:

29 (a) a person who is being detained under a preventative detention
30 order; and

31 (b) a lawyer;

32 for a purpose referred to in paragraph 105.37(1)(a), (b), (c), (d) or
33 (e) is not admissible in evidence against the person in any
34 proceedings in a court.

1 **105.39 Special contact rules for person under 18 or incapable of**
2 **managing own affairs**

- 3 (1) This section applies if the person being detained under a
4 preventative detention order:
5 (a) is under 18 years of age; or
6 (b) is incapable of managing his or her affairs.
- 7 (2) The person is entitled, while being detained under the order, to
8 have contact with:
9 (a) a parent or guardian of the person; or
10 (b) another person who:
11 (i) is able to represent the person's interests; and
12 (ii) is, as far as practicable in the circumstances, acceptable
13 to the person and to the police officer who is detaining
14 the person; and
15 (iii) is not an AFP member; and
16 (iv) is not an AFP employee (within the meaning of the
17 *Australian Federal Police Act 1979*); and
18 (v) is not a member (however described) of a police force
19 of a State or Territory; and
20 (vi) is not an officer or employee of the Australian Security
21 Intelligence Organisation.
- 22 (3) To avoid doubt:
23 (a) if the person being detained (the *detainee*) has 2 parents or 2
24 or more guardians, the detainee is entitled, subject to
25 section 105.40, to have contact under subsection (2) with
26 each of those parents or guardians; and
27 (b) the detainee is entitled to disclose the following to a person
28 with whom the detainee has contact under subsection (2):
29 (i) the fact that a preventative detention order has been
30 made in relation to the detainee;
31 (ii) the fact that the detainee is being detained;
32 (iii) the period for which the detainee is being detained.
- 33 (4) The form of contact that the person being detained is entitled to
34 have with another person under subsection (2) includes:
35 (a) being visited by that other person; and

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- 1 (b) communicating with that other person by telephone, fax or
2 email.
- 3 (5) The period for which the person being detained is entitled to have
4 contact with another person each day under subsection (2) is:
5 (a) 2 hours; or
6 (b) such longer period as is specified in the preventative
7 detention order.
- 8 Note: Paragraph (b)—see subsections 105.8(7) and 105.12(7).
- 9 (6) Despite subsection (5), the police officer who is detaining the
10 person may permit the person to have contact with a person under
11 subsection (2) for a period that is longer than the period provided
12 for in subsection (5).
- 13 (7) The contact that the person being detained has with another person
14 under subsection (2) must be conducted in such a way that the
15 content and meaning of any communication that takes place during
16 the contact can be effectively monitored by a police officer
17 exercising authority under the preventative detention order.
- 18 (8) If the communication that takes place during the contact takes
19 place in a language other than English, the contact may continue
20 only if the content and meaning of the communication in that
21 language can be effectively monitored with the assistance of an
22 interpreter.
- 23 (9) Without limiting subsection (8), the interpreter referred to in that
24 subsection may be a police officer.
- 25 (10) If the person being detained indicates that he or she wishes the
26 communication that takes place during the contact to take place in
27 a language other than English, the police officer who is detaining
28 the person must:
29 (a) arrange for the services of an appropriate interpreter to be
30 provided if it is reasonably practicable to do so during the
31 period during which the person is being detained; and
32 (b) if it is reasonably practicable to do so—arrange for those
33 services to be provided as soon as practicable.

1 **105.40 Entitlement to contact subject to prohibited contact order**

2 Sections 105.35, 105.37 and 105.39 have effect subject to any
3 prohibited contact order made in relation to the person's detention.

4 **105.41 Disclosure offences**

5 *Person being detained*

- 6 (1) A person (the *subject*) commits an offence if:
- 7 (a) the subject is being detained under a preventative detention
8 order; and
 - 9 (b) the subject discloses to another person:
 - 10 (i) the fact that a preventative detention order has been
11 made in relation to the subject; or
 - 12 (ii) the fact that the subject is being detained; or
 - 13 (iii) the period for which the subject is being detained; and
 - 14 (c) the disclosure occurs while the subject is being detained
15 under the order; and
 - 16 (d) the disclosure is not one that the subject is entitled to make
17 under section 105.36, 105.37 or 105.39.

18 Penalty: Imprisonment for 5 years.

19 *Lawyer*

- 20 (2) A person (the *lawyer*) commits an offence if:
- 21 (a) a person being detained under a preventative detention order
22 (the *detainee*) contacts the lawyer under section 105.37; and
 - 23 (b) the lawyer discloses to another person:
 - 24 (i) the fact that a preventative detention order has been
25 made in relation to the detainee; or
 - 26 (ii) the fact that the detainee is being detained; or
 - 27 (iii) the period for which the detainee is being detained; or
 - 28 (iv) any information that the detainee gives the lawyer in the
29 course of the contact; and
 - 30 (c) the disclosure occurs while the detainee is being detained
31 under the order; and
 - 32 (d) the disclosure is not made for the purposes of:

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- 1 (i) proceedings in a federal court for a remedy relating to
2 the preventative detention order or the treatment of the
3 detainee in connection with the detainee's detention
4 under the order; or
- 5 (ii) a complaint to the Commonwealth Ombudsman under
6 the *Complaints (Australian Federal Police) Act 1981* in
7 relation to the application for, or making of, the
8 preventative detention order or the treatment of the
9 detainee by an AFP member in connection with the
10 detainee's detention under the order; or
- 11 (iii) a complaint to an officer or authority of a State or
12 Territory about the treatment of the detainee by a
13 member of the police force of that State or Territory in
14 connection with the detainee's detention under the
15 order; or
- 16 (iv) making representations to the senior AFP member
17 nominated under subsection 105.19(5) in relation to the
18 order, or another police officer involved in the
19 detainee's detention, about the exercise of powers under
20 the order, the performance of obligations in relation to
21 the order or the treatment of the detainee in connection
22 with the detainee's detention under the order.

23 Penalty: Imprisonment for 5 years.

24 *Person having special contact with detainee who is under 18 years*
25 *of age or incapable of managing own affairs*

- 26 (3) A person (the *parent/guardian*) commits an offence if:
27 (a) a person being detained under a preventative detention order
28 (the *detainee*) has contact with the parent/guardian under
29 section 105.39; and
30 (b) the parent/guardian discloses to another person:
31 (i) the fact that a preventative detention order has been
32 made in relation to the detainee; or
33 (ii) the fact that the detainee is being detained; or
34 (iii) the period for which the detainee is being detained; or
35 (iv) any information that the detainee gives the
36 parent/guardian in the course of the contact; and

- 1 (c) the other person is not a person with whom the detainee has
2 also had contact under section 105.39 while being detained
3 under the order; and
4 (d) the disclosure occurs while the detainee is being detained
5 under the order; and
6 (e) the disclosure is not made for the purposes of:
7 (i) a complaint to the Commonwealth Ombudsman under
8 the *Complaints (Australian Federal Police) Act 1981* in
9 relation to the application for, or the making of, the
10 preventative detention order or the treatment of the
11 detainee by an AFP member in connection with the
12 detainee's detention under the order; or
13 (ii) a complaint to an officer or authority of a State or
14 Territory about the treatment of the detainee by a
15 member of the police force of that State or Territory in
16 connection with the detainee's detention under the
17 order; or
18 (iii) making representations to the senior AFP member
19 nominated under subsection 105.19(5) in relation to the
20 order, or another police officer involved in the
21 detainee's detention, about the exercise of powers under
22 the order, the performance of obligations in relation to
23 the order or the treatment of the detainee in connection
24 with the detainee's detention under the order.

