

2004-2005

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

Presented and read a first time

DRAFT-IN-CONFIDENCE

This draft is supplied in confidence and should be given appropriate protection.

Anti-Terrorism Bill 2005

No. , 2005

(Attorney-General)

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

Contents

1	Short title	1
2	Commencement	1
3	Schedule(s)	3
Schedule 1—Definition of terrorist organisation etc.		4
	<i>Crimes (Foreign Incursions and Recruitment) Act 1978</i>	4
	<i>Criminal Code Act 1995</i>	4
	<i>Customs Act 1901</i>	8
Schedule 2—Technical amendments		9
	<i>Criminal Code Act 1995</i>	9
Schedule 3—Financing terrorism		10
	<i>Criminal Code Act 1995</i>	10
	<i>Financial Transaction Reports Act 1988</i>	11
Schedule 4—Control orders and preventative detention orders		12
	Part 1—Control orders and preventative detention orders	12
	<i>Criminal Code Act 1995</i>	12
	Part 2—Consequential amendments	57
	<i>Administrative Decisions (Judicial Review) Act 1977</i>	57
Schedule 5—Powers to stop, question and search persons in relation to terrorist acts		58
	<i>Crimes Act 1914</i>	58
Schedule 6—Power to obtain information and documents		68
	<i>Crimes Act 1914</i>	68
Schedule 7—Sedition		75
	<i>Crimes Act 1914</i>	75
	<i>Criminal Code Act 1995</i>	75
	<i>Migration Act 1958</i>	81
	<i>Surveillance Devices Act 2004</i>	81
Schedule 8—Optical surveillance devices at airports and on board aircraft		82

<i>Aviation Transport Security Act 2004</i>	82
Schedule 9—Financial transaction reporting	84
<i>Financial Transaction Reports Act 1988</i>	84
<i>Proceeds of Crime Act 2002</i>	97
<i>Surveillance Devices Act 2004</i>	97
Schedule 10—ASIO powers etc.	98
<i>Australian Security Intelligence Organisation Act 1979</i>	98
<i>Customs Act 1901</i>	102
<i>Customs Administration Act 1985</i>	103
<i>Migration Act 1958</i>	103

1
2
3
4
5
6
7

DRAFT-IN-CONFIDENCE
This draft is supplied in confidence and should be given appropriate protection

OPC drafter to complete	
1. Does this Bill need a message? (See H of R Practice, fifth ed, pp409-414, and OGC advice.) If yes: <ul style="list-style-type: none"> • List relevant clauses/items— • Prepare message advice (see DD 2004, No. 10) • Give a copy of the message advice to the Legislation area. 	No
2. Does this Bill need a notice? (See H of R Standing Order 178.) If no list relevant clauses/items—	Yes
3. Is there any reason why this Bill should not be introduced in the Senate? (See Constitution sections 53 and 55 and Drafting Direction 2/2005.)	No

8
9
10
11
12
13
14
15
16

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

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Anti-Terrorism Act 2005*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with

1
2
3

column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	The 28th day after the day on which this Act receives the Royal Assent.	
3. Schedule 2	The day on which this Act receives the Royal Assent.	
4. Schedules 3 to 8	The 28th day after the day on which this Act receives the Royal Assent.	
5. Schedule 9, items 1 to 9	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.	
6. Schedule 9, items 10 to 12	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.	
7. Schedule 9, items 13 to 24	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.	
8. Schedule 10, items 1 to 25	The day on which this Act receives the Royal Assent.	
9. Schedule 10, items 26 to 28	The 28th day after the day on which this Act receives the Royal Assent.	

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
10. 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.

7 **3 Schedule(s)**

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Schedule 1—Definition of terrorist organisation etc.

Crimes (Foreign Incursions and Recruitment) Act 1978

1 Paragraph 6(7)(b)

Omit “, (c), (d) or (e)”.

Criminal Code Act 1995

2 Subsection 101.2(3) of the *Criminal Code*

Repeal the subsection, substitute:

- (3) A person commits an offence under this section even if:
- (a) a terrorist act does not occur; or
 - (b) the training is not connected with preparation for, the engagement of a person in, or assistance in a specific terrorist act; or
 - (c) the training is connected with preparation for, the engagement of a person in, or assistance in more than one terrorist act.

3 Subsection 101.4(3) of the *Criminal Code*

Repeal the subsection, substitute:

- (3) A person commits an offence under subsection (1) or (2) even if:
- (a) a terrorist act does not occur; or
 - (b) the thing is not connected with preparation for, the engagement of a person in, or assistance in a specific terrorist act; or
 - (c) the thing is connected with preparation for, the engagement of a person in, or assistance in more than one terrorist act.

4 Subsection 101.5(3) of the *Criminal Code*

Repeal the subsection, substitute:

- (3) A person commits an offence under subsection (1) or (2) even if:
- (a) a terrorist act does not occur; or

- 1 (b) the document is not connected with preparation for, the
2 engagement of a person in, or assistance in a specific terrorist
3 act; or
4 (c) the document is connected with preparation for, the
5 engagement of a person in, or assistance in more than one
6 terrorist act.

7 **5 Subsection 101.6(2) of the *Criminal Code***

8 Repeal the subsection, substitute:

- 9 (2) A person commits an offence under subsection (1) even if:
10 (a) a terrorist act does not occur; or
11 (b) the person's act is not done in preparation for, or planning, a
12 specific terrorist act; or
13 (c) the person's act is done in preparation for, or planning, more
14 than one terrorist act.

15 **6 Subsection 102.1(1) of the *Criminal Code***

16 Insert:

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

18 **7 Subsection 102.1(1) of the *Criminal Code* (paragraph (a) of
19 the definition of *terrorist organisation*)**

20 Omit "the terrorist act", substitute "a terrorist act".

21 **8 Subsection 102.1(1) of the *Criminal Code* (paragraph (b) of
22 the definition of *terrorist organisation*)**

23 Omit "(4); or", substitute "(4)".

24 **9 Subsection 102.1(1) of the *Criminal Code* (paragraphs (c),
25 (d) and (e) of the definition of *terrorist organisation*)**

26 Repeal the paragraphs.

27 **10 After subsection 102.1(1) of the *Criminal Code***

28 Insert:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

Definition of advocates

- (1A) In this Division, an organisation *advocates* the doing of a terrorist act if:
- (a) the organisation directly or indirectly counsels or urges the doing of a terrorist act; or
 - (b) the organisation directly or indirectly provides instruction on the doing of a terrorist act; or
 - (c) the organisation directly praises the doing of a terrorist act.

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

Repeal the subsection, substitute:

Terrorist organisation regulations

- (2) Before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of *terrorist organisation* in this section, the Minister must be satisfied on reasonable grounds that the organisation:
- (a) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur); or
 - (b) advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

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

Repeal the paragraph, substitute:

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

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

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

1 **14 Subsections 102.1(7) to (16) of the *Criminal Code***

2 Repeal the subsections.

3 **15 Paragraph 102.1(17)(a) of the *Criminal Code***

4 Omit “, (c), (d) or (e)”.

5 **16 Paragraph 102.1(17)(b) of the *Criminal Code***

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

7 **17 Paragraph 102.1(17)(c) of the *Criminal Code***

8 Repeal the paragraph, substitute:

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

12 (i) is directly or indirectly engaged in, preparing, planning,
13 assisting in or fostering the doing of a terrorist act
14 (whether or not a terrorist act has occurred or will
15 occur); or

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

18 as the case requires;

19 **18 Subsection 102.1(18) of the *Criminal Code***

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

22 **19 Paragraph 102.5(2)(b) of the *Criminal Code***

23 Omit “, (c), (d) or (e)”.

24 **20 Paragraph 102.8(1)(b) of the *Criminal Code***

25 Omit “, (c), (d) or (e)”.

26 **21 Paragraph 102.8(2)(g) of the *Criminal Code***

27 Omit “, (c), (d) or (e)”.

28 **22 Subsection 103.1(2) of the *Criminal Code***

29 Repeal the subsection, substitute:

30 (2) A person commits an offence under subsection (1) even if:

- 1 (a) a terrorist act does not occur; or
2 (b) the funds will not be used to facilitate or engage in a specific
3 terrorist act; or
4 (c) the funds will be used to facilitate or engage in more than one
5 terrorist act.

6 **23 At the end of Division 106 of the *Criminal Code***

7 Add:

8 **106.2 Saving—regulations made for the purposes of paragraph (a)**
9 **of the definition of *terrorist organisation***

- 10 (1) If:
11 (a) regulations were made before commencement for the
12 purposes of paragraph (a) of the definition of *terrorist*
13 *organisation* in subsection 102.1(1), as in force before
14 commencement; and
15 (b) the regulations were in force immediately before
16 commencement;
17 the regulations continue to have effect, after commencement, as if
18 they had been made for the purposes of that paragraph, as in force
19 after commencement.
20 (2) In this section, *commencement* means the commencement of this
21 section.

22 **106.3 Application provision**

23 The amendments made by items 2 to 5 and item 25 of Schedule 1
24 to the *Anti-Terrorism Bill 2005* apply to offences committed
25 whether before or after the commencement of this section.

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

29 ***Customs Act 1901***

30 **24 Subparagraph 203DA(1)(c)(i)**

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

1
2
3
4
5
6
7
8
9
10
11

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

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
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Schedule 4—Control orders and preventative detention orders

Part 1—Control orders and preventative detention orders

Criminal Code Act 1995

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

Insert:

AFP member means:

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

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

Insert:

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

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

Insert:

control order means an order made under section ^104.3 or ^104.6.

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

Insert:

frisk search means:

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

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

1 Insert:

2 *identification material*, in relation to a person, means prints of the
3 person's hands, fingers, feet or toes, recordings of the person's
4 voice, samples of the person's handwriting or photographs
5 (including video recordings) of the person, but does not include
6 tape recordings made for the purposes of section 23U or 23V of the
7 *Crimes Act 1914*.

8 **6 Subsection 100.1(1) of the *Criminal Code***

9 Insert:

10 *initial preventative detention order* means an order made under
11 section @105.8.

