

TASMANIA

**TERRORISM (PREVENTATIVE DETENTION)
BILL 2005**

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**TERRORISM (PREVENTATIVE DETENTION)
BILL 2005**

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

A BILL FOR

**An Act to allow persons to be taken into custody and
detained in order to prevent an imminent terrorist act
occurring or preserve evidence of, or relating to, a recent
terrorist act and for related matters**

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Terrorism
(Preventative Detention) Act 2005*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

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

“AFP employee” has the same meaning as in the *Australian Federal Police Act 1979* of the Commonwealth;

“AFP member” has the same meaning as in Part 5.3 of the *Criminal Code Act 1995* of the Commonwealth;

“authorised police officer” means a police officer appointed by the Commissioner of Police under subsection (2);

“Commonwealth control order” has the same meaning as “control order” has in Part 5.3 of the *Criminal Code Act 1995* of the Commonwealth;

“corresponding preventative detention law” means –

- (a) Division 105 of the *Criminal Code Act 1995* of the Commonwealth; or
- (b) a law of another State or of a Territory, or particular provisions of a law of another State or of a Territory, that –
 - (i) corresponds or correspond to this Act; or
 - (ii) is or are declared by the regulations to correspond to this Act;

“Director of Corrective Services” has the same meaning as in the *Corrections Act 1997*;

“identification material”, in relation to a person, means samples taken from a part of the person’s body from which a DNA profile may be derived, prints of the person’s hands, fingers, feet or toes, recordings of the person’s voice, samples of the person’s handwriting or photographs (including video recordings) of the person;

“interim preventative detention order” means an interim preventative detention order made by the Supreme Court under section 7;

“lawyer” means a legal practitioner within the meaning of paragraph (a) of the definition of “legal practitioner” in section 3 of the *Legal Profession Act 1993*;

“premises” includes –

- (a) land; and
- (b) a building or vehicle; and
- (c) a part of a building or vehicle; and
- (d) any place, whether built on or not;

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

“preventative detention order” means an order made under section 7, as varied under section 16 or 17, and includes an interim preventative detention order;

“prison” has the same meaning as in the *Corrections Act 1997*;

“prohibited contact order” means an order made under section 14 or 15, as varied under section 16 or 17;

“seizable item” means anything that –

- (a) could present a danger to a person; or
- (b) could be used to assist a person to escape from lawful custody; or
- (c) could be used to contact another person or to operate a device remotely;

“senior police officer” means a police officer of or above the rank of Assistant Commissioner;

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

“thing” includes any object, article or material;

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

- (2) The Commissioner of Police may appoint in writing police officers, or a class or classes of police officers, to be authorised police officers for the purpose of making applications under sections 5, 15 and 17.
- (3) A note in the text of this Act does not form part of this Act.

4. What is a terrorist act?

- (1) In this Act –

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

- (a) the action falls within subsection (2) and does not fall within subsection (3); and
- (b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and
- (c) the action is done or the threat is made with the intention of –
 - (i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or

- (ii) intimidating the public or a section of the public.
- (2) Action falls within this subsection if it –
- (a) causes serious harm that is physical harm to a person; or
 - (b) causes serious damage to property; or
 - (c) causes a person's death; or
 - (d) endangers a person's life, other than the life of the person taking the action; or
 - (e) creates a serious risk to the health or safety of the public or a section of the public; or
 - (f) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to –
 - (i) an information system; or
 - (ii) a telecommunications system; or
 - (iii) a financial system; or
 - (iv) a system used for the delivery of essential government services; or
 - (v) a system used for, or by, an essential public utility; or
 - (vi) a system used for, or by, a transport system.
- (3) Action falls within this subsection if it –

- (a) is advocacy, protest, dissent or industrial action; and
- (b) is not intended –
 - (i) to cause serious harm that is physical harm to a person; or
 - (ii) to cause a person's death; or
 - (iii) to endanger the life of a person, other than the person taking the action; or
 - (iv) to create a serious risk to the health or safety of the public or a section of the public.

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

PART 2 – PREVENTATIVE DETENTION ORDERS**5. Application for preventative detention order**

(1) An authorised police officer (the “**applicant**”) may apply to the Supreme Court or, subject to subsection (3), to a senior police officer for a preventative detention order in relation to a person (the “**subject**”) if –

(a) the applicant is satisfied that –

(i) there are reasonable grounds to suspect that the subject –

(A) will engage in a terrorist act; or

(B) possesses or has under his or her control (whether solely or jointly with any other person) a thing that is connected with the preparation for, or the engagement of a person in, a terrorist act; or

(C) has done an act in preparation for, or planning, a terrorist act; and

(ii) making the order would substantially assist in preventing a terrorist act occurring; and

(iii) detaining the subject for the period for which the applicant is

seeking to have him or her detained under the order is reasonably necessary for the purpose referred to in sub-subparagraph (ii); or

(b) the applicant is satisfied that –

(i) a terrorist act has occurred within the last 28 days; and

(ii) it is necessary to detain the subject to preserve evidence of, or relating to, the terrorist act; and

(iii) detaining the subject for the period for which the applicant is seeking to have him or her detained under the order is reasonably necessary for the purpose referred to in sub-subparagraph (ii).

(2) A terrorist act referred to in subsection (1)(a) must be one –

(a) that is imminent; and

(b) that is expected to occur, in any event, at some time in the next 14 days.

(3) An application may only be made to a senior police officer if the applicant considers that –

(a) there is an urgent need for the order; and

(b) it is not reasonably practicable in the circumstances for the application to be made to the Supreme Court.

6. Form and content of application

- (1) An application under section 5 must –
 - (a) be made in writing; and
 - (b) set out the facts and other grounds on which the applicant considers that the preventative detention order should be made; and
 - (c) specify the period for which the applicant is seeking to have the person detained under the order and set out the facts and other grounds on which the applicant considers that the person should be detained for that period; and
 - (d) set out the information (if any) that the applicant has about the person's age and capacity to manage his or her affairs; and
 - (e) set out the following:
 - (i) the outcomes and particulars of all previous applications for preventative detention orders in relation to the person;
 - (ii) the information (if any) that the applicant has about –
 - (A) the outcomes and particulars of all previous requests for Commonwealth control orders (including the outcomes of the hearings to confirm the orders) in relation to the person; and

- (B) the outcomes and particulars of all previous applications for variations of Commonwealth control orders made in relation to the person; and
 - (C) the outcomes of all previous applications for revocations of Commonwealth control orders made in relation to the person; and
 - (f) set out the information (if any) that the applicant has about any periods for which the person has been detained under an order made under a corresponding preventative detention law.
- (2) If –
- (a) a preventative detention order is made in relation to a person on the basis of assisting in preventing a terrorist act occurring within a particular period; and
 - (b) the person is taken into custody under the order; and
 - (c) an application is made for another preventative detention order in relation to the person on the basis of assisting in preventing a different terrorist act occurring within that period –
- the application must also identify the information on which the application is based

that became available only after the preventative detention order referred to in paragraph (a) was made.