25 Penalty: Imprisonment for 5 years.

- 26 (4) To avoid doubt, a person does not contravene subsection (3)
27 merely by letting another person know that the detainee is safe but
28 is not able to be contacted for the time being.

29 *Interpreter assisting in monitoring contact with detainee*

- 30 (5) A person (the *interpreter*) commits an offence if:
31 (a) the interpreter is an interpreter who assists in monitoring the
32 contact that a person being detained under a preventative
33 detention order (the *detainee*) has with someone while the
34 detainee is being detained under the order; and
35 (b) the interpreter discloses to another person:
36 (i) the fact that a preventative detention order has been
37 made in relation to the detainee; or

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- 1 (ii) the fact that the detainee is being detained; or
2 (iii) the period for which the detainee is being detained; or
3 (iv) any information that interpreter obtains in the course of
4 assisting in the monitoring of that contact; and
5 (c) the disclosure occurs while the detainee is being detained
6 under the order.

7 Penalty: Imprisonment for 5 years.

8 *Passing on improperly disclosed information*

- 9 (6) A person (the **disclosure recipient**) commits an offence if:
10 (a) a person (the **earlier discloser**) discloses to the disclosure
11 recipient:
12 (i) the fact that a preventative detention order has been
13 made in relation to a person; or
14 (ii) the fact that a person is being detained under a
15 preventative detention order; or
16 (iii) the period for which a person is being detained under a
17 preventative detention order; or
18 (iv) any information that a person who is being detained
19 under a preventative detention order communicates to a
20 person while the person is being detained under the
21 order; and
22 (b) the disclosure by the earlier discloser to the disclosure
23 recipient contravenes:
24 (i) subsection (1), (2), (3) or (5); or
25 (ii) this subsection; and
26 (c) the disclosure recipient discloses that information to another
27 person; and
28 (d) the disclosure by the disclosure recipient occurs while the
29 person referred to in subparagraph (a)(i), (ii), (iii) or (iv) is
30 being detained under the order.

31 Penalty: Imprisonment for 5 years.

32 *Police officer or interpreter monitoring contact with lawyer*

- 33 (7) A person (the **monitor**) commits an offence if:
34 (a) the monitor is:
35 (i) a police officer who monitors; or

- 1 (ii) an interpreter who assists in monitoring;
2 contact that a person being detained under a preventative
3 detention order (the *detainee*) has with a lawyer under
4 section 105.37 while the detainee is being detained under the
5 order; and
6 (b) information is communicated in the course of that contact;
7 and
8 (c) the information is communicated for one of the purposes
9 referred to in subsection 105.37(1); and
10 (d) the monitor discloses that information to another person.

11 Penalty: Imprisonment for 5 years.

12 Note: See also subsection 105.38(5).

13 **105.42 Questioning of person prohibited while person is detained**

- 14 (1) A police officer must not question a person while the person is
15 being detained under a preventative detention order except for the
16 purposes of:
17 (a) determining whether the person is the person specified in the
18 order; or
19 (b) ensuring the safety and well-being of the person being
20 detained; or
21 (c) allowing the police officer to comply with a requirement of
22 this Division in relation to the person's detention under the
23 order.

24 Note 1: This subsection will not apply to the person if the person is released
25 from detention under the order (even though the order may still be in
26 force in relation to the person).

27 Note 2: A contravention of this subsection may be an offence under
28 section 105.45.

- 29 (2) An officer or employee of the Australian Security Intelligence
30 Organisation must not question a person while the person is being
31 detained under a preventative detention order.

32 Note 1: This subsection will not apply to the person if the person is released
33 from detention under the order (even though the order may still be in
34 force in relation to the person).

35 Note 2: A contravention of this subsection may be an offence under
36 section 105.45.

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

5 Note 1: This subsection will not apply to the person if the person is released
6 from detention under the order (even though the order may still be in
7 force in relation to the person).

8 Note 2: A contravention of this subsection may be an offence under
9 section 105.45.

10 **105.43 Taking fingerprints, recordings, samples of handwriting or**
11 **photographs**

- 12 (1) A police officer must not take identification material from a person
13 who is being detained under a preventative detention order except
14 in accordance with this section.

15 Note: A contravention of this subsection may be an offence under
16 section 105.45.

- 17 (2) A police officer who is of the rank of sergeant or higher may take
18 identification material from the person, or cause identification
19 material from the person to be taken, if:
20 (a) the person consents in writing; or
21 (b) the police officer believes on reasonable grounds that it is
22 necessary to do so for the purpose of confirming the person's
23 identity as the person specified in the order.

- 24 (3) A police officer may use such force as is necessary and reasonable
25 in the circumstances to take identification material from a person
26 under this section.

- 27 (4) Subject to this section, a police officer must not take identification
28 material (other than hand prints, fingerprints, foot prints or toe
29 prints) from the person if the person:
30 (a) is under 18 years of age; or
31 (b) is incapable of managing his or her affairs;
32 unless a Federal Magistrate orders that the material be taken.

33 Note: A contravention of this subsection may be an offence under
34 section 105.45.

- 35 (5) In deciding whether to make such an order, the Federal Magistrate
36 must have regard to:

- 1 (a) the age, or any disability, of the person; and
2 (b) such other matters as the Federal Magistrate thinks fit.

- 3 (6) The taking of identification material from a person who:
4 (a) is under 18 years of age; or
5 (b) is incapable of managing his or her affairs;
6 must be done in the presence of:
7 (c) a parent or guardian of the person; or
8 (d) if a parent or guardian of the person is not acceptable to the
9 person—another appropriate person.

10 Note 1: For *appropriate person*, see subsection (11).

11 Note 2: A contravention of this subsection may be an offence under
12 section 105.45.

- 13 (7) Despite this section, identification material may be taken from a
14 person who is under 18 years of age and is capable of managing his
15 or her affairs if:
16 (a) subsections (8) and (9) are satisfied; or
17 (b) subsection (8) or (9) is satisfied (but not both) and a Federal
18 Magistrate orders that the material be taken.

19 In deciding whether to make such an order, the Federal Magistrate
20 must have regard to the matters set out in subsection (5).

- 21 (8) This subsection applies if the person agrees in writing to the taking
22 of the material.

- 23 (9) This subsection applies if either:
24 (a) a parent or guardian of the person; or
25 (b) if a parent or guardian is not acceptable to the person—
26 another appropriate person;
27 agrees in writing to the taking of the material.

28 Note: For *appropriate person*, see subsection (11).

- 29 (10) Despite this section, identification material may be taken from a
30 person who:
31 (a) is at least 18 years of age; and
32 (b) is capable of managing his or her affairs;
33 if the person consents in writing.