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

13 Insert:

14 *issuing authority*:

- 15 (a) for initial preventative detention orders means:
16 (i) the Commissioner of the Australian Federal Police; or
17 (ii) a Deputy Commissioner of the Australian Federal
18 Police; or
19 (iii) an AFP member of, or above, the rank of
20 Superintendent; and
21 (b) for continued preventative detention orders means a person
22 appointed under section @105.2.

23 **8 Subsection 100.1(1) of the *Criminal Code***

24 Insert:

25 *issuing Court* means:

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

29 **9 Subsection 100.1(1) of the *Criminal Code***

30 Insert:

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

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

2 Insert:

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

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

6 Insert:

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

10 **12 Subsection 100.1(1) of the *Criminal Code***

11 Insert:

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

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

17 **13 Subsection 100.1(1) of the *Criminal Code***

18 Insert:

19 *prescribed authority* has the same meaning as in Division 3 of
20 Part III of the *Australian Security Intelligence Organisation Act*
21 *1979*.

22 **14 Subsection 100.1(1) of the *Criminal Code***

23 Insert:

24 *preventative detention order* means an order under section @105.8
25 or @105.12.

26 **15 Subsection 100.1(1) of the *Criminal Code***

27 Insert:

28 *prohibited contact order* means an order made under section
29 @105.15 or @105.16.

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

1 Insert:

2 *seizable item* means anything that:

- 3 (a) would present a danger to a person; or
4 (b) could be used to assist a person to escape from lawful
5 custody; or
6 (c) could be used to contact another person or to operate a device
7 remotely.

8 **17 Subsection 100.1(1) of the *Criminal Code***

9 Insert:

10 *senior AFP member* means:

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

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

15 Insert:

16 *tracking device* means any electronic device capable of being used
17 to determine or monitor the location of a person or an object or the
18 status of an object.

19 **19 After Division 103 of the *Criminal Code***

20 Insert:

21 **Division 104—Control orders**

22 **Subdivision A—Making control orders**

23 **^104.1 Seeking Attorney-General's consent to request a control
24 order**

- 25 (1) A senior AFP member must not request a control order in relation
26 to a person without the Attorney-General's written consent.
27 (2) A senior AFP member may only seek the Attorney-General's
28 written consent to request a control order in respect of a person if
29 the member:

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

- 1 (a) considers on reasonable grounds that the control order in the
2 terms to be requested would substantially assist in preventing
3 a terrorist act; or
4 (b) suspects on reasonable grounds that the person has provided
5 training to, or received training from, a listed terrorist
6 organisation.
- 7 (3) In seeking the Attorney-General's consent, the member must give
8 the Attorney-General a draft request that includes the following:
9 (a) a draft of the control order to be requested;
10 (b) a statement of the facts and other grounds on which the
11 member considers it necessary that the order should be made;
12 (c) an explanation as to why each of the obligations, prohibitions
13 and restrictions to be imposed on the person by the order is
14 necessary;
15 (d) a statement of the particulars and outcomes of all previous
16 requests for control orders and preventative detention orders
17 in relation to the person.
- 18 (4) The Attorney-General's consent may be made subject to changes
19 being made to the draft request.
- 20 (5) To avoid doubt, this section operates in relation to a request for a
21 control order in relation to a person, even if such a request has
22 previously been made in relation to the person.

23 **^104.2 Requesting the Court to make a control order**

24 If the Attorney-General consents to the request under section
25 ^104.1, the senior AFP member may request the control order by
26 giving an issuing Court:

- 27 (a) a request:
28 (i) that is the same as the draft request, except for the
29 changes (if any) required by the Attorney-General; and
30 (ii) the information in which is sworn or affirmed by the
31 member; and
32 (b) a copy of the Attorney-General's consent.

33 Note: In urgent circumstances, a senior AFP member may request a control
34 order by electronic means: see section ^104.5.

1 **^104.3 Making a control order**

2 The issuing Court may make an order under this section in relation
3 to the person, but only if:

- 4 (a) the senior AFP member has requested it in accordance with
5 section ^104.2; and
6 (b) the Court is satisfied on the balance of probabilities:
7 (i) that making the order would substantially assist in
8 preventing a terrorist act; or
9 (ii) that the person has provided training to, or received
10 training from, a listed terrorist organisation; and
11 (c) the Court is satisfied on the balance of probabilities that each
12 of the obligations, prohibitions and restrictions to be imposed
13 on the person by the order is reasonably necessary, and
14 reasonably appropriate and adapted, for the purpose of
15 protecting the public from a terrorist act.

16 **^104.4 Terms of control order**

- 17 (1) If the issuing Court makes the control order, the order must:
18 (a) state that the Court is satisfied of the matters mentioned in
19 paragraphs ^104.3(b) and (c); and
20 (b) specify the name of the person to whom the order relates; and
21 (c) specify all of the obligations, prohibitions and restrictions
22 mentioned in subsection (3) that are to be imposed on the
23 person by the order; and
24 (d) specify the period during which the order is to be in force,
25 which must not end more than 12 months after the day on
26 which the order is made; and
27 (e) state that the order does not begin to be in force until it is
28 served personally on the person; and
29 (f) state that the person's lawyer may attend a specified place in
30 order to obtain a copy of the order.

31 Note: An order in relation to a 16- to 18-year-old must not end more than 3
32 months after the day on which the order is made: see section ^104.14.

- 33 (2) Paragraph (1)(d) does not prevent the making of successive orders
34 in relation to the same person.
35 (3) The obligations, prohibitions and restrictions that the Court may
36 impose on the person by the control order are the following:

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

- 1 (a) a prohibition or restriction on the person being at specified
2 areas or places;
- 3 (b) a prohibition or restriction on the person leaving Australia;
- 4 (c) a requirement that the person remain at specified premises
5 between specified times each day, or on specified days;
- 6 (d) a requirement that the person wear a tracking device;
- 7 (e) a prohibition or restriction on the person communicating or
8 associating with specified individuals;
- 9 (f) a prohibition or restriction on the person accessing or using
10 specified forms of telecommunication or other technology
11 (including the Internet);
- 12 (g) a prohibition or restriction on the person possessing or using
13 specified articles or substances;
- 14 (h) a prohibition or restriction on the person carrying out
15 specified activities (including in respect of his or her work or
16 occupation);
- 17 (i) a requirement that the person report to specified persons at
18 specified times and places;
- 19 (j) a requirement that the person allow himself or herself to be
20 photographed;
- 21 (k) a requirement that the person allow his or her fingerprints to
22 be taken;
- 23 (l) if the person consents—a requirement that the person
24 participate in specified counselling or education.
- 25 (4) Subsection 102.8(4) applies to paragraph (3)(e) and the person's
26 communication or association in the same way as that subsection
27 applies to section 102.8 and a person's association.
- 28 (5) This section does not affect the person's right to contact,
29 communicate or associate with the person's lawyer unless the
30 person's lawyer is a specified individual as mentioned in
31 paragraph (3)(e). If the person's lawyer is so specified, the person
32 may contact, communicate or associate with any other lawyer who
33 is not so specified.
- 34 (6) A photograph, or an impression of fingerprints, taken as mentioned
35 in paragraph (3)(j) or (3)(k) must only be used for the purpose of
36 ensuring compliance with the control order.

1 **^104.5 Requesting an urgent control order by electronic means**

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

5 (a) the member thinks it necessary to use such means because of
6 urgent circumstances; and

7 (b) the member either considers or suspects the matters
8 mentioned in subsection ^104.1(2) on reasonable grounds.

9 (2) The Attorney-General's consent under section ^104.1 is not
10 required before the request is made.

11 Note: However, if the Attorney-General's consent is not sought before the
12 request is made, his or her consent must be sought within 4 hours of
13 making the request: see section ^104.7.

14 (3) The issuing Court may require communication by voice to the
15 extent that is practicable in the circumstances.

16 (4) The request must include the following:

17 (a) all that is required in an ordinary request under subsection
18 ^104.1(3) for a control order (including, if the
19 Attorney-General's consent has been sought before making
20 the request, the changes (if any) required by the
21 Attorney-General);

22 (b) an explanation as to why the making of the control order is
23 urgent;

24 (c) if the Attorney-General's consent has been sought before
25 making the request—a copy of the Attorney-General's
26 consent.

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

30 Note: Subsection ^104.6(5) requires the information and explanation to be
31 sworn or affirmed within 24 hours of the order being completed.

32 **^104.6 Making an urgent control order**

33 (1) Before making a control order in response to a request under
34 section ^104.5, the issuing Court must:

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

- 1 (a) consider the information and the explanation included in the
2 request; and
3 (b) receive and consider such further information (if any) as the
4 Court requires.

- 5 (2) If the issuing Court is satisfied that a control order in the terms of
6 the request should be made urgently, the Court may complete the
7 same form of control order that would be made under section
8 ^104.3.

9 *Procedure after urgent control order is made*

- 10 (3) If the issuing Court makes the control order, the Court must inform
11 the senior AFP member, by telephone, fax, email or other
12 electronic means, of:

- 13 (a) the terms of the order; and
14 (b) the day on which, and the time at which, it was completed.

- 15 (4) The member must then complete a form of control order in terms
16 substantially corresponding to those given by the issuing Court,
17 stating on the form:

- 18 (a) the name of the Court; and
19 (b) the day on which, and the time at which, the order was
20 completed.

- 21 (5) Within 24 hours of being informed under subsection (3), the
22 member must give or transmit the following to the issuing Court:

- 23 (a) the form of control order completed by the member;
24 (b) if the information and explanation included in the request
25 were not already sworn or affirmed—that information and
26 explanation duly sworn or affirmed;
27 (c) if the Attorney-General's consent was not sought before
28 making the request—a copy of the Attorney-General's
29 consent.

30 Note: The Attorney-General's consent must be sought within 4 hours of
31 making the request: see section ^104.7.

- 32 (6) The issuing Court must attach to the documents provided under
33 subsection (5) the form of control order the Court has completed.