(3) If –

- (a) an order for a person's detention is made under a corresponding preventative detention law on the basis of assisting in preventing a terrorist act occurring within a particular period; and
- (b) the person is taken into custody under that order; and
- (c) an application is made for a preventative detention order in relation to the person on the basis of assisting in preventing a different terrorist act occurring within that period –

the application must also identify the information on which the application is based that became available only after the order referred to in paragraph (a) was made.

(4) The information in the application must be sworn by the applicant.

Note: Section 45 creates an offence for providing false or misleading information or documents in connection with an application to a senior police officer.

(5) An application to a senior police officer may be made without notice of it being given to the person in relation to whom a preventative detention order is being sought.

(6) An application to the Supreme Court may only be made without notice of it being given to the

person in relation to whom a preventative detention order is being sought if that person is not then being detained under –

- (a) a preventative detention order made by a senior police officer; or
- (b) an order for the person's detention made under a corresponding preventative detention law.

7. Preventative detention orders

(1) The Supreme Court or the senior police officer may, on an application under section 5, make a preventative detention order in relation to a person if –

- (a) satisfied on reasonable grounds that –
 - (i) the person –
 - (A) will engage in a terrorist act; or
 - (B) possesses or has under his or her control (whether solely or jointly with any other person) a thing that is connected with the preparation for, or the engagement of a person in, a terrorist act; or
 - (C) has done an act in preparation for, or in planning, a terrorist act; and

- (ii) making the order would substantially assist in preventing a terrorist act occurring; and
 - (iii) detaining the person for the period for which he or she is to be detained under the order is reasonably necessary for the purpose referred to in subparagraph (ii); or
- (b) satisfied on reasonable grounds that –
 - (i) a terrorist act has occurred within the last 28 days; and
 - (ii) it is necessary to detain the person to preserve evidence of, or relating to, the terrorist act; and
 - (iii) detaining the person for the period for which he or she is to be detained under the order is reasonably necessary for the purpose referred to in subparagraph (ii).
- (2) A terrorist act referred to in subsection (1)(a) must be one –
 - (a) that is imminent; and
 - (b) that is expected to occur, in any event, at some time in the next 14 days.
- (3) The Supreme Court or the senior police officer may refuse to make a preventative detention order unless the authorised police officer applying for it gives the Court or the officer (as the case requires) any further information that it,

he or she requests concerning the grounds on which the order is sought.

- (4) If the application to the Supreme Court is made without notice of it being given to the person in relation to whom a preventative detention order is being sought, the Supreme Court may, if in its opinion it is desirable to do so, make an interim preventative detention order pending the hearing and final determination of the application.

Note: The maximum period during which a person may be detained under an interim order is 48 hours or until the final determination of the application, whichever is the later: see section 9(3).

- (5) If the Supreme Court makes an interim preventative detention order, it must –
- (a) specify a day on which, and time at which, the hearing of the application is to be resumed; and
 - (b) direct the applicant to cause notice of the resumed hearing to be given to –
 - (i) the person in relation to whom the interim order is made; and
 - (ii) if the applicant is aware of the identity of a lawyer who acts for that person in relation to any matter, that lawyer.
- (6) On a resumed hearing referred to in subsection (5), the person in relation to whom the interim order is made is entitled to appear and give evidence, call witnesses, examine and cross-examine witnesses, adduce material and make submissions. However, his or her absence

does not prevent the Supreme Court from finally determining the application.

- (7) An interim preventative detention order that, but for this subsection, would cease to have effect before the application is finally determined, continues to have effect, subject to section 9(2), until the application is finally determined.
- (8) On finally determining an application following the making of an interim preventative detention order, the Supreme Court may by order –
 - (a) confirm the order without variation or vary the period specified in the order as the period during which the person in relation to whom it is made may be detained under it; or
 - (b) revoke the order if not satisfied as mentioned in subsection (1).
- (9) If the person in relation to whom the interim preventative detention order is made is being detained in a prison, the applicant for that order must cause a copy of any order made under subsection (8) to be given to the Director of Corrective Services as soon as practicable after it is made.
- (10) On the hearing by the Supreme Court of an application under section 5 (including a resumed hearing referred to in subsection (5) of this section) –

Note: The period of detention in the confirmed order may be extended, or further extended, under section 11.

- (a) the person in relation to whom a preventative detention order is being sought (including a person in relation to whom an interim preventative detention order or a preventative detention order made by a senior police officer is in force) is entitled to appear and give evidence, call witnesses, examine and cross-examine witnesses, adduce material and make submissions; but
 - (b) the absence of that person does not prevent the Supreme Court from determining, or finally determining, the application.
- (11) If, on an application by an authorised police officer for the making of a preventative detention order in relation to a person who is being detained under a preventative detention order made or purportedly made by a senior police officer (the “**police order**”), the Supreme Court is satisfied that the making or purported making of the police order was so unreasonable that no senior police officer acting reasonably could have made that order, the Supreme Court may –
 - (a) declare the police order to be void from its beginning; and
 - (b) determine that the State should compensate the person, as assessed by the Supreme Court, in respect of any loss sustained or damage incurred by the person as a direct and reasonable consequence of his or her detention under the police order.

- (12) If the Supreme Court makes a determination under subsection (11)(b), the State is liable to pay the compensation assessed by the Supreme Court and the Consolidated Fund is, to the necessary extent, appropriated for this purpose.

8. Nature of preventative detention order

- (1) A preventative detention order is an order that the person in relation to whom it is made may be –
- (a) taken into custody (unless he or she is already being detained under a preventative detention order, or an order for his or her detention made under a corresponding preventative detention law, that is in force or was in force immediately before the making of the new order); and
 - (b) detained during the period that –
 - (i) starts when the person is first taken into custody or detained under the order (the “**start**”); and
 - (ii) ends a specified period of time after the start.
- (2) The order must be in writing.
- (3) Subject to section 9, the period of time specified in the order under subsection (1)(b)(ii) must not exceed 14 days.
- (4) A preventative detention order must set out –

- (a) the name of the person in relation to whom it is made; and
- (b) the period during which the person may be detained under the order; and
- (c) the place or places where the person may be, or must not be, detained under the order; and
- (d) the date on which, and the time at which, the order is made; and
- (e) whether the person is prohibited from disclosing under section 32(2) the period for which he or she is being detained; and
- (f) whether the person is allowed to have any further contact with a person under section 32(4) and, if so –
 - (i) the person or persons with whom he or she may have contact; and
 - (ii) the period for which he or she may have contact on any day and the number of days on which he or she may have such contact; and
 - (iii) whether the person is prohibited from disclosing the period for which he or she is being detained to a person with whom he or she has contact; and
 - (iv) any other conditions applicable to the contact; and

- (g) if applicable, particulars of the order for the person's detention made under a corresponding preventative detention law on the ceasing to have effect of which the order is to start to have effect; and
 - (h) if applicable, the date and time after which the person may not be taken into custody under the order.
- (5) If the person in relation to whom the order is made is –
- (a) under 18 years of age; or
 - (b) incapable of managing his or her affairs –

the order may provide that the period each day for which the person is entitled to have contact with another person under section 36(2) is the period of more than 2 hours that is specified in the order.