- 1 (11) A reference in this section to an *appropriate person* in relation to a
2 person (the *subject*) who is under 18 years of age, or incapable of
3 managing his or her affairs, is a reference to a person who:
4 (a) is capable of representing the subject's interests; and
5 (b) as far as is practicable in the circumstances, is acceptable to
6 the subject and the police officer who is detaining the
7 subject; and
8 (c) is none of the following:
9 (i) an AFP member;
10 (ii) an AFP employee (within the meaning of the *Australian*
11 *Federal Police Act 1979*);
12 (iii) a member (however described) of a police force of a
13 State or Territory;
14 (iv) an officer or employee of the Australian Security
15 Intelligence Organisation.

16 **105.44 Use of identification material**

- 17 (1) This section applies if identification material is taken under
18 section 105.43 from a person being detained under a preventative
19 detention order.
- 20 (2) The material may be used only for the purpose of determining
21 whether the person is the person specified in the order.
- 22 Note: A contravention of this subsection may be an offence under
23 section 105.45.
- 24 (3) If:
25 (a) a period of 12 months elapses after the identification material
26 is taken; and
27 (b) proceedings in respect of:
28 (i) the preventative detention order; or
29 (ii) the treatment of the person in connection with the
30 person's detention under the order;
31 have not been brought, or have been brought and
32 discontinued or completed, within that period;
33 the material must be destroyed as soon as practicable after the end
34 of that period.

1 **105.45 Offences of contravening safeguards**

2 A person commits an offence if:

- 3 (a) the person engages in conduct; and
4 (b) the conduct contravenes:
5 (i) subsection 105.28(1); or
6 (ii) subsection 105.29(1); or
7 (iii) section 105.30; or
8 (iv) section 105.33; or
9 (v) subsection 105.42(1), (2) or (3); or
10 (vi) subsection 105.43(1), (4) or (6); or
11 (vii) subsection 105.44(2).

12 Penalty: Imprisonment for 2 years.

13 **Subdivision F—Miscellaneous**

14 **105.46 Nature of functions of Federal Magistrate**

- 15 (1) A function of making an order conferred on a Federal Magistrate
16 by section 105.43 is conferred on the Federal Magistrate in a
17 personal capacity and not as a court or a member of a court.
- 18 (2) Without limiting the generality of subsection (1), an order made by
19 a Federal Magistrate under section 105.43 has effect only by virtue
20 of this Act and is not to be taken by implication to be made by a
21 court.
- 22 (3) A Federal Magistrate performing a function of, or connected with,
23 making an order under section 105.43 has the same protection and
24 immunity as if he or she were performing that function as, or as a
25 member of, the Federal Magistrates Court.

26 **105.47 Annual report**

- 27 (1) The Attorney-General must, as soon as practicable after each
28 30 June, cause to be prepared a report about the operation of this
29 Division during the year ended on that 30 June.
- 30 (2) Without limiting subsection (1), a report relating to a year must
31 include the following matters:

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- 1 (a) the number of initial preventative detention orders made
2 under section 105.8 during the year;
- 3 (b) the number of continued preventative detention orders made
4 under section 105.12 during the year;
- 5 (c) whether a person was taken into custody under each of those
6 orders and, if so, how long the person was detained for;
- 7 (d) particulars of any complaints in relation to the detention of a
8 person under a preventative detention order made or referred
9 during the year to:
- 10 (i) the Commonwealth Ombudsman; or
11 (ii) the Internal Investigation Division of the Australian
12 Federal Police;
- 13 (e) the number of prohibited contact orders made under
14 sections 105.15 and 105.16 during the year.
- 15 (3) The Attorney-General must cause copies of the report to be laid
16 before each House of the Parliament within 15 sitting days of that
17 House after the report is completed.

18 **105.48 Ombudsman functions and powers not affected**

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

22 **105.49 Queensland public interest monitor functions and powers not
23 affected**

24 This Division does not affect a function or power that the
25 Queensland public interest monitor, or a Queensland deputy public
26 interest monitor, has under a law of Queensland.

27 **105.50 Law relating to legal professional privilege not affected**

28 To avoid doubt, this Division does not affect the law relating to
29 legal professional privilege.

1 **105.51 Legal proceedings in relation to preventative detention**
2 **orders**

3 (1) Subject to subsections (2) and (4), proceedings may be brought in a
4 court for a remedy in relation to:

5 (a) a preventative detention order; or

6 (b) the treatment of a person in connection with the person's
7 detention under a preventative detention order.

8 (2) A court of a State or Territory does not have jurisdiction in
9 proceedings for a remedy if:

10 (a) the remedy relates to:

11 (i) a preventative detention order; or

12 (ii) the treatment of a person in connection with the
13 person's detention under a preventative detention order;
14 and

15 (b) the proceedings are commenced while the order is in force.

16 (3) Subsection (2) has effect despite any other law of the
17 Commonwealth (whether passed or made before or after the
18 commencement of this section).

19 (4) An application cannot be made under the *Administrative Decisions*
20 *(Judicial Review) Act 1997* in relation to a decision made under
21 this Division.

22 Note: See paragraph (dac) of Schedule 1 to the *Administrative Decisions*
23 *(Judicial Review) Act 1997*.

24 (5) An application may be made to the Administrative Appeals
25 Tribunal for review of:

26 (a) a decision by an issuing authority under section 105.8 or
27 105.12 to make a preventative detention order; or

28 (b) a decision by an issuing authority in relation to a preventative
29 detention order to extend or further extend the period for
30 which the order is in force in relation to a person.

31 The application cannot be made while the order is in force.

32 (6) The power of the Administrative Appeals Tribunal to review a
33 decision referred to in subsection (5) may be exercised by the
34 Tribunal only in the Security Appeals Division of the Tribunal.

35 (7) The Administrative Appeals Tribunal may:

- 1 (a) declare a decision referred to in subsection (5) in relation to a
2 preventative detention order in relation to a person to be void
3 if the Tribunal would have set the decision aside if an
4 application for review of the decision had been able to be
5 made to the Tribunal while the order was in force; and
6 (b) determine that the Commonwealth should compensate the
7 person in relation to the person's detention under the order if
8 the Tribunal declares the decision to be void under
9 paragraph (a).
- 10 (8) If the Administrative Appeals Tribunal makes a determination
11 under paragraph (7)(b), the Commonwealth is liable to pay the
12 compensation determined by the Tribunal.
- 13 (9) The provisions of the *Administrative Appeals Tribunal Act 1975*
14 apply in relation to an application to the Administrative Appeals
15 Tribunal for review of a decision referred to in subsection (5) with
16 the modifications specified in the regulations made under this Act.