1 **^104.7 Seeking Attorney-General's consent within 4 hours**

2 (1) Within 4 hours of making the request under section ^104.6, the
3 senior AFP member must, in accordance with subsection
4 ^104.1(3), seek the Attorney-General's consent to request the
5 control order in relation to the person.

6 (2) If the Attorney-General:

7 (a) refuses his or her consent to request the order; or

8 (b) has not given his or her consent to request the order;

9 within 4 hours of the request being made, the order immediately
10 ceases to be in force.

11 Note: However, the senior AFP member can vary the request and seek the
12 Attorney-General's consent to request a new control order in relation
13 to the person: see subsection ^104.1(5).

14 **^104.8 Court to assume that exercise of power not authorised by**
15 **urgent control order**

16 If:

17 (a) it is material, in any proceedings, for a Court to be satisfied
18 that the exercise of a power under, or in respect of, a control
19 order made under section ^104.6 was duly authorised; and

20 (b) the form of control order completed by the relevant issuing
21 Court is not produced in evidence;

22 the first-mentioned Court is to assume, unless the contrary is
23 proved, that the exercise of the power was not duly authorised.

24 **Subdivision B—Rights in respect of control order**

25 **^104.9 Service and explanation of control order**

26 (1) As soon as practicable after a control order is made in relation to a
27 person, the senior AFP member who requested the order:

28 (a) must serve the control order personally on the person; and

29 (b) must inform the person of the following:

30 (i) the effect of the order;

31 (ii) the period for which the order is in force;

32 (iii) the effect of sections ^104.10 to ^104.13; and

1 (c) must ensure that the person understands the information
2 provided under paragraph (b) (taking into account the
3 person's age, mental capacity and any other relevant factor).

4 (2) A failure to comply with paragraph (1)(c) does not make the
5 control order ineffective to any extent.

6 **^104.10 Lawyer may request copy of control order**

7 (1) A lawyer of the person in relation to whom the control order is
8 made may attend the place specified in the order under paragraph
9 ^104.4(1)(f) in order to obtain a copy of the order.

10 (2) This section does not:

11 (a) require more than one person to give the lawyer a copy of the
12 order; or

13 (b) entitle the lawyer to request or be given a copy of, or see, a
14 document other than the order.

15 **^104.11 Application by person for revocation of control order**

16 (1) A person in relation to whom a control order is made may apply to
17 an issuing Court for the Court to revoke the order.

18 (2) The person may make the application at any time after the order is
19 served on the person.

20 (3) The person must give written notice to the Commissioner of the
21 Australian Federal Police of both the application and the grounds
22 on which the revocation is sought.

23 (4) However, the control order remains in force until the Court revokes
24 the order.

25 (5) The Commissioner, or an AFP member on behalf of the
26 Commissioner, may adduce additional material to the Court in
27 relation to the application to revoke the control order.

28 (6) The Court may revoke the control order if, at the time of
29 considering the application, it is satisfied that there would not be
30 sufficient grounds on which to make the order.

1 **^104.12 Application by AFP Commissioner for revocation of control**
2 **order**

- 3 (1) If, before a control order ceases to be in force, the Commissioner
4 of the Australian Federal Police is satisfied that the grounds on
5 which the order was made have ceased to exist, the Commissioner
6 must apply to an issuing Court for the Court to revoke the order.
- 7 (2) The Court may revoke the control order if, at the time of
8 considering the application, it is satisfied that there would not be
9 sufficient grounds on which to make the order.
- 10 (3) As soon as practicable after the Court has revoked the control
11 order, the Commissioner must cause the person in relation to
12 whom the order was made to be served personally with the
13 revocation.

14 **Subdivision C—Contravening a control order**

15 **^104.13 Offence for contravening a control order**

- 16 A person commits an offence if:
17 (a) a control order is in force in relation to the person; and
18 (b) the person contravenes the order.

19 Penalty: Imprisonment for 5 years.

20 **Subdivision D—Miscellaneous**

21 **^104.14 Special rules for young people**

22 *Rules for persons under 16*

- 23 (1) A control order has no effect if the person in relation to whom the
24 order is made is under 16.

25 *Rules for persons who are at least 16 but under 18*

- 26 (2) If an issuing Court is satisfied that a person in relation to whom a
27 control order is being made is at least 16 but under 18, the period
28 during which the order is to be in force must not end more than 3
29 months after the day on which the order is made by the Court.

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

1 Note: The order does not begin to be in force until it is served personally on
2 the person: see paragraph ^104.4(1)(e).

3 **^104.15 Annual report**

4 (1) The Attorney-General must, as soon as practicable after each
5 30 June, cause to be prepared a report about the operation of this
6 Division during the year ended on that 30 June.

7 (2) Without limiting subsection (1), a report relating to a year must
8 include the following matters:

9 (a) the number of control orders made under section ^104.3;

10 (b) the number of control orders made under section ^104.6;

11 (c) particulars of any complaints made or referred to:

12 (i) the Commonwealth Ombudsman; or

13 (ii) the Internal Investigation Division of the Australian
14 Federal Police.

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 **^104.16 Sunset provision**

19 This Division ceases to have effect at the end of 10 years after it
20 commences.

21 **Division 105—Preventative detention orders**

22 **Subdivision A—Preliminary**

23 **@105.1 Object**

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

26 (a) prevent an imminent terrorist act occurring; or

27 (b) preserve evidence of, or relating to, a recent terrorist act.

1 **@105.2 Issuing authorities for continued preventative detention**
2 **orders**

3 (1) The Minister may, by writing, appoint as an issuing authority for
4 continued preventative detention orders a person who is:

- 5 (a) a Federal Magistrate; or
6 (b) a Judge.

7 (2) The Minister must not appoint a person unless:

- 8 (a) the person has, by writing, consented to being appointed; and
9 (b) the consent is in force.

10 **@105.3 AFP member detaining person under a preventative**
11 **detention order**

12 If:

13 (a) a number of AFP members are detaining, or involved in the
14 detention of, a person under a preventative detention order at
15 a particular time; and

16 (b) an obligation is expressed in this Division to be imposed on
17 the AFP member detaining the person;

18 the obligation is imposed at that time on the most senior of those
19 AFP members.

20 **Subdivision B—Preventative detention orders**

21 **@105.4 Basis for applying for, and making, preventative detention**
22 **orders**

23 (1) An AFP member may apply for, and an issuing authority may
24 make, a preventative detention order in relation to a person (the
25 *subject*) only if subsection (2) or (4) applies.

26 Note: For the meaning of *issuing authority*, see subsection 100.1(1) and
27 section 105.2.

28 (2) This subsection applies if the AFP member or the issuing authority,
29 as the case may be, is satisfied that:

30 (a) there are reasonable grounds to suspect that the subject:

31 (i) will engage in a terrorist act; or

32 (ii) possesses a thing that is connected with the preparation
33 for, or the engagement of a person in, a terrorist act; or

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

- 1 (iii) has done, or will do, an act in preparation for, or
2 planning, a terrorist act; and
3 (b) making the order would substantially assist in preventing a
4 terrorist act occurring.
- 5 (3) A terrorist act referred to in subsection (2):
6 (a) must be one that is imminent; and
7 (b) must be one that is expected to occur, in any event, at some
8 time in the next 14 days.
- 9 (4) This subsection applies if the AFP member or the issuing authority,
10 as the case may be, is satisfied that:
11 (a) a terrorist act has occurred within the last 28 days; and
12 (b) it is necessary to detain the subject to preserve evidence of,
13 or relating to, the terrorist act.
- 14 (5) An issuing authority may refuse to make a preventative detention
15 order unless the AFP member applying for the order gives the
16 issuing authority any further information that the issuing authority
17 requests concerning the grounds on which the order is sought.

18 **@105.5 No preventative detention order in relation to person under**
19 **16 years of age**

- 20 (1) A preventative detention order cannot be applied for, or made, in
21 relation to a person who is under 16 years of age.
- 22 Note: See also section @105.36 and subsections @105.40(4) to (9) and (11)
23 for the special rules for people who are under 18 years of age.
- 24 (2) If:
25 (a) a person is being detained under a preventative detention
26 order; and
27 (b) the AFP member who is detaining the person is satisfied on
28 reasonable grounds that the person is under 16 years of age;
29 the AFP member must, as soon as practicable, release the person
30 from detention under the order.

31 **@105.6 Preventative detention allowed only once in relation to a**
32 **particular terrorist act**

- 33 (1) If:
-

- 1 (a) an initial preventative detention order is made in relation to a
2 person on the basis of assisting in preventing a particular
3 terrorist act occurring within a particular period; and
4 (b) the person is detained under the order;
5 another initial preventative detention order cannot be applied for,
6 or made, in relation to the person on the basis of assisting in
7 preventing the same terrorist act occurring within that period.
8 Note: It will be possible to apply for, and make, another initial preventative
9 detention order in relation to the person on the basis of preserving
10 evidence of, or relating to, the terrorist act if it occurs.

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

19 **@105.7 Application for initial preventative detention order**

- 20 (1) An AFP member may apply to an issuing authority for an initial
21 preventative detention order in relation to a person.
22 (2) The application must:
23 (a) be made in writing; and
24 (b) set out the facts and other grounds on which the AFP
25 member considers that the order should be made; and
26 (c) set out the particulars and outcomes of all previous
27 applications for preventative detention orders, and requests
28 for control orders, in relation to the person.

29 **@105.8 Initial preventative detention order**

- 30 (1) On application by an AFP member, an issuing authority may make
31 an initial preventative detention order under this section in relation
32 to a person.
33 (2) Subsection (1) has effect subject to sections @105.4, @105.5 and
34 @105.6.

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

- 1 (3) An initial preventative detention order under this section is an
2 order that the person specified in the order may be:
3 (a) taken into custody; and
4 (b) detained during the period that:
5 (i) starts when the person is first taken into custody under
6 the order; and
7 (ii) ends a specified period of time after the person is first
8 taken into custody under the order.
- 9 (4) The order must be in writing.
- 10 (5) The period of time specified in the order under
11 subparagraph (3)(b)(ii) must not exceed 24 hours.
- 12 (6) An initial preventative detention order under this section must set
13 out:
14 (a) the name of the person in relation to whom it is made; and
15 (b) the period during which the person may be detained under
16 the order; and
17 (c) the date on which, and the time at which, the order is made;
18 and
19 (d) the date and time after which the person may not be taken
20 into custody under the order.