9. Duration of preventative detention orders

- (1) The maximum period that may be specified in a preventative detention order made by a senior police officer as the period during which a person may be detained under the order is 24 hours.
- (2) Subject to subsection (3), the maximum period (including that period, as extended, or further extended, under section 11) that may be specified in a preventative detention order made by the Supreme Court as the period during which a person may be detained under the order is 14

days less any period during which the person is actually detained under –

- (a) a preventative detention order made by a senior police officer; or
- (b) an order for the person's detention made under a corresponding preventative detention law –

on the same basis.

- (3) The maximum period that may be specified in an interim preventative detention order made by the Supreme Court as the period during which a person may be detained under the order is 48 hours.
- (4) Despite the period of detention specified in a preventative detention order made by a senior police officer, as soon as practicable after the person in relation to whom the order is made is first taken into custody or detained under the order, an application for a preventative detention order in relation to the person must be made to the Supreme Court.
- (5) To avoid doubt, for the purposes of subsection (2) orders are made on the same basis if –
 - (a) in the case of orders made on the basis of preventing a terrorist act from occurring, they relate to the same terrorist act occurring within the same period; and
 - (b) in the case of orders made on the basis of preserving evidence of, or relating to, a terrorist act, they relate to the same terrorist act.

10. When order starts and ceases to have effect

- (1) A preventative detention order in relation to a person starts to have effect –
 - (a) if the preventative detention order so provides, on an order for the person's detention made under a corresponding preventative detention law ceasing to have effect; or
 - (b) in any other case, when it is made.

Note: When the order starts to have effect it authorises the person to be taken into custody, if necessary (see section 8(1)(a)). The period for which the person may be detained under the order only starts to run when the person is first taken into custody or detained under the order (section 8(1)(b)).

- (2) A preventative detention order in relation to a person under which the person is required to be taken into custody ceases to have effect at the end of the period of 48 hours after the order is made if the person has not been taken into custody under the order within that period.
- (3) If a preventative detention order does not cease to have effect under subsection (2), it ceases to have effect when whichever of the following first occurs:
 - (a) the end of –
 - (i) the period specified in the order as the period during which the person may be detained under the order; or
 - (ii) if that period is extended or further extended under

section 11, that period as extended or further extended;

- (b) if the order was made by a senior police officer, a preventative detention order is made by the Supreme Court in relation to the same person;
- (c) the revocation of the order under section 7, 16 or 17.

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

11. Extension of preventative detention order

(1) If –

- (a) a preventative detention order is made by the Supreme Court in relation to a person on the final determination of an application under section 5; and
- (b) the order is in force in relation to the person –

an authorised police officer may apply to the Supreme Court for an extension, or a further extension, of the period for which the order is to be in force in relation to the person.

(2) The application must –

- (a) be made in writing; and
- (b) set out the facts and other grounds on which the applicant considers that the extension, or further extension, is

reasonably necessary for the purpose for which the order was made; and

- (c) set out the outcomes and particulars of all previous applications for extensions, or further extensions, of the order.
- (3) The information in the application must be sworn by the applicant.
 - (4) The applicant must cause notice of the application to be given to the person in relation to whom the preventative detention order is in force.
 - (5) The person in relation to whom the preventative detention order is in force is entitled to appear on the hearing and give evidence, call witnesses, examine and cross-examine witnesses, adduce material and make submissions. However, his or her absence does not prevent the Supreme Court from determining the application.
 - (6) The Supreme Court may, by order, extend or further extend the period for which the order is to be in force in relation to the person if it is satisfied that detaining the person under the order for the period as extended, or further extended, is reasonably necessary for the purpose for which the order was made.
 - (7) The order must be in writing.
 - (8) The extension, or further extension, must not result in the preventative detention order specifying a period in excess of the maximum period permissible under section 9(2).
 - (9) If the person in relation to whom the order is in force is being detained in a prison and the

Supreme Court makes an order under subsection (6) that extends, or further extends, the period for which the order is to be in force, the applicant must cause a copy of the order under that subsection to be given to the Director of Corrective Services as soon as practicable after it is made.

12. No preventative detention order in relation to person under 16 years of age

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

Note: See also section 36 and section 40(4) to (10) for the special rules for people who are under 18 years of age.

- (2) If –

- (a) a person is being detained under a preventative detention order or a purported preventative detention order; and
- (b) the police officer who is detaining the person is satisfied on reasonable grounds that the person is under 16 years of age –

the police officer must release the person or arrange in writing for his or her release, as soon as practicable, from detention under the order or purported order.

13. Restrictions on multiple preventative detention orders

(1) If –

- (a) a preventative detention order is made in relation to a person on the basis of assisting in preventing a terrorist act occurring within a particular period; and
- (b) the person is being detained under that order –

another preventative detention order cannot be applied for, or made, under this Part in relation to the person on the basis of assisting in preventing a different terrorist act occurring within that period unless the application, or the order, is based on information that became available only after the preventative detention order referred to in paragraph (a) was made.

(2) If –

- (a) an order for a person's detention is made under a corresponding preventative detention law on the basis of assisting in preventing a terrorist act occurring within a particular period; and
- (b) the person is being detained under that order –

a preventative detention order cannot be applied for to, or made by, a senior police officer under this Part in relation to the person on the basis of assisting in preventing the same terrorist act occurring within that period.

(3) If –

- (a) an order for a person's detention is made under a corresponding preventative detention law on the basis of assisting in preventing a terrorist act occurring within a particular period; and
- (b) the person is being detained under that order –

a preventative detention order cannot be applied for, or made, under this Part in relation to the person on the basis of assisting in preventing a different terrorist act occurring within that period unless the application, or the order, is based on information that became available only after the order referred to in paragraph (a) was made.

(4) If –

- (a) an order for a person's detention is made under a corresponding preventative detention law on the basis of preserving evidence of, or relating to, a terrorist act; and
- (b) the person is being detained under that order –

a preventative detention order cannot be applied for to, or made by, a senior police officer under this Part in relation to the person on the basis of preserving evidence of, or relating to, the same terrorist act.