17 **105.52 Review by State and Territory courts**

- 18 (1) This section applies if:
19 (a) a person is detained under a preventative detention order (the
20 ***Commonwealth order***) that is made on the basis of:
21 (i) assisting in preventing a terrorist act occurring within a
22 period; or
23 (ii) preserving evidence of, or relating to, a terrorist act; and
24 (b) the person is detained under an order (the ***State order***) that is
25 made under a corresponding State preventative detention law
26 on the basis of:
27 (i) assisting in preventing the same terrorist act, or a
28 different terrorist act, occurring within that period; or
29 (ii) preserving evidence of, or relating to, the same terrorist
30 act; and
31 (c) the person brings proceedings before a court of a State or
32 Territory in relation to:
33 (i) the application for, or the making of, the State order; or
34 (ii) the person's treatment in connection with the person's
35 detention under the State order.
- 36 (2) The court may:
-

- 1 (a) review the application for, or the making of, the
2 Commonwealth order, or the person's treatment in
3 connection with the person's detention under the
4 Commonwealth order, on the same grounds as those on
5 which the court may review the application for, or the
6 making of, the State order, or the person's treatment in
7 connection with the person's detention under the State order;
8 and
- 9 (b) grant the same remedies in relation to the application for, or
10 the making of, the Commonwealth order, or the person's
11 treatment in connection with the person's detention under the
12 Commonwealth order, as those the court can grant in relation
13 to the application for, or the making of, the State order, or the
14 person's treatment in connection with the person's detention
15 under the State order.
- 16 (3) If:
- 17 (a) the person applies to the court for:
- 18 (i) review of the application for, or the making of, the
19 Commonwealth order or the person's treatment in
20 connection with the person's detention under the
21 Commonwealth order; or
- 22 (ii) a remedy in relation to the application for, or the
23 making of, the Commonwealth order or the person's
24 treatment in connection with the person's detention
25 under the Commonwealth order; and
- 26 (b) the person applies to the court for an order under this
27 subsection;
- 28 the court may order the Commissioner of the Australian Federal
29 Police to give the court, and the parties to the proceedings, the
30 information that was put before the person who issued the
31 Commonwealth order when the application for the Commonwealth
32 order was made.
- 33 (4) Subsection (3) does not require information to be given to the
34 court, or the parties to the proceedings, if the disclosure of the
35 information is likely to prejudice national security (within the
36 meaning of the *National Security Information (Criminal and Civil*
37 *Proceedings) Act 2004*).
- 38 (5) This section has effect:
- 39 (a) without limiting subsection 105.51(1); and
-

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

1 (b) subject to subsection 105.51(2).

2 (6) Nothing in this section affects the operation of the *National*
3 *Security Information (Criminal and Civil Proceedings) Act 2004* in
4 relation to the proceedings.

5 **105.53 Sunset provision**

6 (1) A preventative detention order, or a prohibited contact order, that is
7 in force at the end of 10 years after the day on which this Division
8 commences ceases to be in force at that time.

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

1

2 **Part 2—Consequential amendments**

3 *Administrative Decisions (Judicial Review) Act 1977*

4 **25 After paragraph (daa) of Schedule 1**

5 Insert:

6 (dab) decisions of the Attorney-General under section 104.2 of the
7 *Criminal Code*;

8 (dac) decisions under Division 105 of the *Criminal Code*;

1
2 **Schedule 5—Powers to stop, question and**
3 **search persons in relation to terrorist**
4 **acts**
5

6 *Crimes Act 1914*

7 **1 Part IAA (heading)**

8 Repeal the heading, substitute:

9 **Part IAA—Search, information gathering, arrest**
10 **and related powers**

11 **2 Subsection 3C(1)**

12 Insert:

13 *serious offence* means an offence:

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

21 **3 Subsection 3C(1)**

22 Insert:

23 *serious terrorism offence* means:

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

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

6 **4 Paragraph 3D(1)(a)**

7 Omit “persons or”.

8 **5 Paragraph 3D(1)(c)**

9 After “conveyances”, insert “or persons”.

10 **6 At the end of subsection 3D(1)**

11 Add:

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

13 **7 Paragraph 3D(4)(a)**

14 Omit “persons or”.

15 **8 Paragraph 3D(4)(c)**

16 After “conveyances”, insert “or persons”.

17 **9 After paragraph 3D(4)(d)**

18 Insert:

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

20 **10 After Division 3 of Part IAA**

21 Insert:

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

24 **Subdivision A—Definitions**

25 **3UA Definitions**

26 In this Division:

1 **Commonwealth place** means a Commonwealth place within the
2 meaning of the *Commonwealth Places (Application of Laws) Act*
3 *1970*.

4 **police officer** means:

- 5 (a) a member of the Australian Federal Police (within the
6 meaning of the *Australian Federal Police Act 1979*); or
7 (b) a special member (within the meaning of that Act); or
8 (c) a member, however described, of a police force of a State or
9 Territory.

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

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

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

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

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

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

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

28 **Subdivision B—Powers**

29 **3UB Application of Subdivision**

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

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

- 1 reasonable grounds that the person might have just
2 committed, might be committing or might be about to
3 commit, a terrorist act; or
4 (b) the person is in a Commonwealth place in a prescribed
5 security zone.

6 **3UC Requirement to provide name etc.**

- 7 (1) A police officer may request the person to provide the officer with
8 the following details:
9 (a) the person's name;
10 (b) the person's residential address;
11 (c) the person's reason for being in that particular
12 Commonwealth place;
13 (d) evidence of the person's identity.
14 (2) If a police officer:
15 (a) makes a request under subsection (1); and
16 (b) informs the person:
17 (i) of the officer's authority to make the request; and
18 (ii) that it may be an offence not to comply with the request;
19 the person commits an offence if:
20 (c) the person fails to comply with the request; or
21 (d) the person gives a name or address that is false in a material
22 particular.

23 Penalty: 20 penalty units.

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

- 26 (3) Subsection (2) does not apply if the person has a reasonable
27 excuse.

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

30 **3UD Stopping and searching**

- 31 (1) A police officer may:
32 (a) stop and detain the person for the purpose of conducting a
33 search under paragraph (b); and

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

12 *Conditions relating to conduct of search of person*

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

20 *Other conditions relating to conduct of search of person or thing*

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

28 **3UE Seizure of terrorism related items and serious offence related**
29 **items**

30 If a police officer:

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

1 the officer may seize the thing.

2 **3UF How seized things must be dealt with**

3 *Seizure notice to be served*

- 4 (1) A police officer who is for the time being responsible for a thing
5 seized under section 3UE must, within 7 days after the day on
6 which the thing was seized, serve a seizure notice on:
7 (a) the owner of the thing; or
8 (b) if the owner of the thing cannot be identified after reasonable
9 inquiries—the person from whom the thing was seized.
- 10 (2) Subsection (1) does not apply if:
11 (a) both:
12 (i) the owner of the thing cannot be identified after
13 reasonable inquiries; and
14 (ii) the thing was not seized from a person; or
15 (b) it is not possible to serve the person required to be served
16 under subsection (1).
- 17 (3) A seizure notice must:
18 (a) identify the thing; and
19 (b) state the date on which the thing was seized; and
20 (c) state the ground or grounds on which the thing was seized;
21 and
22 (d) state that, if the owner does not request the return of the thing
23 within 90 days after the date of the notice, the thing is
24 forfeited to the Commonwealth.

25 *Return of thing seized*

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

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

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

5 *Forfeiture of thing seized*

6 (8) A thing is forfeited to the Commonwealth if the owner of the thing
7 does not request its return:

8 (a) before the end of the 90th day after the date of the seizure
9 notice in relation to the thing; or

10 (b) if subsection (2) applied in relation to the thing so that a
11 seizure notice was not served—before the end of the 90th day
12 after the day on which the thing was seized.