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

22 **@105.9 Duration of initial preventative detention order**

- 23 (1) An initial preventative detention order in relation to a person starts
24 to have effect when it is made.
- 25 (2) An initial preventative detention order in relation to a person
26 ceases to have effect at the end of the period of 48 hours after the
27 order is made if the person has not been taken into custody under
28 the order within that period.
- 29 (3) If the person is taken into custody under the order within 48 hours
30 after the order is made, the order ceases to have effect when
31 whichever of the following first occurs:
32 (a) the end of:
33 (i) the period specified in the order as the period during
34 which the person may be detained under the order; or

1 (ii) if that period is extended or further extended under
2 section @105.10—that period as extended or further
3 extended;

4 (b) the revocation of the order under section @105.17.

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

7 Note 2: An AFP member may apply under section @105.11 for a continued
8 preventative detention order in relation to the person to allow the
9 person to continue to be detained for up to 48 hours after the person is
10 first taken into custody under the initial preventative detention order.

11 **@105.10 Extension of initial preventative detention order**

12 (1) If:

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

15 (b) the order is in force in relation to the person;
16 an AFP member may apply to an issuing authority for initial
17 preventative detention orders for an extension, or a further
18 extension, of the period for which the order is to be in force in
19 relation to the person.

20 (2) The application must:

21 (a) be made in writing; and

22 (b) set out the facts and other grounds on which the AFP
23 member considers that the extension or further extension
24 should be made; and

25 (c) set out the particulars and outcomes of all previous
26 applications for extensions of the order.

27 (3) The issuing authority may extend, or further extend, the period for
28 which the order is to be in force in relation to the person.

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

30 (5) The period as extended, or further extended, must end no later than
31 24 hours after the person is first taken into custody under the order.

32 **@105.11 Application for continued preventative detention order**

33 (1) An AFP member may apply to an issuing authority for continued
34 preventative detention orders for a continued preventative

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

1 detention order in relation to a person in relation to whom an initial
2 preventative detention order is in force.

3 (2) The application must:
4 (a) be made in writing; and
5 (b) set out the facts and other grounds on which the AFP
6 member considers that the order should be made; and
7 (c) set out the particulars and outcomes of all previous
8 applications for preventative detention orders, and requests
9 for control orders, in relation to the person.

10 (3) Paragraph (2)(c) does not require the application to set out details
11 in relation to the application that was made for the initial
12 preventative detention order in relation to which the continued
13 preventative detention order is sought.

14 (4) The information in the application must be sworn or affirmed by
15 the AFP member.

16 **@105.12 Judge or magistrate may make continued preventative**
17 **detention order**

18 (1) On application by an AFP member, an issuing authority may make
19 a continued preventative detention order under this section in
20 relation to a person if:

21 (a) an initial preventative detention order is in force in relation to
22 the person; and
23 (b) the person has been taken into custody under the order
24 (whether or not the person is being detained under the order).

25 (2) Subsection (1) has effect subject to sections @105.4, @105.5 and
26 @105.6.

27 (3) A continued preventative detention order under this section is an
28 order that the person specified in the order may be detained during
29 a further period that:

30 (a) starts at the end of the period during which the person may be
31 detained under the initial preventative detention order; and
32 (b) ends a specified period of time after the person is first taken
33 into custody under the initial preventative detention order.

34 (4) The order must be in writing.

- 1 (5) The period of time specified under paragraph (3)(b) must not
2 exceed 48 hours.
- 3 (6) A continued preventative detention order under this section must
4 set out:
- 5 (a) the name of the person in relation to whom it is made; and
6 (b) the further period during which the person may be detained
7 under the order; and
8 (c) the date on which, and the time at which, the order is made.

9 **@105.13 Duration of continued preventative detention order**

- 10 (1) A continued preventative detention order in relation to a person
11 starts to have effect when it is made.
- 12 (2) A continued preventative detention order in relation to a person
13 ceases to have effect when whichever of the following first occurs:
- 14 (a) the end of:
- 15 (i) the period specified in the order as the further period
16 during which the person may be detained; or
17 (ii) if that period is extended or further extended under
18 section @105.14—that period as extended or further
19 extended;
- 20 (b) the revocation of the order under section @105.17.

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

23 **@105.14 Extension of continued preventative detention order**

- 24 (1) If:
- 25 (a) an initial preventative detention order is made in relation to a
26 person; and
27 (b) a continued preventative detention order is made in relation
28 to the person in relation to that initial preventative detention
29 order; and
30 (c) the continued preventative detention order is in force in
31 relation to the person;
- 32 an AFP member may apply to an issuing authority for continued
33 preventative detention orders for an extension, or a further
34 extension, of the period for which the continued preventative
35 detention order is to be in force in relation to the person.

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

- 1 (2) The application must:
2 (a) be made in writing; and
3 (b) set out the facts and other grounds on which the AFP
4 member considers that the extension or further extension
5 should be made; and
6 (c) set out the particulars and outcomes of all previous
7 applications for extensions of the continued preventative
8 detention order.
- 9 (3) The information in the application must be sworn or affirmed by
10 the AFP member.
- 11 (4) The issuing authority may extend, or further extend, the period for
12 which the continued preventative detention order is to be in force
13 in relation to the person.
- 14 (5) The extension, or further extension, must be made in writing.
- 15 (6) The period as extended, or further extended, must end no later than
16 48 hours after the person is first taken into custody under the initial
17 preventative detention order.

18 **@105.15 Prohibited contact order (person in relation to whom**
19 **preventative detention order is being sought)**

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

- 1 (b) is satisfied that making the prohibited contact order will
2 assist in achieving the objectives of the preventative
3 detention order;
4 the issuing authority may make a prohibited contact order under
5 this section that the subject is not, while being detained under the
6 preventative detention order, to contact a person specified in the
7 prohibited contact order.
- 8 (5) The prohibited contact order must be in writing.

9 **@105.16 Prohibited contact order (person in relation to whom**
10 **preventative detention order is already in force)**

- 11 (1) If a preventative detention order is in force in relation to a person
12 (the *subject*), an AFP member may apply to an issuing authority
13 for preventative detention orders of that kind for a prohibited
14 contact order under this section in relation to the subject's
15 detention under the preventative detention order.
- 16 (2) The application must set out:
17 (a) the terms of the order sought; and
18 (b) the facts and other grounds on which the AFP member
19 considers that the order should be made.
- 20 (3) If the preventative detention order is a continued preventative
21 detention order, the information in the application for the
22 prohibited contact order must be sworn or affirmed by the AFP
23 member.
- 24 (4) If the issuing authority is satisfied that making the prohibited
25 contact order will assist in achieving the objectives of the
26 preventative detention order, the issuing authority may make a
27 prohibited contact order under this section that the subject is not,
28 while being detained under the preventative detention order, to
29 contact a person specified in the prohibited contact order.
- 30 (5) The prohibited contact order must be in writing.

31 **@105.17 Revocation of preventative detention order or prohibited**
32 **contact order**

- 33 (1) If:

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

1 (a) a preventative detention order is in force in relation to a
2 person; and
3 (b) the AFP member who is detaining the person under the order
4 is satisfied that the grounds on which the order was made
5 have ceased to exist;
6 the AFP member must apply to an issuing authority for
7 preventative detention orders of that kind for the revocation of the
8 order.

9 (2) If:
10 (a) a preventative detention order is in force in relation to a
11 person; and
12 (b) an issuing authority for preventative detention orders of that
13 kind is satisfied, on application by an AFP member, that the
14 grounds on which the order was made have ceased to exist;
15 the issuing authority must revoke the order.

16 (3) If:
17 (a) a prohibited contact order is in force in relation to a person's
18 detention under a preventative detention order; and
19 (b) the AFP member who is detaining the person under the
20 preventative detention order is satisfied that the grounds on
21 which the prohibited contact order was made have ceased to
22 exist;
23 the AFP member must apply to an issuing authority for
24 preventative detention orders of that kind for the revocation of the
25 prohibited contact order.

26 (4) If:
27 (a) a prohibited contact order is in force in relation to a person's
28 detention under a preventative detention order; and
29 (b) an issuing authority for preventative detention orders of that
30 kind is satisfied, on application by an AFP member, that the
31 grounds on which the prohibited contact order was made
32 have ceased to exist;
33 the issuing authority must revoke the prohibited contact order.

34 **@105.18 Status of person making continued preventative detention**
35 **order**

36 (1) An issuing authority who makes:

- 1 (a) a continued preventative detention order; or
2 (b) a prohibited contact order in relation to a person's detention
3 under a continued preventative detention order;
4 has, in the performance of his or her duties under this Subdivision,
5 the same protection and immunity as a Justice of the High Court.
- 6 (2) A function of:
7 (a) making or revoking a continued preventative detention order;
8 or
9 (b) extending, or further extending, the period for which a
10 continued preventative detention order is to be in force; or
11 (c) making or revoking a prohibited contact order in relation to a
12 person's detention under a continued preventative detention
13 order;
14 that is conferred on a judge or magistrate is conferred on the judge
15 or magistrate in a personal capacity and not as a court or a member
16 of a court.

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

18 **@105.19 Power to detain person under preventative detention order**

- 19 While a preventative detention order is in force in relation to a
20 person:
21 (a) any AFP member may take the person into custody; and
22 (b) any AFP member may detain the person.

23 **@105.20 Endorsement of order with date and time person taken** 24 **into custody**

- 25 As soon as practicable after a person is first taken into custody
26 under an initial preventative detention order, the AFP member who
27 is detaining the person under the order must endorse on the order
28 the date on which, and time at which, the person is first taken into
29 custody under the order.

30 **@105.21 Requirement to provide name etc.**

- 31 (1) If an AFP member believes on reasonable grounds that a person
32 whose name or address is, or whose name and address are,
33 unknown to the AFP member may be able to assist the AFP

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

1 member in executing a preventative detention order, the AFP
2 member may request the person to provide his or her name or
3 address, or name and address, to the AFP member.