14. Prohibited contact order (person in relation to whom preventative detention order is being sought)

- (1) An authorised police officer who applies for a preventative detention order in relation to a person (the “**subject**”) may also apply for a prohibited contact order under this section in relation to the subject’s detention under the preventative detention order.
- (2) The application must set out –
 - (a) the terms of the order sought; and
 - (b) the facts and other grounds on which the applicant considers that the order should be made.
- (3) The information in the application must be sworn by the applicant.

Note: Section 45 creates an offence for providing false or misleading information or documents in connection with an application to a senior police officer.

- (4) An application to the Supreme Court may only be made without notice of it being given to the person in relation to whom a prohibited contact order is being sought if that person is not then being detained under –
 - (a) a preventative detention order made by a senior police officer; or
 - (b) an order for the person’s detention made under a corresponding preventative detention law.
- (5) If the application to the Supreme Court is made without notice of it being given to the person in

relation to whom the prohibited contact order is being sought and the order is being sought in conjunction with an application for a preventative detention order under section 5, the Court may, if in its opinion it is desirable to do so, make an interim prohibited contact order pending the hearing and final determination of the application at the resumed hearing of the application for the preventative detention order.

- (6) The person in relation to whose detention an application for a prohibited contact order is made to the Supreme Court under this section is entitled to be given notice of the application and to appear and give evidence, call witnesses, examine and cross-examine witnesses, adduce material and make submissions in relation to it. However, his or her absence does not prevent the Supreme Court from determining the application.
- (7) If the Supreme Court or the senior police officer, as the case requires –
 - (a) makes the preventative detention order; and
 - (b) is satisfied on reasonable grounds that making the prohibited contact order will assist in achieving the purpose of the preventative detention order –

the Court or officer may make a prohibited contact order under this section that the subject is not, while being detained under the preventative detention order, to contact any person specified in the prohibited contact order.

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

15. Prohibited contact order (person in relation to whom preventative detention order is already in force)

- (1) If a preventative detention order is in force in relation to a person (the “**subject**”), an authorised police officer may apply to the Supreme Court or, if the preventative detention order was made by a senior police officer, to a senior police officer for a prohibited contact order under this section in relation to the subject’s detention under the preventative detention order.
- (2) The application must set out –
 - (a) the terms of the order sought; and
 - (b) the facts and other grounds on which the applicant considers that the order should be made.
- (3) The information in the application must be sworn by the applicant.

Note: Section 45 creates an offence for providing false or misleading information or documents in connection with an application to a senior police officer.

- (4) The person in relation to whose detention under a preventative detention order an application for a prohibited contact order is made to the Supreme Court under this section is entitled to be given notice of the application and to appear and give evidence, call witnesses, examine and cross-examine witnesses, adduce material and make submissions in relation to it. However, his or her absence does not prevent the Supreme Court from determining the application.

- (5) If the Supreme Court or the senior police officer (as the case requires) is satisfied on reasonable grounds that making the prohibited contact order will assist in achieving the purpose for which the preventative detention order was made, the Court or officer may make a prohibited contact order under this section that the subject is not, while being detained under the preventative detention order, to contact any person specified in the prohibited contact order.
- (6) The prohibited contact order must be in writing.

16. Application by detainee for revocation or variation of preventative detention order or prohibited contact order

- (1) A person in relation to whom a preventative detention order made by the Supreme Court is in force may, with the leave of the Supreme Court, apply to the Supreme Court for –
 - (a) the revocation or a variation of the order;
or
 - (b) the revocation or a variation of any prohibited contact order that is in force in relation to the person's detention under the preventative detention order.
- (2) The Supreme Court must not grant leave to apply for the revocation or a variation of an order unless it is satisfied that new facts or circumstances have arisen since the making of the order or relevant matters had not been provided to the court in relation to the application for the order.

- (3) To avoid doubt, an application for leave to apply for the revocation or a variation of an order does not operate as a stay of the order.
- (4) If –
- (a) a preventative detention order made by the Supreme Court is in force in relation to a person; and
 - (b) the Supreme Court grants leave to that person to apply for the revocation or a variation of the order; and
 - (c) the Supreme Court is satisfied, on the application of that person, that, because of new facts or circumstances that have arisen since the making of the order or relevant matters that had not been provided to the court in relation to the application for the order, it is appropriate that the order be revoked or varied –
- the Court, by order, must revoke or vary the order.
- (5) If the person in relation to whom a preventative detention order made by the Supreme Court is in force is being detained in a prison and the order is revoked or varied under subsection (4), the police officer who is detaining the person under the order must cause a copy of the order made under that subsection to be given to the Director of Corrective Services as soon as practicable after it is made.
- (6) If –
- (a) a prohibited contact order is in force in relation to a person's detention under a

preventative detention order made by the Supreme Court; and

- (b) the Supreme Court grants leave to that person to apply for the revocation or a variation of the order; and
- (c) the Supreme Court is satisfied, on the application of that person, that, because of new facts or circumstances that have arisen since the making of the order or relevant matters that had not been provided to the court in relation to the application for the order, it is appropriate that the order be revoked or varied –

the Court, by order, must revoke or vary the order.

- (7) If the person in relation to whose detention under a preventative detention order a prohibited contact order is in force is being detained in a prison and the prohibited contact order is revoked or varied under subsection (6), the police officer who is detaining the person under the preventative detention order must cause a copy of the order made under that subsection to be given to the Director of Corrective Services as soon as practicable after it is made.

17. Application by police for revocation or variation of preventative detention order or prohibited contact order

- (1) If –
 - (a) a preventative detention order is in force in relation to a person; and

- (b) the police officer who is detaining the person under the order is satisfied that the grounds on which the order was made have ceased to exist –

an authorised police officer must as soon as practicable apply for the revocation of the order to the Supreme Court or, if the order was made by a senior police officer, to a senior police officer.

(2) If –

- (a) a preventative detention order is in force in relation to a person; and
- (b) the police officer who is detaining the person under the order is satisfied that, because of new facts or circumstances that have arisen since the making of the order or relevant matters that had not been provided to the court in relation to the application for the order, it is appropriate that the order be varied –

the authorised police officer must apply for a variation of the order to the Supreme Court or, if the order was made by a senior police officer, to a senior police officer.

(3) If –

- (a) a preventative detention order is in force in relation to a person; and
- (b) the Supreme Court or, if the order was made by a senior police officer, a senior police officer is satisfied, on application by an authorised police officer under

subsection (1) or (2) that it is appropriate that the order be revoked or varied –

the Court, by order, or the officer, in writing, must revoke or vary the order.