13 *Application to magistrate*

14 (9) If:

15 (a) the owner of a thing requests the return of the thing:

16 (i) within 90 days after the date of the seizure notice in
17 relation to the thing; or

18 (ii) if subsection (2) applied in relation to the thing so that a
19 seizure notice was not served—within 90 days after the
20 day on which the thing was seized; and

21 (b) the thing has not been returned to the owner by the end of the
22 90th day;

23 the police officer who is for the time being responsible for the
24 thing must, before the end of the 95th day:

25 (c) return the thing to the owner; or

26 (d) apply to a magistrate for an order under section 3UG.

27 **3UG Application to magistrate**

28 (1) If subsection 3UF(9) applies, the police officer may apply to a
29 magistrate for an order in relation to the thing.

30 (2) The magistrate must, in determining an application by a police
31 officer under subsection (1), allow the owner of the thing to appear
32 and be heard.

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

19 **3UH Relationship of Subdivision to other laws**

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

28 **Subdivision C—Prescribed security zones**

29 **3UI Applications for declarations**

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

1 **3UJ Minister may make declarations**

2 *Declaration*

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

8 *Declaration has effect*

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

10 *Duration of declaration*

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

14 *Revocation of declaration*

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

22 *Gazettal and publication of declaration*

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

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

3 *Effect of failure to publish*

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

6 *Declaration or revocation not legislative instruments*

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

9 **Subdivision D—Sunset provision**

10 **3UK Sunset provision**

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

1
2 **Schedule 6—Power to obtain information and**
3 **documents**
4

5 *Crimes Act 1914*

6 **1 After Division 4A of Part IAA**

7 Insert:

8 **Division 4B—Power to obtain information and documents**

9 **Subdivision A—Definitions**

10 **3ZQL Definitions**

11 In this Division:

12 *authorised AFP officer* means:

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

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

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

24 **3ZQM Power to request information or documents about terrorist**
25 **acts from operators of aircraft or ships**

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

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

3 (2) The officer may:

4 (a) ask the operator questions relating to the aircraft or ship, or
5 its cargo, crew, passengers, stores or voyage, that are relevant
6 to the matter; or

7 (b) request the operator to produce documents relating to the
8 aircraft or ship, or its cargo, crew, passengers, stores or
9 voyage:

10 (i) that are relevant to the matter; and

11 (ii) that are in the possession or under the control of the
12 operator.

13 (3) A person who is asked a question or requested to produce a
14 document under subsection (2) must answer the question or
15 produce the document as soon as practicable.

16 *Offence*

17 (4) A person commits an offence if:

18 (a) the person is an operator of an aircraft or ship; and

19 (b) the person is asked a question or requested to produce a
20 document under subsection (2); and

21 (c) the person fails to answer the question or produce the
22 document.

23 Penalty: 60 penalty units.

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

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

26 (6) It is a defence to a prosecution for an offence against subsection (4)
27 if the person charged had a reasonable excuse for:

28 (a) failing to answer the question; or

29 (b) failing to produce the document.

30 *Definitions*

31 (7) In this section:

32 **operator** has the meaning given by section 4 of the *Customs Act*
33 *1901*.

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

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

5 **3ZQN Power to obtain documents relating to serious terrorism**
6 **offences**

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

32 **3ZQO Power to obtain documents relating to serious offences**

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

- 1 considers on reasonable grounds that the person has documents
2 (including in electronic form) that are relevant to, and will assist,
3 the investigation of a serious offence.
- 4 (2) If the Magistrate is satisfied on the balance of probabilities, by
5 information on oath or by affirmation, that a person has documents
6 (including in electronic form) that are relevant to, and will assist,
7 the investigation of a serious offence, the Magistrate may give the
8 person a written notice requiring the person to produce documents
9 that:
- 10 (a) relate to one or more of the matters set out in section 3ZQP,
11 as specified in the notice; and
12 (b) are in the possession or under the control of the person.
- 13 (3) The Magistrate must not give the notice unless the authorised AFP
14 officer or some other person has given to the Magistrate, either
15 orally or by affidavit, such further information (if any) as the
16 Magistrate requires concerning the grounds on which the issue of
17 the notice is being sought.
- 18 (4) The notice must:
- 19 (a) specify the name of the person to whom the notice is given;
20 and
21 (b) specify the matters to which the documents to be produced
22 relate; and
23 (c) specify the manner in which the documents are to be
24 produced; and
25 (d) specify the place at which the documents are to be produced;
26 and
27 (e) state that the person must comply with the notice within 14
28 days after the day on which the notice is given; and
29 (f) set out the effect of section 3ZQS (offence for failure to
30 comply); and
31 (g) if the notice specifies that information about the notice must
32 not be disclosed—set out the effect of section 3ZQT (offence
33 for disclosing existence or nature of a notice).

34 **3ZQP Matters to which documents must relate**

35 A document to be produced under a notice under section 3ZQN or
36 3ZQO must relate to one or more of the following matters:

- 1 (a) determining whether an account is held by a specified person
2 with a specified financial institution, and details relating to
3 the account (including details of any related accounts);
4 (b) determining whether a specified person is a signatory to an
5 account with a specified financial institution, and details
6 relating to the account (including details of any related
7 accounts);
8 (c) determining whether a transaction has been conducted by a
9 specified financial institution on behalf of a specified person,
10 and details relating to the transaction (including details
11 relating to other parties to the transaction);
12 (d) determining whether a specified person travelled or will
13 travel between specified dates or specified locations, and
14 details relating to the travel (including details relating to
15 other persons travelling with the specified person);
16 (e) determining whether assets have been transferred to or from a
17 specified person between specified dates, and details relating
18 to the transfers (including details relating to the names of any
19 other persons to or from whom the assets were transferred);
20 (f) determining whether an account is held by a specified person
21 in respect of a specified utility (such as gas, water or
22 electricity), and details relating to the account (including the
23 names of any other persons who also hold the account);
24 (g) determining who holds an account in respect of a specified
25 utility (such as gas, water or electricity) at a specified place,
26 and details relating to the account;
27 (h) determining whether a telephone account is held by a
28 specified person, and details relating to the account
29 (including:
30 (i) details in respect of calls made to or from the relevant
31 telephone number; or
32 (ii) the times at which such calls were made or received; or
33 (iii) the lengths of such calls; or
34 (iv) the telephone numbers to which such calls were made
35 and from which such calls were received);
36 (i) determining who holds a specified telephone account, and
37 details relating to the account (including details mentioned in
38 paragraph (h));
39 (j) determining whether a specified person resides at a specified
40 place;
-

1 (k) determining who resides at a specified place.

2 **3ZQQ Powers conferred on Federal Magistrates in their personal**
3 **capacity**

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

12 **3ZQR Documents must be produced**

- 13 (1) A person is not excused from producing a document under
14 section 3ZQN or 3ZQO on the ground that to do so:
15 (a) would contravene any other law; or
16 (b) might tend to incriminate the person or otherwise expose the
17 person to a penalty or other liability; or
18 (c) would disclose material that is protected against disclosure
19 by legal professional privilege or any other duty of
20 confidence; or
21 (d) would be otherwise contrary to the public interest.
- 22 (2) However, neither:
23 (a) the production of the document; nor
24 (b) any information, document or thing obtained as a direct or
25 indirect consequence of producing the document;
26 is admissible in evidence against the person in proceedings other
27 than proceedings for an offence against section 137.1, 137.2 or
28 149.1 of the *Criminal Code* that relates to this Act.
- 29 (3) A person is not liable to any penalty by reason of his or her
30 producing a document when required to do so under section 3ZQN
31 or 3ZQO.
- 32 (4) The fact that a person is not excused under subsection (1) from
33 producing a document does not otherwise affect a claim of legal

1 professional privilege that anyone may make in relation to that
2 document.