- 4 (2) If an AFP member:
- 5 (a) makes a request of a person under subsection (1); and
 - 6 (b) informs the person of the reason for the request; and
 - 7 (c) complies with subsection (4) if the person makes a request
8 under that subsection;
- 9 the person must not:
- 10 (d) refuse or fail to comply with the request; or
 - 11 (e) give a name or address that is false in a material particular.

12 Penalty: 20 penalty units.

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

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

- 17 (4) If an AFP member who makes a request of a person under
18 subsection (1) is requested by the person to provide to the person:
- 19 (a) his or her name or the address of his or her place of duty; or
 - 20 (b) his or her name and that address; or
 - 21 (c) if he or she is not in uniform and it is practicable for the AFP
22 member to provide the evidence—evidence that he or she is
23 an AFP member;
- 24 the AFP member must not:
- 25 (d) refuse or fail to comply with the request; or
 - 26 (e) give a name or address that is false in a material particular.

27 Penalty: 5 penalty units.

28 **@105.22 Power to enter premises**

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

1 the AFP member may enter the premises, using such force as is
2 necessary and reasonable in the circumstances, at any time of the
3 day or night for the purpose of searching the premises for the
4 person or taking the person into custody.

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

9 (a) it would not be practicable to take the person into custody,
10 either at the dwelling house or elsewhere, at another time; or

11 (b) it is necessary to do so in order to prevent the concealment,
12 loss or destruction of evidence of, or relating to, a terrorist
13 act.

14 (3) In subsection (2):

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

18 **@105.23 Use of force**

19 (1) An AFP member must not, in the course of taking a person into
20 custody or detaining a person under a preventative detention order,
21 use more force, or subject the person to greater indignity, than is
22 necessary and reasonable:

23 (a) to take the person into custody; or

24 (b) to prevent the escape of the person after being taken into
25 custody.

26 (2) An AFP member must not, in the course of taking a person into
27 custody or detaining a person under a preventative detention order:

28 (a) do anything that is likely to cause the death of, or grievous
29 bodily harm to, the person unless the AFP member believes
30 on reasonable grounds that doing that thing is necessary to
31 protect life or to prevent serious injury to another person
32 (including the AFP member); or

33 (b) if the person is attempting to escape being taken into custody
34 by fleeing—do such a thing unless:

35 (i) the AFP member believes on reasonable grounds that
36 doing that thing is necessary to protect life or to prevent

- 1 serious injury to another person (including the AFP
2 member); and
3 (ii) the person has, if practicable, been called on to
4 surrender and the AFP member believes on reasonable
5 grounds that the person cannot be apprehended in any
6 other manner.

7 (3) Subsection (2) does not limit subsection (1).

8 **@105.24 Power to conduct a frisk search**

9 An AFP member who takes a person into custody under a
10 preventative detention order, or who is present when the person is
11 taken into custody, may, if the AFP member suspects on
12 reasonable grounds that it is prudent to do so in order to ascertain
13 whether the person is carrying any seizable items:

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

17 **@105.25 Power to conduct an ordinary search**

18 An AFP member who takes a person into custody under a
19 preventative detention order, or who is present when the person is
20 taken into custody, may, if the AFP member suspects on
21 reasonable grounds that the person is carrying:

- 22 (a) evidence of, or relating to, a terrorist act; or
23 (b) a seizable item;
24 conduct an ordinary search of the person at, or soon after, the time
25 when the person is taken into custody, and seize any such thing
26 found as a result of the search.

27 **@105.26 Warrant under section 34D of the *Australian Security***
28 ***Intelligence Organisation Act 1979***

- 29 (1) This section applies if:
30 (a) a person is being detained under a preventative detention
31 order; and
32 (b) a warrant under section 34D of the *Australian Security*
33 *Intelligence Organisation Act 1979* is in force in relation to
34 the person; and
-

- 1 (c) a copy of the warrant is given to the AFP member who is
2 detaining the person under the preventative detention order.
- 3 (2) The AFP member must take such steps as are necessary to ensure
4 that the person may be dealt with in accordance with the warrant.
- 5 (3) Without limiting subsection (2), the AFP member may, under
6 section @105.27, release the person from detention under the
7 preventative detention order so that the person may be dealt with in
8 accordance with the warrant.
- 9 (4) To avoid doubt, the fact that the person is released from detention
10 under the preventative detention order so that the person may be:
11 (a) questioned before a prescribed authority under the warrant;
12 or
13 (b) detained under the warrant in connection with that
14 questioning;
15 does not extend the period for which the preventative detention
16 order remains in force in relation to the person.
- 17 Note: See paragraph @105.27(6)(a).

18 **@105.27 Release of person from preventative detention**

- 19 (1) A person who is being detained under a preventative detention
20 order may be released from detention under the order.
- 21 Note: A person may be released, for example, so that the person may be
22 arrested and otherwise dealt with under Part IC of the *Crimes Act*
23 *1914*.
- 24 (2) The AFP member who releases the person from detention under
25 the preventative detention order must give the person a written
26 statement that the person is being released from that detention. The
27 statement must be signed by the AFP member.
- 28 (3) Subsection (2) does not apply if the person is released from
29 detention so that the person may be dealt with:
30 (a) in accordance with a warrant under section 34D of the
31 *Australian Security Intelligence Organisation Act 1979*; or
32 (b) under Division 4 of Part IAA of the *Crimes Act 1914*.
- 33 (4) To avoid doubt, a person may be taken to have been released from
34 detention under a preventative detention order even if:

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

- 1 (a) the person is informed that he or she is being released from
2 detention under the order; and
3 (b) the person is taken into custody on some other basis
4 immediately after the person is informed that he or she is
5 being released from detention under the order.

- 6 (5) To avoid doubt, the person is taken not to be detained under the
7 preventative detention order during the period during which the
8 person is released from detention under the order.

9 Note: During this period, the provisions of this Division that apply to a
10 person who is being detained under a protective detention order (for
11 example, section @105.31 which deals with the people the person
12 may contact) do not apply to the person.

- 13 (6) To avoid doubt:
14 (a) the release of the person under subsection (1) from detention
15 under the preventative detention order does not extend the
16 period for which the preventative detention order remains in
17 force; and
18 (b) a person released under subsection (1) from detention under a
19 preventative detention order may again be taken into custody
20 and detained under the order at any time while the order
21 remains in force in relation to the person.

22 **Subdivision D—Informing person detained about preventative**
23 **detention order**

24 **@105.28 Effect of preventative detention order to be explained to**
25 **person detained**

26 *Initial preventative detention order*

- 27 (1) As soon as practicable after a person is first taken into custody
28 under an initial preventative detention order, the AFP member who
29 is detaining the person under the order must inform the person of
30 the matters covered by subsection (2).

31 Note 1: A contravention of this subsection may be an offence under section
32 @105.42.

33 Note 2: A contravention of this subsection does not affect the lawfulness of
34 the person's detention under the order (see subsection (1)).

- 35 (2) The matters covered by this subsection are:
-

- 1 (a) the fact that the preventative detention order has been made
2 in relation to the person; and
3 (b) the period during which the person may be detained under
4 the order; and
5 (c) the restrictions that apply to the people the person may
6 contact while the person is being detained under the order;
7 and
8 (d) the fact that an application may be made under section
9 @105.11 for an order that the person continue to be detained
10 for a further period; and
11 (e) the person's right to make a complaint orally or in writing to
12 the Commonwealth Ombudsman under Part III of the
13 *Complaints (Australian Federal Police) Act 1981*; and
14 (f) the fact that the person may seek from a federal court a
15 remedy relating to:
16 (i) the order; or
17 (ii) the treatment of the person in connection with the order;
18 and
19 (g) the person's entitlement under section @105.34 to contact a
20 lawyer.

21 *Continued preventative detention order*

- 22 (3) As soon as practicable after a continued preventative detention
23 order (the ***continued order***) is made in relation to a person, the
24 AFP member who is detaining the person must inform the person
25 of the matters covered by subsection (4).

26 Note 1: A contravention of this subsection may be an offence under section
27 @105.42.

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

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

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

- 1 (d) the person's right to make a complaint orally or in writing to
2 the Commonwealth Ombudsman under Part III of the
3 *Complaints (Australian Federal Police) Act 1981*; and
4 (e) the fact that the person may seek from a federal court a
5 remedy relating to:
6 (i) the continued order; or
7 (ii) the treatment of the person in connection with the
8 continued order; and
9 (f) the person's entitlement under section @105.34 to contact a
10 lawyer.

11 *Prohibited contact order need not be disclosed*

- 12 (5) Paragraphs (2)(c) and (4)(c) do not require the AFP member to
13 inform the person being detained of:
14 (a) the fact that a prohibited contact order has been made in
15 relation to the person's detention; or
16 (b) the name of a person specified in a prohibited contact order
17 that has been made in relation to the person's detention.

18 *Extension of preventative detention order*

- 19 (6) If a preventative detention order is extended, or further extended,
20 under section @105.10 or @105.14, the AFP member detaining
21 the person under the order must inform the person of the extension
22 as soon as practicable after the extension, or further extension, is
23 made.

24 Note 1: A contravention of this subsection may be an offence under section
25 @105.42.

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

28 *Compliance with obligation to inform*

- 29 (7) Subsection (1), (3) or (6) does not apply if the actions of the person
30 being detained under the preventative detention order make it
31 impracticable for the AFP member to comply with that subsection.

32 Note: A defendant bears an evidential burden in relation to the matter in
33 subsection (7). See subsection 13.3(3).

- 34 (8) The AFP member detaining the person under the preventative
35 detention order complies with subsection (1) or (3) if the AFP
-

1 member informs the person in substance of the matters covered by
2 subsection (2) or (4) (even if this is not done in language of a
3 precise or technical nature).

4 (9) The AFP member who is detaining the person under the
5 preventative detention order must arrange for the assistance of an
6 interpreter in complying with subsection (1), (3) or (6) if the AFP
7 member has reasonable grounds to believe that the person is
8 unable, because of inadequate knowledge of the English language
9 or a physical disability, to communicate with reasonable fluency in
10 that language.