- (4) If the person in relation to whom the preventative detention order is in force is being detained in a prison and the order is revoked or varied under subsection (3), the applicant for the revocation or variation must cause a copy of any instrument made under that subsection to be given to the Director of Corrective Services as soon as practicable after it is made.
- (5) If –
- (a) a prohibited contact order is in force in relation to a person's detention under a preventative detention order; and
 - (b) the police officer who is detaining the person under the preventative detention order is satisfied, because of new facts or circumstances that have arisen since the making of the order or relevant matters that had not been provided to the court in relation to the application for the order, that it is appropriate that the order be revoked or varied (including that the grounds on which the order was made have ceased to exist) –

an authorised police officer must apply for the revocation or a variation of the prohibited contact order to the Supreme Court or, if the order was made by a senior police officer, to a senior police officer.

(6) If –

- (a) a prohibited contact order is in force in relation to a person's detention under a preventative detention order; and
- (b) the Supreme Court or, if the order was made by a senior police officer, a senior police officer is satisfied, on application by a police officer under subsection (5), that it is appropriate that the order be revoked or varied –

the Court, by order, or the officer, in writing, must revoke or vary the prohibited contact order.

(7) If the person in relation to whose detention under a preventative detention order a prohibited contact order is in force is being detained in a prison and the prohibited contact order is revoked or varied under subsection (6), the applicant for the revocation or variation must cause a copy of any instrument made under that subsection to be given to the Director of Corrective Services as soon as practicable after it is made.

**PART 3 – CARRYING OUT PREVENTATIVE
DETENTION ORDERS**

18. Power to detain person under preventative detention order

- (1) While a preventative detention order is in effect in relation to a person –
 - (a) any police officer may take the person into custody; and
 - (b) any police officer may detain the person.
- (2) A police officer may, for the purpose of taking a person into custody under a preventative detention order or preventing him or her from escaping from detention under the order, exercise any of the powers that he or she would have if he or she were apprehending the person under section 26 of the *Criminal Code* or the person was escaping from legal custody.
- (3) Subsection (2) does not apply to the extent to which particular powers are provided for in this Act.
- (4) If a preventative detention order is made in relation to a person, the Commissioner of Police must nominate a police officer of or above the rank of commander (the “**nominated senior police officer**”) to oversee the exercise of powers under, and the performance of obligations in relation to, the preventative detention order.
- (5) The nominated senior police officer must be someone who was not involved in the making of

the application for the preventative detention order or the making of the order in relation to the person.

- (6) The nominated senior police officer must –
- (a) oversee the exercise of powers under, and the performance of obligations in relation to, the preventative detention order; and
 - (b) without limiting paragraph (a), ensure that the provisions of section 17 are complied with in relation to the preventative detention order; and
 - (c) receive and consider any representations that are made under subsection (7).
- (7) The following persons:
- (a) the person being detained under a preventative detention order;
 - (b) the Ombudsman under the *Ombudsman Act 1978*;
 - (c) a lawyer acting for the person being detained under a preventative detention order in relation to the order or a prohibited contact order;
 - (d) a person with whom the person being detained under a preventative detention order has contact under section 36(2);
 - (e) a person exercising authority under the order or implementing or enforcing the order (including a person taken to be

such a person by force of section 25(5)(b) –

are entitled to make representations to the nominated senior police officer in relation to –

- (f) the exercise of powers under, and the performance of obligations in relation to, the preventative detention order; and
- (g) without limiting paragraph (a), compliance with the provisions of section 17 in relation to the preventative detention order; and
- (h) the person's treatment in connection with the person's detention under the preventative detention order.

19. Endorsement of order with date and time person taken into custody or detained

As soon as practicable after a person is first taken into custody or detained under a preventative detention order, the police officer who is detaining the person under the order must endorse on the order –

- (a) the date on which, and time at which, the person is first taken into custody or detained under the order; and
- (b) particulars of where the person is being detained.

20. Requirement to provide name, &c.

(1) If a police officer believes on reasonable grounds that a person whose name or address is, or whose name and address are, unknown to the police officer may be able to assist the police officer in executing a preventative detention order, the police officer may request the person to provide his or her name or address, or name and address, to the police officer.

(2) If a police officer –

(a) makes a request of a person under subsection (1); and

(b) informs the person of the reason for the request; and

(c) if the police officer is not in uniform, shows the person evidence that he or she is a police officer; and

(d) complies with subsection (4) if the person makes a request under that subsection –

the person must not –

(e) refuse or fail to comply with the request; or

(f) give a name or address that is false in a material particular.

Penalty: Fine not exceeding 20 penalty units.

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

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

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

the police officer must not –

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

Penalty: Fine not exceeding 5 penalty units.

(5) Subsection (4) does not apply if the police officer has a reasonable excuse.

21. Power to enter premises

(1) If –

- (a) a preventative detention order is in force in relation to a person; and
- (b) a police officer believes on reasonable grounds that the person is on any premises –

the police officer may enter the premises, using such force as is necessary and reasonable in the circumstances and with such assistance as is necessary, for the purpose of searching the premises for the person or taking the person into custody.

- (2) A police officer may direct a person not to enter, or to leave or to remain in, premises or in the vicinity of premises that are being entered under this section.

22. Power to conduct personal search

- (1) In this section –

“body cavity” means rectum or vagina;

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

“ordinary search” means –

- (a) a search of a person conducted by –
- (i) running hands over the person’s outer clothing; or
 - (ii) passing an electronic metal detection device over or in close proximity to the person’s outer clothing; or

- (iii) requiring the person to pass through such a device; or
 - (iv) requiring the person to turn out his or her pockets; and
- (b) the examination of any thing worn or carried by, or in the control or possession of, the person that is conveniently removed including –
- (i) an examination conducted by passing an electronic metal detection device over or in close proximity to that thing; and
 - (ii) passing the thing through such a device; and
 - (iii) searching through any bag, basket or other receptacle; and
 - (iv) moving, and if it is considered necessary, removing and searching through the contents of any pocket, bag, basket or other receptacle;

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

- (2) A police officer who takes a person into custody under a preventative detention order or who is present when the person is taken into custody may, if the police officer suspects on reasonable grounds –
- (a) that it is prudent to do so in order to ascertain whether the person is carrying any seizable item; or
 - (b) that the person is carrying –
 - (i) evidence of or relating to a terrorist act; or
 - (ii) a seizable item –
- conduct an ordinary search of a person at or soon after the time when the person is taken into custody and seize any thing found as a result of such a search.
- (3) A police officer who is detaining a person under a preventative detention order may conduct a strip search of the person if the police officer believes on reasonable grounds that it is necessary to conduct a strip search of that person for the purposes of the search and that the seriousness and urgency of the circumstances require a strip search to be conducted.
- (4) A police officer may detain a person for so long as is reasonably necessary to conduct a search under this section.
- (5) Where a police officer detains a person for the purpose of a search under this section, the following provisions apply:

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

23. Warrant under section 34D of the *Australian Security Intelligence Organisation Act 1979* of the Commonwealth

- (1) This section applies if –
 - (a) a person is being detained under a preventative detention order; and
 - (b) a warrant under section 34D of the *Australian Security Intelligence Organisation Act 1979* of the Commonwealth is in force in relation to the person; and
 - (c) a copy of the warrant is given to the police officer who is detaining the person under the preventative detention order.
- (2) The police officer must take such steps as are necessary to ensure that the person may be dealt with in accordance with the warrant.