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

5 A person commits an offence if:

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

9 Penalty: 30 penalty units.

10 **3ZQT Offence for disclosing existence or nature of notice**

11 (1) A person commits an offence if:

- 12 (a) the person is given a notice under section 3ZQN or 3ZQO;
13 and
14 (b) the notice specifies that information about the notice must not
15 be disclosed; and
16 (c) the person discloses the existence or nature of the notice.

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

18 (2) Subsection (1) does not apply if:

- 19 (a) the person discloses the information to another person in
20 order to obtain a document that is required by the notice in
21 order to comply with it, and that other person is directed not
22 to inform the person to whom the document relates about the
23 matter; or
24 (b) the disclosure is made to obtain legal advice or legal
25 representation in relation to the notice; or
26 (c) the disclosure is made for the purposes of, or in the course of,
27 legal proceedings.

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

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Schedule 7—Sedition

4

Crimes Act 1914

5

1 Paragraph 4J(7)(b)

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

7

2 Sections 24A to 24E

8 Repeal the sections.

9

3 Paragraph 30A(1)(b)

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

11

4 At the end of section 30A

12 Add:

13 (3) In this section:

14 *sedition intention* means an intention to effect any of the
15 following purposes:

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

27

Criminal Code Act 1995

28

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

29 Repeal the heading, substitute:

1 **Part 5.1—Treason and sedition**

2 **6 Division 80 of the *Criminal Code* (heading)**

3 Repeal the heading, substitute:

4 **Division 80—Treason and sedition**

5 **7 Before section 80.1 of the *Criminal Code***

6 Insert:

7 **80.1A Definition of *organisation***

8 In this Division:

9 ***organisation*** means:

10 (a) a body corporate; or

11 (b) an unincorporated body;

12 whether or not the body is based outside Australia, consists of
13 persons who are not Australian citizens, or is part of a larger
14 organisation.

15 **8 Subsection 80.1(1A) of the *Criminal Code* (note)**

16 Omit “Note”, substitute “Note 1”.

17 **9 At the end of subsection 80.1(1A) of the *Criminal Code***

18 Add:

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

20 **10 Subsections 80.1(3), (4), (6) and (7) of the *Criminal Code***

21 Repeal the subsections.

22 **11 Subsection 80.1(8) of the *Criminal Code* (definition of
23 *organisation*)**

24 Repeal the definition.

25 **12 At the end of Division 80 of the *Criminal Code***

26 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 paragraphs (1)(a), (b) and (c).

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

1 first-mentioned person urges the other person to use force or
2 violence against.

3 *Urging a person to assist the enemy*

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

14 Penalty: Imprisonment for 7 years.

15 *Urging a person to assist those engaged in armed hostilities*

- 16 (8) A person commits an offence if:
17 (a) the person urges another person to engage in conduct; and
18 (b) the first-mentioned person intends the conduct to assist, by
19 any means whatever, an organisation or country; and
20 (c) the organisation or country is engaged in armed hostilities
21 against the Australian Defence Force.

22 Penalty: Imprisonment for 7 years.

23 *Defence*

- 24 (9) Subsections (7) and (8) do not apply to engagement in conduct by
25 way of, or for the purposes of, the provision of aid of a
26 humanitarian nature.

27 Note 1: A defendant bears an evidential burden in relation to the matter in
28 subsection (9). See subsection 13.3(3).

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

30 **80.3 Defence for acts done in good faith**

- 31 (1) Sections 80.1 and 80.2 do not apply to a person who:
-

-
- 1 (a) tries in good faith to show that any of the following persons
2 are mistaken in any of his or her counsels, policies or actions:
3 (i) the Sovereign;
4 (ii) the Governor-General;
5 (iii) the Governor of a State;
6 (iv) the Administrator of a Territory;
7 (v) an adviser of any of the above;
8 (vi) a person responsible for the government of another
9 country; or
10 (b) points out in good faith errors or defects in the following,
11 with a view to reforming those errors or defects:
12 (i) the Government of the Commonwealth, a State or a
13 Territory;
14 (ii) the Constitution;
15 (iii) legislation of the Commonwealth, a State, a Territory or
16 another country;
17 (iv) the administration of justice of or in the
18 Commonwealth, a State, a Territory or another country;
19 or
20 (c) urges in good faith another person to attempt to lawfully
21 procure a change to any matter established by law, policy or
22 practice in the Commonwealth, a State, a Territory or another
23 country; or
24 (d) points out in good faith any matters that are producing, or
25 have a tendency to produce, feelings of ill-will or hostility
26 between different groups, in order to bring about the removal
27 of those matters; or
28 (e) does anything in good faith in connection with an industrial
29 dispute or an industrial matter.
- 30 Note: A defendant bears an evidential burden in relation to the matter in
31 subsection (1). See subsection 13.3(3).
- 32 (2) In considering a defence under subsection (1), the Court may have
33 regard to any relevant matter, including whether the acts were
34 done:
35 (a) for a purpose intended to be prejudicial to the safety or
36 defence of the Commonwealth; or
37 (b) with the intention of assisting an enemy:
38 (i) at war with the Commonwealth; and
-

- 1 (ii) specified by Proclamation made for the purpose of
2 paragraph 80.1(1)(e) to be an enemy at war with the
3 Commonwealth; or
4 (c) with the intention of assisting another country, or an
5 organisation, that is engaged in armed hostilities against the
6 Australian Defence Force; or
7 (d) with the intention of assisting a proclaimed enemy of a
8 proclaimed country (within the meaning of subsection
9 24AA(4) of the *Crimes Act 1914*); or
10 (e) with the intention of assisting persons specified in paragraphs
11 24AA(2)(a) and (b) of the *Crimes Act 1914*; or
12 (f) with the intention of causing violence or creating public
13 disorder or a public disturbance.

14 **80.4 Extended geographical jurisdiction for offences**

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

17 **80.5 Attorney-General's consent required**

- 18 (1) Proceedings for an offence against this Division must not be
19 commenced without the Attorney-General's written consent.
20 (2) Despite subsection (1):
21 (a) a person may be arrested for an offence against this Division;
22 or
23 (b) a warrant for the arrest of a person for such an offence may
24 be issued and executed;
25 and the person may be charged, and may be remanded in custody
26 or on bail, but:
27 (c) no further proceedings may be taken until that consent has
28 been obtained; and
29 (d) the person must be discharged if proceedings are not
30 continued within a reasonable time.

31 **80.6 Division not intended to exclude State or Territory law**

32 It is the intention of the Parliament that this Division is not to apply
33 to the exclusion of a law of a State or a Territory to the extent that
34 the law is capable of operating concurrently with this Division.