11 (10) Without limiting subsection (9), the assistance of the interpreter
12 may be provided by telephone.

13 *Failure to comply does not affect lawfulness of detention*

14 (11) The lawfulness of a person's detention under a preventative
15 detention order is not affected by a failure to comply with
16 subsection (1), (3) or (6).

17 **@105.29 Copy of preventative detention order**

18 (1) As soon as practicable after a person is first taken into custody
19 under an initial preventative detention order, the AFP member who
20 is detaining the person under the order must give the person a copy
21 of the order.

22 (2) As soon as practicable after a continued preventative detention
23 order is made in relation to a person, the AFP member who is
24 detaining the person under the order must give the person a copy of
25 the order.

26 (3) A person who is being detained under a preventative detention
27 order may request an AFP member who is detaining the person to
28 arrange for a copy of the order, or any extension or further
29 extension of the order under section @105.10 or @105.14, to be
30 given to a lawyer nominated by the person being detained.

31 (4) The AFP member must make arrangements for a copy of the order,
32 or the extension or further extension, to be given to the lawyer as
33 soon as practicable after the request is made.

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

- 1 (5) Without limiting subsection (4), the copy of the order, or the
2 extension, may be faxed or emailed to the lawyer.
- 3 (6) Subsection (4) does not apply if the lawyer nominated by the
4 person being detained is a person specified in a prohibited contact
5 order made in relation to the person's detention.
- 6 (7) To avoid doubt, subsection (4) does not entitle the lawyer to be
7 given a copy of, or see, a document other than the order or the
8 extension.
- 9 (8) Nothing in this section requires a copy of a prohibited contact
10 order to be given to a person.
- 11 (9) The AFP member who gives:
12 (a) the person being detained under an initial preventative
13 detention order; or
14 (b) a lawyer nominated by 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 (10) 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), (2), (4) or (9).

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

22 **@105.30 Humane treatment of person being detained**

- 23 A person being taken into custody, or 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 section
32 @105.42.

1 **@105.31 Restriction on contact with other people**

2 Except as provided by sections @105.32, @105.33, @105.34 and
3 @105.36, while a person is being detained under a preventative
4 detention 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
11 @105.32, @105.33, @105.34 and @105.36 may be subject to a
12 prohibited contact order made under section @105.15 or @105.16
13 (see section @105.37).

14 **@105.32 Contacting family members etc.**

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

- 16 (a) one of his or her family members; and
17 (b) if he or she:
18 (i) lives with another person and that other person is not a
19 family member of the person being detained; or
20 (ii) lives with other people and those other people are not
21 family members of the person being detained;
22 that other person or one of those other people; and
23 (c) if he or she is employed—his or her employer; and
24 (d) if he or she employs people in a business—one of the people
25 he or she employs in that business; and
26 (e) if he or she engages in a business together with another
27 person or other people—that other person or one of those
28 other people;

29 by telephone, fax or email but solely for the purposes of letting the
30 person contacted know that the person being detained is safe but is
31 not able to be contacted for the time being.

32 (2) In this section:

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

- 34 (a) the person's spouse, de facto spouse or same-sex partner; or
35 (b) a parent, step-parent or grandparent of the person; or
36 (c) a child, step-child or grandchild of the person; or
-

- 1 (d) a brother, sister, step-brother or step-sister of the person; or
2 (e) a guardian or carer of the person.

3 **@105.33 Contacting Ombudsman**

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

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

10 **@105.34 Contacting lawyer**

- 11 (1) The person being detained is entitled to contact a lawyer by
12 telephone, fax or email but solely for the purpose of:
13 (a) arranging for the lawyer to act for the person in relation to,
14 and instructing the lawyer to bring, proceedings in a federal
15 court for a remedy relating to:
16 (i) the preventative detention order; or
17 (ii) the treatment of the person in connection with the order;
18 or
19 (b) arranging for the lawyer to act for the person in relation to,
20 and instructing the lawyer in relation to, a complaint to the
21 Commonwealth Ombudsman under the *Complaints
22 (Australian Federal Police) Act 1981* in relation to:
23 (i) the preventative detention order; or
24 (ii) the treatment of the person in connection with the order.
- 25 (2) 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 @105.37 (prohibited contact order); or
31 (ii) the person is not able to contact that lawyer;
32 the AFP member 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).

- 1 (3) In recommending lawyers to the person being detained as part of
2 giving the person assistance under subsection (2), the AFP member
3 who is detaining the person may give priority to lawyers who have
4 been given a security clearance at an appropriate level by the
5 Department.
- 6 (4) Despite subsection (3) but subject to section @105.37, the person
7 being detained is entitled under this section to contact a lawyer
8 who does not have a security clearance of the kind referred to in
9 subsection (3).

10 **@105.35 Monitoring contact under section @105.32 or @105.34**

- 11 (1) The contact the person being detained has with another person
12 under section @105.32 or @105.34 may take place only if it is
13 conducted in such a way that the contact, and the content and
14 meaning of the communication that takes place during the contact,
15 can be effectively monitored by an AFP member exercising
16 authority under the preventative detention order.
- 17 (2) The contact may take place in a language other than English only if
18 the content and meaning of the communication that takes place
19 during the contact can be effectively monitored with the assistance
20 of an interpreter.
- 21 (3) Without limiting subsection (2), the interpreter referred to in that
22 subsection may be an AFP member.
- 23 (4) If the person being detained indicates that he or she wishes the
24 contact to take place in a language other than English, the AFP
25 member who is detaining the person must:
- 26 (a) arrange for the services of an appropriate interpreter to be
27 provided if it is reasonably practicable to do so during the
28 period during which the person is being detained; and
- 29 (b) if it is reasonably practicable to do so—arrange for those
30 services to be provided as soon as practicable.

31 **@105.36 Special contact rules for person under 18 or incapable of**
32 **managing own affairs**

- 33 (1) This section applies if the person being detained under a protective
34 detention order:
- 35 (a) is under 18 years of age; or
-

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

- 1 (b) is incapable of managing his or her affairs.
- 2 (2) The person is entitled, while being detained under the order, to
3 have contact with:
- 4 (a) a parent or guardian of the person; or
5 (b) another person who:
- 6 (i) is able to represent the person's interests; and
7 (ii) is, as far as practicable in the circumstances, acceptable
8 to the person and to the AFP member who is detaining
9 the person; and
10 (iii) is not an AFP member; and
11 (iv) is not an AFP employee (within the meaning of the
12 *Australian Federal Police Act 1979*); and
13 (v) is not a member (however described) of a police force
14 of a State or Territory; and
15 (vi) is not an officer or employee of the Australian Security
16 Intelligence Organisation.
- 17 (3) The form of contact that the person being detained is entitled to
18 have with another person under subsection (2) includes:
- 19 (a) being visited by that other person; and
20 (b) communicating with that other person by telephone, fax or
21 email.
- 22 (4) The period for which the person being detained is entitled to have
23 contact with another person under subsection (2) is 2 hours each
24 day.
- 25 (5) Despite subsection (4), the AFP member who is detaining the
26 person may permit the person to have contact with another person
27 under subsection (2) for a longer period.
- 28 (6) The contact that the person being detained has with another person
29 under subsection (2) must be conducted in a way that the content
30 and meaning of any communication that takes place during the
31 contact can be monitored by an AFP member exercising authority
32 under the preventative detention order.
- 33 (7) If the communication that takes place during the contact takes
34 place in a language other than English, the contact may continue
35 only if the content and meaning of the communication in that

- 1 language can be effectively monitored with the assistance of an
2 interpreter.
- 3 (8) Without limiting subsection (7), the interpreter referred to in that
4 subsection may be an AFP member.
- 5 (9) If the person being detained indicates that he or she wishes the
6 communication that takes place during the contact to take place in
7 a language other than English, the AFP member who is detaining
8 the person must:
- 9 (a) arrange for the services of an appropriate interpreter to be
10 provided if it is reasonably practicable to do so during the
11 period during which the person is being detained; and
- 12 (b) if it is reasonably practicable to do so—arrange for those
13 services to be provided as soon as practicable.

14 **@105.37 Entitlement to contact subject to prohibited contact order**

15 Sections @105.32, @105.34 and @105.36 have effect subject to
16 any prohibited contact order made in relation to the person's
17 detention.

18 **@105.38 Disclosure offences**

- 19 (1) A person (the *offender*) commits an offence if:
- 20 (a) a person being detained under a preventative detention order
21 (the *detainee*) contacts the offender under section @105.34;
22 and
- 23 (b) the offender 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 under the
27 order; or
- 28 (iii) any information that the detainee gives the offender in
29 the course of the contact; and
- 30 (c) the disclosure occurs while the order is in force in relation to
31 the detainee; and
- 32 (d) the disclosure is not made for the purposes of:
- 33 (i) proceedings in a federal court for a remedy relating to
34 the preventative detention order or the treatment of the
35 person in connection with the order; or

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

1 (ii) a complaint to the Commonwealth Ombudsman under
2 the under the *Complaints (Australian Federal Police)*
3 *Act 1981* in relation to the preventative detention order
4 or the treatment of the person in connection with the
5 order.

6 Penalty: Imprisonment for 5 years.

7 (2) A person (the *offender*) commits an offence if:

- 8 (a) a person being detained under a preventative detention order
9 (the *detainee*) has contact with the offender under section
10 @105.36; and
11 (b) the offender discloses to another person:
12 (i) the fact that a preventative detention order has been
13 made in relation to the detainee; or
14 (ii) the fact that the detainee is being detained under the
15 order; or
16 (iii) any information that the detainee gives the offender in
17 the course of the contact; and
18 (c) the disclosure occurs while the order is in force in relation to
19 the detainee; and
20 (d) the disclosure is not made for the purposes of a complaint to
21 the Commonwealth Ombudsman under the under the
22 *Complaints (Australian Federal Police) Act 1981* in relation
23 to the preventative detention order or the treatment of the
24 person in connection with the order.