- (3) Without limiting subsection (2), the police officer may, under section 24, release, or arrange in writing for the release of, the person from detention under the preventative detention order so that the person may be dealt with in accordance with the warrant.
- (4) To avoid doubt, the fact that the person is released from detention under the preventative detention order so that the person may be –
 - (a) questioned before a prescribed authority under the warrant; or
 - (b) detained under the warrant in connection with that questioning –

does not extend the period for which the preventative detention order remains in force in relation to the person.

24. Release of person from preventative detention

- (1) The police officer who is detaining a person under a preventative detention order may release the person from detention under the order or arrange in writing for his or her release from detention under the order.
- (2) The police officer who releases, or arranges in writing for the release of, a person from detention under a preventative detention order must give the person a written statement signed by the police officer that the person is being released from that detention.
- (3) Subsection (2) does not apply if the police officer releases, or arranges in writing for the

release of, the person from detention so that the person may be dealt with –

- (a) in connection with a charge relating to an alleged crime; or
 - (b) in accordance with a warrant under section 34D of the *Australian Security Intelligence Organisation Act 1979* of the Commonwealth; or
 - (c) under the provisions of Division 4 of Part IAA, or Part IC, of the *Crimes Act 1914* of the Commonwealth.
- (4) To avoid doubt, a person may be taken to have been released from detention under a preventative detention order even if –
- (a) the person is informed that he or she is being released from detention under the order; and
 - (b) the person is taken into custody on some other basis immediately after the person is informed that he or she is being released from detention under the order.
- (5) To avoid doubt, a person is taken not to be detained under a preventative detention order during a period during which the person is released from detention under the order.

Note: During this period, the provisions of this Act that apply to a person who is being detained under a preventative detention order (for example, section 31 which deals with the people the person may contact) do not apply to the person.

- (6) To avoid doubt –

- (a) the release of the person under subsection (1) from detention under the preventative detention order does not extend the period for which the preventative detention order remains in force in relation to the person; and

Note: This means that the time for which the person may be detained under the order continues to run while the person is released.

- (b) a person released under subsection (1) from detention under a preventative detention order may again be taken into custody and detained under the order at any time while the order remains in force in relation to the person.

25. Arrangement for detainee to be held in prison

- (1) A senior police officer may request the Director of Corrective Services to authorise the transfer of a person who is being detained under a preventative detention order from the place where he or she is being detained to a prison.
- (2) A request under subsection (1) must be accompanied by a copy of –
 - (a) the preventative detention order on which is endorsed the date on which, and time at which, the person was first taken into custody or detained under the order; and
 - (b) any extension or further extension of the order under section 11; and

- (c) any prohibited contact order that is in force in relation to the person's detention under the preventative detention order.
- (3) To avoid doubt, a request may be made under subsection (1) in respect of a person who is under 18 years of age.
- (4) If requested to do so under subsection (1), the Director of Corrective Services may, by instrument, authorise the transfer to a prison of a person being detained by a police officer under a preventative detention order from the place where he or she is being detained.
- (5) If a person is being detained in a prison under a preventative detention order –
 - (a) the preventative detention order is taken to authorise the Director of Corrective Services to detain the person at the prison while the order is in force in relation to the person; and
 - (b) section 30 applies in relation to the person's detention under the order at the prison as if –
 - (i) the Director of Corrective Services; or
 - (ii) any other person involved in the person's detention at that prison –

were a person exercising authority under the order or implementing or enforcing the order; and
 - (c) the senior police officer who made the request under subsection (1) is taken,

while the person is detained at the prison,
to be the police officer detaining the
person for the purposes of Parts 4 and 5;
and

- (d) a police officer may at any time enter the prison and visit the person being detained in the prison in connection with the exercise of powers under, and the performance of obligations in relation to, the order.
- (6) The *Corrections Act 1997* applies in respect of the detention of a person in a prison or police gaol under a preventative detention order or an order for his or her detention made under a corresponding preventative detention law as if the following provisions of that Act or made under that Act did not form part of it:
- (a) sections 10, 11, 12, 13, 14, 16 and 17;
 - (b) sections 25 and 28;
 - (c) sections 29(1)(j), (k), (l), (m), (n) and (o);
 - (d) sections 30, 33, 40, 41 and 42 ;
 - (e) Part 7;
 - (f) regulations 27(b) and (c) of the *Corrections Regulations 1998*.
- (7) A person permitted to contact a person being detained under a preventative detention order by visiting the person while the person subject to the order is being detained in a prison may enter the prison and visit the person in accordance with the procedures determined by the Director of Corrective Services and the police officer

exercising authority under the preventative detention order.

- (8) Nothing in this section prevents an AFP member entering a prison and visiting a person being detained in the prison in connection with the exercise of powers under, and the performance of obligations in relation to, an order for the person's detention made under a corresponding preventative detention law.

**PART 4 – INFORMING PERSON DETAINED ABOUT
PREVENTATIVE DETENTION ORDER**

26. Effect of preventative detention order to be explained to person detained

- (1) As soon as practicable after a person is first detained under a preventative detention order, the police officer who is detaining the person under the order must inform the person of the matters covered by subsection (2).

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

- (2) The matters covered by this subsection are –
- (a) the fact that the preventative detention order has been made in relation to the person; and
 - (b) the period during which the person may be detained under the order; and
 - (c) the restrictions that apply to what the person being detained may convey to the people the person may contact while the person is being detained under the order; and
 - (d) the restrictions that apply to the people that the person may contact while the person is being detained under the order; and
 - (e) if the order was made by a senior police officer, the fact that an application may

be made to the Supreme Court under Part 2 for a further preventative detention order; and

- (f) any right the person has to complain to the Ombudsman under the *Ombudsman Act 1978* in relation to –
 - (i) the application for, or the making of, the preventative detention order or a prohibited contact order; or
 - (ii) the treatment of the person in connection with the person's detention under the preventative detention order; and
- (g) the fact that the person may seek from a court a remedy relating to –
 - (i) the preventative detention order; or
 - (ii) a prohibited contact order; or
 - (iii) the treatment of the person in connection with the person's detention under the preventative detention order; and
- (h) the person's entitlement under section 34 to contact a lawyer; and
- (i) the name and work telephone number of the senior police officer who has been nominated under section 18(4) to oversee the exercise of powers under, and the performance of obligations in relation to, the order.