1 ***Migration Act 1958***

2 **13 Subparagraph 203(1)(c)(i)**

3 Omit “24C,”.

4 **14 Subparagraph 203(1)(c)(ia)**

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

6 ***Surveillance Devices Act 2004***

7 **15 Subparagraph 30(1)(a)(v)**

8 Repeal the subparagraph.

9 **16 Subparagraph 30(1)(a)(vi)**

10 Omit “, 80.1”.

11 **17 Subparagraph 30(1)(a)(vii)**

12 Repeal the subparagraph.

13 **18 Subparagraph 30(1)(a)(viii)**

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

1
2 **Schedule 8—Optical surveillance devices at**
3 **airports and on board aircraft**
4

5 *Aviation Transport Security Act 2004*

6 **1 Title**

7 Omit “related”, substitute “other”.

8 **2 At the end of subsection 3(1)**

9 Add:

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

11 **3 Section 4 (at the end of the paragraph relating to Part 4)**

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

15 **4 Section 9**

16 Insert:

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

19 **5 At the end of Part 4**

20 Add:

21 **Division 10—Optical surveillance devices**

22 **74J Purposes of this Division**

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

25 (a) preventing and detecting contraventions of, or offences
26 against:

27 (i) this Act; or

28 (ii) any other law of the Commonwealth;
29 at airports or on board aircraft;

1 (b) safeguarding Commonwealth interests.

2 **74K Minister may determine code**

3 (1) For the purposes of this Division, the Minister may, by legislative
4 instrument, determine a code that regulates and authorises, despite
5 any law of a State or a Territory, the use of optical surveillance
6 devices by aviation industry participants:

7 (a) at a security controlled airport; or

8 (b) on board an aircraft that:

9 (i) is at a security controlled airport; or

10 (ii) is a prescribed aircraft; or

11 (c) in a vehicle that:

12 (i) is on board an aircraft covered by paragraph (b); or

13 (ii) is at a security controlled airport.

14 (2) The code may also regulate and authorise the use or disclosure of a
15 signal, image or other information obtained by the use of the
16 optical surveillance devices.

17 (3) Regulations made for the purposes of this section may prescribe
18 penalties for offences against the code. The penalties must not
19 exceed 50 penalty units.

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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.

1 **5 Subsection 3(1)**

2 Insert:

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

5 **6 Subsection 3(1)**

6 Insert:

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

9 **7 After section 3**

10 Insert:

11 **3A Translation of foreign currency to Australian currency**

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

18 **8 Division 1A of Part II (heading)**

19 Repeal the heading, substitute:

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

22 **9 At the end of Division 1A of Part II**

23 Add:

24 **15AA Reports in relation to bearer negotiable instruments taken**
25 **into or out of Australia**

26 (1) If, under section 33AA:

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

1 (b) an officer conducts an examination or search and finds a
2 bearer negotiable instrument with a person;
3 the officer may request the person to prepare a report for the
4 Director.

- 5 (2) The report must:
6 (a) be in the approved form; and
7 (b) contain the reportable details in relation to the matter being
8 reported; and
9 (c) be signed by the person giving the report.
- 10 (3) The report must be given to an officer as soon as possible after the
11 request is made.
- 12 (4) A person commits an offence if:
13 (a) the person is requested to prepare a report; and
14 (b) the person:
15 (i) fails to comply with the request; or
16 (ii) fails to give the report as required by subsection (3).

17 **Penalty:** Imprisonment for 2 years.

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

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

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

33 10 After Division 3 of Part II

34 Insert:

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

3 **17FA Customer information in international funds transfer**
4 **instructions transmitted out of Australia**

5 (1) If:

6 (a) a cash dealer in Australia is the sender of an international
7 funds transfer instruction transmitted out of Australia; and

8 (b) at least one of the following applies:

9 (i) the cash dealer is acting on behalf of, or at the request
10 of, another person who is not an ADI;

11 (ii) the cash dealer is not an ADI;

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

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

16 (2) For the purposes of this section:

17 (a) if a cash dealer transmits an instruction on behalf of, or at the
18 request of, another person, the cash dealer is taken to be the
19 sender of the instruction; and

20 (b) if a person, not being a cash dealer, transmits an instruction
21 on behalf of, or at the request of, a cash dealer, the cash
22 dealer is taken to be the sender of the instruction.

23 (3) In this section:

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

28 (a) the ordering customer's name and full business or residential
29 address (not being a post office box);

30 (b) either:

31 (i) the number of the ordering customer's account with the
32 cash dealer; or

33 (ii) if the customer does not have an account with the cash
34 dealer—the identification code assigned to the
35 instruction by the cash dealer.

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

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

7 **17FB Customer information in international funds transfer**
8 **instructions transmitted into Australia**

9 *Application*

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

17 *Direction to cash dealer*

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

24 *Offence*

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

29 **Penalty:** Imprisonment for 2 years.

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

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

3 *Report by cash dealer*

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

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

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

14 *Definitions*

- 15 (6) In this section:

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

- 20 (a) the ordering customer's name;
21 (b) any one of the following:
22 (i) the ordering customer's full business or residential
23 address (not being a post office box);
24 (ii) the ordering customer's date and place of birth;
25 (iii) a unique identification number given to the ordering
26 customer by a foreign government;
27 (iv) the identification number given to the ordering customer
28 by the ordering organisation;
29 (c) either:
30 (i) the number of the ordering customer's account with the
31 ordering organisation; or
32 (ii) if the ordering customer does not have an account with
33 the ordering organisation—the identification code
34 assigned to the instruction by the ordering organisation.

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

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

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

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

12 **11 After Part IIIA**

13 Insert:

14 **Part IIIB—Register of Providers of Remittance** 15 **Services** 16

17 **24E Advice by certain cash dealers to the Director**

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

33 Penalty: Imprisonment for 2 years.

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

8 **24F Register of Providers of Remittance Services**

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

18 *Requirement to provide name and prescribed particulars*

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

32 *Offence*

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

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

3 Penalty: Imprisonment for 2 years.

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

11 **12 Paragraph 28(1)(a)**

12 Omit “to the Director”.

13 **13 Subsection 29(1)**

14 Omit “to the Director”.

15 **14 Paragraph 29(3)(a)**

16 After “section 15”, insert “or 15AA”.

17 **15 Paragraph 29(3)(a)**

18 After “section 33”, insert “or 33AA”.

19 **16 After paragraph 29(4)(b)**

20 Insert:

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

25 **17 Subsection 30(1)**

26 Omit “to the Director”.

27 **18 After section 33**

28 Insert:

1 **33AA Questioning and search powers in relation to bearer**
2 **negotiable instruments**

3 *Officer may ask questions about bearer negotiable instruments*

- 4 (1) Any person who is about to leave Australia must, if requested to do
5 so by an officer:
- 6 (a) declare whether or not the person has with him or her any
7 bearer negotiable instruments; and
 - 8 (b) declare the amount payable under each bearer negotiable
9 instrument that the person has with him or her; and
 - 10 (c) produce to the officer each bearer negotiable instrument that
11 the person has with him or her.
- 12 (2) Any person who arrives in Australia must, if requested to do so by
13 an officer:
- 14 (a) declare whether or not the person has with him or her any
15 bearer negotiable instruments; and
 - 16 (b) declare the amount payable under each bearer negotiable
17 instrument that the person has with him or her; and
 - 18 (c) produce to the officer each bearer negotiable instrument that
19 the person has with him or her.