25 Penalty: Imprisonment for 5 years.

26 (3) To avoid doubt, a person does not contravene subsection (2)
27 merely by letting another person contacted know that the detainee
28 is safe but is not able to be contacted for the time being.

29 **@105.39 Questioning of person prohibited while person is detained**

30 (1) Subject to subsection (2), an AFP member must not question a
31 person while the person is being detained under a preventative
32 detention order.

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

1 Note 2: A contravention of this section may be an offence under section
2 @105.42.

3 (2) An AFP member may question the person for the purpose of
4 confirming the person's identity as the person specified in the
5 preventative detention order.

6 **@105.40 Taking fingerprints, recordings, samples of handwriting or**
7 **photographs**

8 (1) An AFP member must not:
9 (a) take identification material from a person who is being
10 detained under a preventative detention order except in
11 accordance with this section; or
12 (b) require any other person to submit to the taking of
13 identification material (but nothing in this paragraph prevents
14 such a person consenting to the taking of identification
15 material).

16 Note: A contravention of this subsection may be an offence under section
17 @105.42.

18 (2) An AFP member who is of the rank of sergeant or higher may take
19 identification material from the person, or cause identification
20 material from the person to be taken, if:

21 (a) the person consents in writing; or
22 (b) the AFP member believes on reasonable grounds that it is
23 necessary to do so for the purpose of confirming the person's
24 identity as the person specified in the order.

25 (3) An AFP member may use such force as is necessary and
26 reasonable in the circumstances to take identification material from
27 a person under this section.

28 (4) Subject to this section, an AFP member must not take
29 identification material (other than hand prints, finger prints, foot
30 prints or toe prints) from the person if the person:

31 (a) is under 18; or
32 (b) is incapable of managing his or her affairs;
33 unless a Federal Magistrate orders that the material be taken.

34 Note: A contravention of this subsection may be an offence under section
35 @105.42.

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

- 1 (5) In deciding whether to make such an order, the Federal Magistrate
2 must have regard to:
3 (a) the age, or any disability, of the person; and
4 (b) such other matters as the Federal Magistrate thinks fit.
- 5 (6) The taking of identification material from a person who:
6 (a) is under 18; or
7 (b) is incapable of managing his or her affairs;
8 must be done in the presence of:
9 (c) a parent or guardian of the person; or
10 (d) if the parent or guardian of the person is not acceptable to the
11 person—another appropriate person.
- 12 Note 1: For *appropriate person*, see subsection (12).
13 Note 2: A contravention of this subsection may be an offence under section
14 @105.42.
- 15 (7) Despite this section, identification material may be taken from a
16 person who is under 18 years of age, or is capable of managing his
17 or her affairs, if:
18 (a) subsections (8) and (9) are satisfied; or
19 (b) subsection (8) or (9) is satisfied (but not both) and a Federal
20 Magistrate orders that the material be taken.
21 In deciding whether to make such an order, the Federal Magistrate
22 must have regard to the matters set out in subsection (5).
- 23 (8) This subsection applies if the person agrees in writing to the taking
24 of the material.
- 25 (9) This subsection applies if either:
26 (a) a parent or guardian of the person; or
27 (b) if a parent or guardian is not acceptable to the person—
28 another appropriate person;
29 agrees in writing to the taking of the material.
- 30 Note: For *appropriate person*, see subsection (12).
- 31 (10) Despite this section, identification material may be taken from a
32 person who:
33 (a) is at least 18 years of age; and
34 (b) is capable of managing his or her affairs;
35 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 AFP member 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 **@105.41 Use of identification material**

- 17 (1) This section applies if identification material is taken under section
18 @105.40 from a person being detained under a preventative
19 detention order.
- 20 (2) The material may be used only for the purpose of confirming the
21 person's identity as the person specified in the order.
- 22 (3) If:
- 23 (a) a period of 12 months elapses after the identification material
24 is taken; and
 - 25 (b) proceedings in respect of:
 - 26 (i) the preventative detention order; or
 - 27 (ii) the treatment of the person in connection with the order;
28 have not been brought, or have been brought and
29 discontinued, within that period;
- 30 the material must be destroyed as soon as practicable after the end
31 of that period.

32 Note: A contravention of this subsection may be an offence under section
33 @105.42.

34 **@105.42 Offences of contravening safeguards**

- 35 (1) A person commits an offence if:
-

Schedule 4 Control orders and preventative detention orders

Part 1 Control orders and preventative detention orders

- 1 (a) the person engages in conduct; and
2 (b) the conduct contravenes subsection @105.28(1), (3) or (6) or
3 section @105.30, @105.39, @105.40 or @105.41.

4 Penalty: Imprisonment for 2 years.

5 (2) In this section:

6 *engage in conduct* means:

- 7 (a) do an act; or
8 (b) omit to perform an act.

9 **Subdivision F—Miscellaneous**

10 **@105.43 Nature of functions of Federal Magistrate**

- 11 (1) A function of making an order conferred on a Federal Magistrate
12 by section @105.40 is conferred on the Federal Magistrate in a
13 personal capacity and not as a court or a member of a court.
- 14 (2) Without limiting the generality of subsection (1), an order made by
15 a Federal Magistrate under section @105.40 has effect only by
16 virtue of this Act and is not to be taken by implication to be made
17 by a court.
- 18 (3) A Federal Magistrate performing a function of, or connected with,
19 making an order under section @105.40 has the same protection
20 and immunity as if he or she were performing that function as, or
21 as a member of, the Federal Magistrates Court.

22 **@105.44 Annual report**

- 23 (1) The Attorney-General must, as soon as practicable after each
24 30 June, cause to be prepared a report about the operation of this
25 Division during the year ended on that 30 June.
- 26 (2) Without limiting subsection (1), a report relating to a year must
27 include the following matters:
- 28 (a) the number of initial preventative detention orders made
29 under section @105.8 during the year;
- 30 (b) the number of continued preventative detention orders made
31 under section @105.12 during the year;

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

14 **@105.45 Ombudsman functions and powers not affected**

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

18 **@105.46 Law relating to legal professional privilege not affected**

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

21 **@105.47 Jurisdiction of State and Territory courts excluded**

- 22 (1) A court of a State or Territory does not have jurisdiction in
23 proceedings for a remedy if:
- 24 (a) the remedy relates to:
- 25 (i) a preventative detention order; or
26 (ii) the treatment of a person in connection with such an
27 order; and
- 28 (b) the proceedings are commenced while the order is in force.
- 29 (2) This section has effect despite any other law of the Commonwealth
30 (whether passed or made before or after the commencement of this
31 section).

Schedule 4 Control orders and preventative detention orders
Part 1 Control orders and preventative detention orders

1 **@105.48 Sunset provision**

2 This Division ceases to have effect at the end of 10 years after it
3 commences.

1

2 **Part 2—Consequential amendments**

3 *Administrative Decisions (Judicial Review) Act 1977*

4 **20 After paragraph (daa) of Schedule 1**

5 Insert:

6 (dab) decisions of the Attorney-General under section ^104.1 of the
7 *Criminal Code*;

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

1
2
3
4
5

6

7
8

9
10

11
12
13
14
15
16
17
18
19
20

21
22
23
24
25
26
27
28
29
30
31

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

Crimes Act 1914

1 Part IAA (heading)

Repeal the heading, substitute:

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

2 Subsection 3C(1)

Insert:

serious offence means an offence:

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

3 Subsection 3C(1)

Insert:

serious terrorism offence means:

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

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) requesting 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 At the end of subsection 3D(4)**

18 Add:

19 or (e) requesting 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 This Division ceases to have effect at the end of 10 years after it
12 commences.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Schedule 6—Power to obtain information and documents

Crimes Act 1914

1 After Division 4A of Part IAA

Insert:

Division 4B—Power to obtain information and documents

Subdivision A—Definitions

3ZQL Definitions

In this Division:

authorised AFP officer means:

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

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

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

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

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

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

33 **3ZQP Matters to which documents must relate**

34 A document to be produced under a notice under section 3ZQN or
35 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
15 not 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*.

1
2 **Schedule 7—Sedition**
3

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, otherwise than by lawful
22 means, to procure a change to any matter established by law
23 in 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 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 that it is a group or groups that are distinguished by race, religion, nationality or

1 political opinion that the first-mentioned person urges the other
2 person to use force or 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 or a Territory
16 or 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 in the
22 Commonwealth, a State, a Territory or another country; or
23 (d) points out in good faith any matters that are producing, or
24 have a tendency to produce, feelings of ill-will or hostility
25 between different groups, in order to bring about the removal
26 of those matters; or
27 (e) does anything in good faith in connection with an industrial
28 dispute or an industrial matter.
- 29 Note: A defendant bears an evidential burden in relation to the matter in
30 subsection (1). See subsection 13.3(3).
- 31 (2) In considering a defence under subsection (1), the Court may have
32 regard to any relevant matter, including whether the acts were
33 done:
34 (a) for a purpose intended to be prejudicial to the safety or
35 defence of the Commonwealth; or
36 (b) with the intention of assisting an enemy:
37 (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, 101, 102, 103 or”.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

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

Aviation Transport Security Act 2004

1 Title

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

2 At the end of subsection 3(1)

Add:

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

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

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

4 Section 9

Insert:

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

5 At the end of Part 4

Add:

Division 10—Optical surveillance devices

74J Purposes of this Division

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

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

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

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 section 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;
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 fails to comply with the request.
- 15 **Penalty:** Imprisonment for 2 years.
- 16 **Note:** Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in
17 respect of an offence an appropriate fine instead of, or in addition to, a
18 term of imprisonment. The maximum fine that a court can impose on
19 an individual is worked out by multiplying the maximum term of
20 imprisonment (in months) by 5, and then multiplying the resulting
21 number by the amount of a penalty unit. The amount of a penalty unit
22 is stated in section 4AA of that Act.
- 23 (5) The officer must, as soon as practicable after receiving the report,
24 forward the report to the Director.
- 25 (6) In this section:
26 ***officer*** means:
27 (a) a police officer; or
28 (b) a customs officer.
- 29 ***reportable details***, in relation to a matter being reported, means the
30 details of the matter that are referred to in Schedule 3AA.