27. Person being detained to be informed of extension of preventative detention order

If a preventative detention order is extended, or further extended, under section 11, the police officer detaining the person under the order must inform the person of the extension, or further extension, as soon as practicable after the extension, or further extension, is made.

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

28. Compliance with obligations to inform

- (1) Section 26(1) or section 27 does not apply if the actions of the person being detained under the preventative detention order make it impracticable for the police officer to comply with that section.
- (2) The police officer detaining the person under the preventative detention order complies with section 26(1) if the police officer informs the person in substance of the matters covered by section 26(2) (even if this is not done in language of a precise or technical nature).
- (3) The police officer who is detaining the person under the preventative detention order must arrange for the assistance of an interpreter in complying with section 26(1) or section 27 if the police officer has reasonable grounds to believe that the person is unable, because of inadequate knowledge of the English language or a physical disability, to communicate with reasonable fluency in that language.

- (4) Without limiting subsection (3), the assistance of the interpreter may be provided by telephone.
- (5) The lawfulness of a person's detention under a preventative detention order is not affected by a failure to comply with section 26(1) or section 27 or subsection (3) of this section.

29. Copy of preventative detention order and prohibited contact order

- (1) As soon as practicable after a person is first taken into custody or detained under a preventative detention order, the police officer who is detaining the person under the order must give the person –
 - (a) a copy of the order and of any prohibited contact order in force in relation to his or her detention; and
 - (b) a summary of the grounds on which the preventative detention order or prohibited contact order is made.
- (2) To avoid doubt, subsection (1)(b) does not require information to be included in the summary if the disclosure of the information is likely to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004* of the Commonwealth).
- (3) Despite section 18(2), a police officer does not need to have a copy of the preventative detention order with him or her, or to produce a copy of an order to the person being taken into custody

when the police officer takes the person into custody.

- (4) As soon as practicable after a preventative detention order is extended, or further extended, under section 11, the police officer who is detaining the person under the preventative detention order must give the person a copy of the order made under section 11(6).
- (5) A person who is being detained under a preventative detention order may request a police officer who is detaining the person to arrange for a copy of –
 - (a) the preventative detention order or of any prohibited contact order in force in relation to his or her detention; or
 - (b) the summary given to the person under subsection (1)(b); or
 - (c) any order under section 11(6) –

to be given to a lawyer acting for the person in relation to the order.

Note 1: Section 34 deals with the person's right to contact a lawyer and the obligation of the police officer detaining the person to give the person assistance to choose a lawyer.

Note 2: Section 37 prevents the person from contacting a lawyer who is specified in a prohibited contact order.

- (6) The police officer must make arrangements for a copy of an order or the summary to be given to the lawyer as soon as practicable after the request is made.

- (7) Without limiting subsection (6), the copy of an order or the summary may be faxed or emailed to the lawyer.
- (8) To avoid doubt, subsection (6) does not entitle the lawyer to be given a copy of, or see, a document other than the preventative detention order, the prohibited contact order, the summary or any order under section 11(6).
- (9) The police officer who gives –
- (a) the person being detained under a preventative detention order; or
 - (b) a lawyer acting for the person –
- a copy of the preventative detention order under this section must endorse on the copy the date on which, and time at which, the person was first taken into custody or detained under the order.
- (10) Subsection (1), (4), (6) or (9) does not apply if the actions of the person being detained under the preventative detention order make it impracticable for the police officer to comply with that subsection.
- (11) The lawfulness of a person's detention under a preventative detention order is not affected by a failure to comply with subsection (1), (4), (6) or (9).

PART 5 – TREATMENT OF PERSON DETAINED**30. Humane treatment of person being detained**

A person being taken into custody, or being detained, under a preventative detention order –

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

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

31. Restriction on contact with other people

- (1) Except as provided by sections 32, 33, 34 and 36, while a person is being detained under a preventative detention order, the person –

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

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

Note 2: A person's entitlement to contact other people under sections 32, 33, 34 and 36 may be subject to a prohibited contact order made under section 14 or 15 (see section 37).

- (2) While a person is being detained in a prison under a preventative detention order or an order

for the person's detention made under a corresponding preventative detention law, the person is required to give to a police officer or an AFP member, as the case requires, exercising authority under the order any letter that he or she wishes to send to any person other than the Ombudsman under the *Ombudsman Act 1978* or the Commonwealth Ombudsman under the *Complaints (Australian Federal Police) Act 1981* of the Commonwealth.

- (3) A prison officer within the meaning of the *Corrections Act 1997* who receives –
- (a) from a person being detained in a prison under an order referred to in subsection (2) a letter required by that subsection to be given to a police officer or AFP member exercising authority under the order; or
 - (b) a letter sent to a person being detained in a prison under an order referred to in subsection (2) –

must as soon as practicable give that letter to such a police officer or AFP member.

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

Note 2: A person's entitlement to contact other people under sections 32, 34 and 36 may be subject to a prohibited contact order made under section 14 or 15.

32. Contacting family members, &c.

- (1) In this section –

“family member” of a person means –

- (a) the person’s spouse; or
 - (b) the person’s partner within the meaning of the *Relationships Act 2003*; or
 - (c) a parent, step-parent or grandparent of the person; or
 - (d) a child, stepchild or grandchild of the person; or
 - (e) a brother, sister, stepbrother or stepsister of the person; or
 - (f) a guardian or carer of the person.
- (2) The person being detained is entitled to contact once –
- (a) his or her parents or one of his or her other family members; and
 - (b) if he or she –
 - (i) lives with another person and that other person is not a family member of the person being detained; or
 - (ii) lives with other people and those other people are not family members of the person being detained –

that other person or one of those other people; and

- (c) if he or she is employed, his or her employer; and
- (d) if he or she employs people in a business, one of the people he or she employs in that business; and
- (e) if he or she engages in a business together with another person or other people, that other person or one of those other people; and
- (f) if the police officer detaining the person agrees to the person contacting another person, that other person –

by telephone, fax or email but solely for the purposes of letting the person contacted know that the person being detained is safe but is not able to be contacted for a specified period or for the time being (if the preventative detention order prohibits a period being specified).

- (3) To avoid doubt, the person being detained is not entitled, under subsection (2), to disclose –
 - (a) the fact that a preventative detention order has been made in relation to the person; or
 - (b) the fact that the person is being detained.
- (4) If the preventative detention order so allows, the person being detained, in addition to any entitlement under subsection (2), is entitled, while being detained under the order, to have further contact with one or more of his or her family members or any other person or persons, as specified in the order.