20 *Officer may copy bearer negotiable instruments*

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

25 *Application of subsections (5) and (6)*

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

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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.

1 *officer* has the same meaning as in section 33.

2 **21 After Schedule 3**

3 Insert:

4 **Schedule 3AA—Reportable details for**
5 **purposes of section 15AA**

6 Note: See subsection 15AA(6).
7
8

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

- 11 1. The amount payable under each bearer negotiable instrument.
- 12 2. Whether the bearer negotiable instrument is denominated in
13 Australian currency or foreign currency and, if foreign currency,
14 which foreign currency.
- 15 3. If the person making the report is to carry the bearer negotiable
16 instruments into or out of Australia:
- 17 (a) the name, address, date of birth and occupation (or, where
18 appropriate, the business or principal activity) of the person;
19 and
- 20 (b) the international travel document number and country of
21 issue of the international travel document or international
22 travel documents held by the person; and
- 23 (c) if the person is not an Australian resident—that person’s
24 address while in Australia; and
- 25 (d) the name of the city in Australia from which the person is to
26 depart or at which the person will arrive; and
- 27 (e) the name of the foreign country and the city in that country
28 from which the bearer negotiable instruments are being
29 imported or to which the bearer negotiable instruments are
30 being exported; and
- 31 (f) if the person is to carry the bearer negotiable instruments on
32 behalf of another person:

- 1 (i) the name, address and occupation (or, where
2 appropriate, business or principal activity) of that
3 person; and
4 (ii) the name and address, and occupation, business or
5 principal activity of the person to whom the bearer
6 negotiable instruments are to be delivered; and
7 (g) the day on which the person is to enter or leave Australia and
8 the number of the flight or the name of the vessel on which
9 the person is entering or leaving.
- 10 4. If a person is to carry the bearer negotiable instruments out of
11 Australia—the name and address of that person.

12 ***Proceeds of Crime Act 2002***

13 **22 Subsection 29(3)**

14 After “section 15,” insert “15AA,”.

15 **23 Section 338 (after subparagraph (c)(i) of the definition of**
16 ***serious offence*)**

17 Insert:

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

20 ***Surveillance Devices Act 2004***

21 **24 Subsection 6(1) (paragraph (c) of the definition of *relevant***
22 ***offence*)**

23 After “section 15”, insert “, 15AA”.

1
2 **Schedule 10—ASIO powers etc.**
3

4 *Australian Security Intelligence Organisation Act 1979*

5 **1 Section 4**

6 Insert:

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

11 **2 After section 22**

12 Insert:

13 **23 Requesting information or documents from operators of aircraft**
14 **or vessels**

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

27 *Offence*

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

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- 1 Penalty: 60 penalty units.
- 2 (4) Subsection (3) is an offence of strict liability.
- 3 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 4 (5) It is a defence to a prosecution for an offence against subsection (3)
- 5 if the person charged had a reasonable excuse for:
- 6 (a) failing to answer the question; or
- 7 (b) failing to produce the document.
- 8 (6) The Director-General, or a senior officer of the Organisation
- 9 appointed by the Director-General in writing to be an authorising
- 10 officer for the purposes of this subsection, may authorise, in
- 11 writing, an officer or employee of the Organisation, or a class of
- 12 such officers or employees, for the purposes of this section.
- 13 (7) In this section:
- 14 *authorised officer or employee* means an officer or employee who
- 15 is authorised under subsection (6) for the purposes of this section.
- 16 *operator* has the meaning given by section 4 of the *Customs Act*
- 17 1901.
- 18 *senior officer of the Organisation* means an officer of the
- 19 Organisation who holds or performs the duties of an office that is:
- 20 (a) equivalent to a position occupied by an SES employee; or
- 21 (b) designated as an office of Coordinator by the
- 22 Director-General under section 85.

23 **3 Paragraphs 25(4)(d) and (4A)(c)**

24 Omit “for such time as is reasonable”.

25 **4 After subsection 25(4B)**

26 Insert:

27 *Time period for retaining records and other things*

- 28 (4C) A record or other thing retained as mentioned in paragraph (4)(d)
- 29 or (4A)(c) may be retained for only such time as is reasonable,
- 30 unless returning the record or thing would be prejudicial to
- 31 security.

1 **5 Paragraph 25(5)(a)**

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

4 **6 Paragraph 25(5)(a)**

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

7 **7 Paragraph 25(5)(b)**

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

10 **8 Subparagraph 25(5)(b)(iii)**

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

12 **9 Subparagraph 25(5)(b)(iii)**

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

14 **10 Subsection 25(6)**

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

18 **11 Subsection 25(6)**

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

21 **12 Subsection 25(10)**

22 Omit “28 days”, substitute “90 days”.

23 **13 Before paragraph 25A(4)(a)**

24 Insert:

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

27 **14 At the end of paragraph 25A(4)(a)**

28 Add:

29 or (iv) a data storage device;

1 **15 After subsection 25A(5)**

2 Insert:

3 *Authorisation of entry measures*

4 (5A) The warrant must:

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

9 **16 Subsection 27(4)**

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

11 **17 Subsection 27AA(9)**

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

13 **18 Paragraph 27A(3)(a)**

14 Omit “28 days”, substitute “90 days”.

15 **19 Paragraph 27A(3)(b)**

16 Omit “or 26C(3)—6 months; or”, substitute “, 26C(3), 27(2) or (3) or
17 27AA(5) or (8)—6 months;”.

18 **20 Paragraph 27A(3)(c)**

19 Repeal the paragraph.

20 **21 Paragraph 34G(5)(b)**

21 Omit “in a material particular”.

22 **22 After subsection 34G(5)**

23 Insert:

24 (5A) Subsection (5) does not apply if the statement is not false or
25 misleading in a material particular.

26 Note: A defendant bears an evidential burden in relation to the matter in
27 subsection (5A) (see subsection 13.3(3) of the *Criminal Code*).

28 **23 Paragraphs 34N(1)(a) and (c)**

29 Omit “for such time as is reasonable”.

1 **24 At the end of section 34N**

2 Add:

- 3 (3) A record or other thing, or an item, retained as mentioned in
4 paragraph (1)(a) or (c) may be retained for only such time as is
5 reasonable, unless returning the record, thing or item would be
6 prejudicial to security.

7 **25 Application of items**

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

12 **26 Section 35**

13 Before “In this Part”, insert “(1)”.

14 **27 Section 35 (at the end of the definition of *prescribed***
15 ***administrative action*)**

16 Add:

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

19 **28 At the end of section 35**

20 Add:

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

24 ***Customs Act 1901***

25 **29 After subparagraph 186A(1)(b)(ii)**

26 Insert:

- 27 or (iii) the performance of functions under section 17 of the
28 *Australian Security Intelligence Organisation Act 1979*;
29 or
30 (iv) the performance of functions under section 6 of the
31 *Intelligence Services Act 2001*; or

- 1 (v) security (within the meaning of section 4 of the
2 *Australian Security Intelligence Organisation 1979*);

3 ***Customs Administration Act 1985***

4 **30 After paragraph 16(9)(i)**

5 Insert:

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

11 ***Migration Act 1958***

12 **31 Paragraph 202(1)(a)**

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

15 **32 Subsection 202(6)**

16 Insert:

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