31 10 After Division 3 of Part II

32 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 (1) of the definition of **cash dealer**, the person must
20 advise the Director, in writing, of that fact.

21 (2) A person commits an offence if:

- 22 (a) the person carries on a business mentioned in
23 subparagraph (k)(ib) or paragraph (1) of the definition of **cash**
24 **dealer**; and
25 (b) the person fails to comply with subsection (1):
26 (i) if the person starts to carry on the business on or after
27 the day on which this section commences—within 30
28 days of starting to carry on the business; and
29 (ii) in any other case—within 30 days after the day on
30 which this section commences.

31 Penalty: Imprisonment for 2 years.

32 Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in
33 respect of an offence an appropriate fine instead of, or in addition to, a

1 term of imprisonment. If a body corporate is convicted of an offence,
 2 subsection 4B(3) of that Act allows a court to impose a fine of an
 3 amount that is not greater than 5 times the maximum fine that could
 4 be imposed by the court on an individual convicted of the same
 5 offence.

6 **24F Register of Providers of Remittance Services**

7 (1) The Director must maintain a register, to be known as the Register
 8 of Providers of Remittance Services, in which the Director is to
 9 include:
 10 (a) the names; and
 11 (b) prescribed particulars;
 12 of cash dealers who carry on a business mentioned in
 13 subparagraph (k)(ib) or paragraph (l) of the definition of *cash*
 14 *dealer*.

15 (2) The register may be maintained by electronic means.

16 (3) The register is to be made available for inspection on the Internet.

17 *Requirement to provide name and prescribed particulars*

18 (4) For the purposes of ensuring that the register is accurate and
 19 complete, if:
 20 (a) an authorised officer has reason to believe that a person
 21 carries on a business mentioned in subparagraph (k)(ib) or
 22 paragraph (l) of the definition of *cash dealer*; and
 23 (b) the Director does not have the name, and all prescribed
 24 particulars, of the person;
 25 the authorised officer:
 26 (c) may, either orally or in writing, require the person to give the
 27 authorised officer the person's name and all prescribed
 28 particulars; and
 29 (d) if paragraph (c) applies—must, either orally or in writing,
 30 inform the person of the effect of subsection (5).

31 *Offence*

32 (5) A person commits an offence if:
 33 (a) the person is required to give information under
 34 paragraph (4)(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 that is
23 false or misleading in a material particular; or

24 **17 Subsection 30(1)**

25 Omit “to the Director”.

26 **18 After section 33**

27 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**).

- 1 *Officer may conduct searches*
- 2 (5) The officer may, with such assistance as is reasonable and
3 necessary, examine an article which the person has with him or her
4 if the person:
5 (a) is about to leave Australia or has arrived in Australia; or
6 (b) is about to board or leave, or has boarded or left, any ship or
7 aircraft;
8 for the purpose of finding out whether the person has with him or
9 her any bearer negotiable instruments in respect of which a false
10 declaration has been made.
- 11 (6) The officer may, with such assistance as is reasonable and
12 necessary, search the person if:
13 (a) the person is about to leave Australia, or has arrived in
14 Australia, or the person is about to board or leave, or has
15 boarded or left, any ship or aircraft; and
16 (b) the officer has reasonable grounds to suspect that there is on
17 the person, or in clothing being worn by the person, a bearer
18 negotiable instrument in respect of which a false declaration
19 has been made;
20 for the purpose of finding out whether the person has with him or
21 her any such bearer negotiable instrument.
- 22 (7) A customs officer may only exercise the powers under
23 subsection (6) if the customs officer is one in respect of whom a
24 declaration under section 219ZA of the *Customs Act 1901* is in
25 force.
- 26 (8) A person must not be searched under subsection (6) except by a
27 person of the same sex.
- 28 *Officer may conduct searches on board a ship or aircraft*
- 29 (9) The officer, and any person assisting the officer, may:
30 (a) board any ship or aircraft; or
31 (b) go onto or enter any prescribed place;
32 for the purpose of exercising the powers conferred by
33 subsection (1), (2), (5), (6) or (10).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

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 Subsection 15AA(6)

7
8 For the purposes of section 15AA, the following are the reportable
9 details in respect of bearer negotiable instruments:

- 10 1. The amount payable under each bearer negotiable instrument.
- 11 2. Whether the bearer negotiable instrument is denominated in
12 Australian currency or foreign currency and, if foreign currency,
13 which foreign currency.
- 14 3. If the person making the report is to carry the bearer negotiable
15 instruments into or out of Australia:
- 16 (a) the name, address, date of birth and occupation (or, where
17 appropriate, the business or principal activity) of the person;
18 and
- 19 (b) the international travel document number and country of
20 issue of the international travel document or international
21 travel documents held by the person; and
- 22 (c) if the person is not an Australian resident—that person’s
23 address while in Australia; and
- 24 (d) the name of the city in Australia from which the person is to
25 depart or at which the person will arrive; and
- 26 (e) the name of the foreign country and the city in that country
27 from which the bearer negotiable instruments are being
28 imported or to which the bearer negotiable instruments are
29 being exported; and
- 30 (f) if the person is to carry the bearer negotiable instruments on
31 behalf of another person:
- 32 (i) the name, address and occupation (or, where
33 appropriate, business or principal activity) of that
34 person; and

- 1 (ii) the name and address, and occupation, business or
 - 2 principal activity of the person to whom the bearer
 - 3 negotiable instruments are to be delivered; and
 - 4 (g) the day on which the person is to enter or leave Australia and
 - 5 the number of the flight or the name of the vessel on which
 - 6 the person is entering or leaving.
- 7 4. If a person is to carry the bearer negotiable instruments out of
- 8 Australia—the name and address of that person.

9 ***Proceeds of Crime Act 2002***

10 **22 Subsection 29(3)**

11 After “section 15,” insert “15AA,”.

12 **23 Section 338 (after subparagraph (c)(i) of the definition of**

13 ***serious offence*)**

14 Insert:

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

17 ***Surveillance Devices Act 2004***

18 **24 Subsection 6(1) (paragraph (c) of the definition of *relevant***

19 ***offence*)**

20 After “section 15”, insert “, 15AA”.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

Schedule 10—ASIO powers etc.

Australian Security Intelligence Organisation Act 1979

1 Section 4

Insert:

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

2 After section 22

Insert:

23 Requesting information or documents from operators of aircraft or vessels

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

Offence

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

-
- 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 appointed by the
- 9 Director-General in writing to be an authorising officer for the
- 10 purposes of this subsection, may authorise, in writing, an officer or
- 11 employee of the Organisation, or a class of such officers or
- 12 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 **3 Paragraphs 25(4)(d) and (4A)(c)**
- 19 Omit “for such time as is reasonable”.
- 20 **4 After subsection 25(4B)**
- 21 Insert:
- 22 *Time period for retaining records and other things*
- 23 (4C) A record or other thing retained as mentioned in paragraph (4)(d)
- 24 or (4A)(c) may be retained for only such time as is reasonable,
- 25 unless returning the record or thing would be prejudicial to
- 26 security.
- 27 **5 Paragraph 25(5)(a)**
- 28 After “or other electronic equipment” (first occurring), insert “, or a
- 29 data storage device, brought to or”.
- 30 **6 Paragraph 25(5)(a)**
-

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

3 **7 Paragraph 25(5)(b)**

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

6 **8 Subparagraph 25(5)(b)(iii)**

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

8 **9 Subparagraph 25(5)(b)(iii)**

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

10 **10 Subsection 25(6)**

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

14 **11 Subsection 25(6)**

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

17 **12 Subsection 25(10)**

18 Omit “28 days”, substitute “90 days”.

19 **13 Before paragraph 25A(4)(a)**

20 Insert:

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

23 **14 After subparagraph 25A(4)(a)(iii)**

24 Insert:

25 or (iv) a data storage device;

26 **15 After subsection 25A(5)**

27 Insert:

1 *Authorisation of entry measures*

2 (5A) The warrant must:

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

7 **16 Subsection 27(4)**

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

9 **17 Subsection 27AA(9)**

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

11 **18 Paragraph 27A(3)(a)**

12 Omit “28 days”, substitute “90 days”.

13 **19 Paragraph 27A(3)(b)**

14 Omit “or 26C(3)—6 months; or”, substitute “, 26C(3), 27(2) or (3) or
15 27AA(5) or (8)—6 months;”.

16 **20 Paragraph 27A(3)(c)**

17 Repeal the paragraph.

18 **21 Paragraph 34G(5)(b)**

19 Omit “in a material particular”.

20 **22 After subsection 34G(5)**

21 Insert:

22 (5A) Subsection (5) does not apply if the statement is not false or
23 misleading in a material particular.

24 Note: A defendant bears an evidential burden in relation to the matter in
25 subsection (5A) (see subsection 13.3(3) of the *Criminal Code*).

26 **23 Paragraphs 34N(1)(a) and (c)**

27 Omit “for such time as is reasonable”.

28 **24 At the end of section 34N**

29 Add:

- 1 (3) A record or other thing, or an item, retained as mentioned in
2 paragraph (1)(a) or (c) may be retained for only such time as is
3 reasonable, unless returning the record, thing or item would be
4 prejudicial to security.

5 **25 Application of items**

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

10 **26 Section 35**

11 Before “In this Part”, insert “(1)”.

12 **27 Section 35 (at the end of the definition of *prescribed***
13 ***administrative action*)**

14 Add:

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

17 **28 At the end of section 35**

18 Add:

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

22 ***Customs Act 1901***

23 **29 After subparagraph 186A(1)(b)(ii)**

24 Insert:

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

1 ***Customs Administration Act 1985***

2 **30 After paragraph 16(9)(i)**

3 Insert:

4 (ia) a purpose relating to the performance of functions under
5 section 17 of the *Australian Security Intelligence*
6 *Organisation Act 1979*;

7 (ib) a purpose relating to the performance of functions under
8 section 6 of the *Intelligence Services Act 2001*;

9 ***Migration Act 1958***

10 **31 Paragraph 202(1)(a)**

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

13 **32 Subsection 202(6)**

14 Insert:

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