- (5) To avoid doubt, the person being detained is entitled to disclose the following to a person with whom he or she has contact under subsection (4):
- (a) the fact that a preventative detention order has been made in relation to the person;
 - (b) the fact that the person is being detained;
 - (c) unless the preventative detention order otherwise provides, the period for which the person is being detained.
- (6) The form of contact that the person being detained is entitled to have with another person under subsection (4) includes –
- (a) being visited by that other person; and
 - (b) communicating with that other person by telephone, fax or email.
- (7) The period for which the person being detained is entitled to have contact with another person on any day under subsection (4), and the number of days on which he or she is entitled to have such contact, is as specified in the preventative detention order.

33. Contacting Ombudsman

The person being detained is entitled to contact the Ombudsman under the *Ombudsman Act 1978*.

34. Contacting lawyer

- (1) The person being detained is entitled to contact a lawyer but solely for the purpose of –
 - (a) obtaining advice from the lawyer about the person's legal rights in relation to –
 - (i) the preventative detention order; or
 - (ii) a prohibited contact order in force in relation to his or her detention; or
 - (iii) the treatment of the person in connection with the person's detention under the preventative detention order; or
 - (b) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, proceedings in a court for a remedy relating to –
 - (i) the preventative detention order; or
 - (ii) a prohibited contact order in force in relation to his or her detention; or
 - (iii) the treatment of the person in connection with the person's detention under the preventative detention order; or
 - (c) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, a complaint to the

Ombudsman under the *Ombudsman Act 1978* in relation to –

- (i) the application for, or the making of, the preventative detention order or a prohibited contact order; or
 - (ii) the treatment of the person by a police officer in connection with the person's detention under the preventative detention order; or
 - (d) arranging for the lawyer to act for the person in relation to an appearance, or hearing, before a court or tribunal in a proceeding to which the person is a party or in which he or she otherwise has standing to appear that is to take place while the person is being detained under the order.
- (2) The form of contact that the person being detained is entitled to have with a lawyer under subsection (1) includes –
- (a) being visited by the lawyer; and
 - (b) communicating with the lawyer by telephone, fax or email.
- (3) If –
- (a) the person being detained or, if he or she is under 18 years of age or is incapable of managing his or her affairs, a person with whom he or she has contact under section 36 asks to be allowed to contact a particular lawyer under subsection (1); and

(b) either –

(i) the person is not entitled to contact that lawyer because of section 37 (prohibited contact order); or

(ii) the person is not able to contact that lawyer –

the police officer who is detaining the person must give the person reasonable assistance to choose another lawyer for the person to contact under subsection (1).

- (4) In recommending lawyers as part of giving a person assistance under subsection (3), the police officer who is detaining the person may give priority to lawyers who have been given a security clearance at an appropriate level by the Attorney-General's Department of the Commonwealth.
- (5) Despite subsection (4) but subject to section 37, the person is entitled under this section to contact a lawyer who does not have a security clearance of the kind referred to in subsection (4).

35. Monitoring contact under section 32 or 34

- (1) The contact the person being detained has with another person under section 32 or 34 may take place only if it is conducted in such a way that the contact, and the content and meaning of the communication that takes place during the contact, can be effectively monitored by a police

officer exercising authority under the preventative detention order.

- (2) The contact may take place in a language other than English only if the content and meaning of the communication that takes place during the contact can be effectively monitored with the assistance of an interpreter.
- (3) Without limiting subsection (2), the interpreter referred to in that subsection may be a police officer.
- (4) If the person being detained indicates that he or she wishes the contact to take place in a language other than English, the police officer who is detaining the person must –
 - (a) arrange for the services of an appropriate interpreter to be provided if it is reasonably practicable to do so during the period during which the person is being detained; and
 - (b) if it is reasonably practicable to do so, arrange for those services to be provided as soon as practicable.
- (5) Any communication between –
 - (a) a person who is being detained under a preventative detention order; and
 - (b) a lawyer –

for a purpose referred to in section 34(1)(a), (b), (c) or (d) is not admissible in evidence against the person in any proceedings in a court or tribunal.

36. Special contact rules for person under 18 or incapable of managing own affairs

- (1) This section applies if the person being detained under a preventative detention order –
 - (a) is under 18 years of age; or
 - (b) is incapable of managing his or her affairs.

- (2) The person is entitled, while being detained under the order, to have contact with –
 - (a) a parent or guardian of the person; or
 - (b) another person who –
 - (i) is able to represent the person's interests; and
 - (ii) is, as far as practicable in the circumstances, acceptable to the person and to the police officer who is detaining the person; and
 - (iii) is not a police officer; and
 - (iv) is not an AFP member or an AFP employee; and
 - (v) is not a member (however described) of a police force of another State or of a Territory; and
 - (vi) is not an officer or employee of the Australian Security Intelligence Organisation.

- (3) To avoid doubt –

- (a) if the person being detained (the “**detainee**”) has 2 parents or 2 or more guardians, the detainee is entitled, subject to section 37, to have contact under subsection (2) with each of those parents or guardians; and
 - (b) the detainee is entitled to disclose the following to a person with whom the detainee has contact under subsection (2):
 - (i) the fact that a preventative detention order has been made in relation to the detainee;
 - (ii) the fact that the detainee is being detained;
 - (iii) the period for which the detainee is being detained.
- (4) The form of contact that the person being detained is entitled to have with another person under subsection (2) includes –
- (a) being visited by that other person; and
 - (b) communicating with that other person by telephone, fax or email.
- (5) The period for which the person being detained is entitled to have contact with another person each day under subsection (2) is –
- (a) 2 hours; or
 - (b) such longer period as is specified in the preventative detention order.

Note: See section 8(5).

- (6) Despite subsection (5), the police officer who is detaining the person may permit the person to have contact with a person under subsection (2) for a period that is longer than the period provided for in subsection (5).
- (7) The contact that the person being detained has with another person under subsection (2) must be conducted in such a way that the content and meaning of any communication that takes place during the contact can be effectively monitored by a police officer exercising authority under the preventative detention order.
- (8) If the communication that takes place during the contact takes place in a language other than English, the contact may continue only if the content and meaning of the communication in that language can be effectively monitored with the assistance of an interpreter.
- (9) Without limiting subsection (8), the interpreter referred to in that subsection may be a police officer.
- (10) If the person being detained indicates that he or she wishes the communication that takes place during the contact to take place in a language other than English, the police officer who is detaining the person must –
 - (a) arrange for the services of an appropriate interpreter to be provided if it is reasonably practicable to do so during the period during which the person is being detained; and

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

37. Entitlement to contact subject to prohibited contact order

Sections 32, 34 and 36 have effect subject to any prohibited contact order made in relation to the person's detention.

38. Disclosure offences

- (1) A person (the “**subject**”) commits an offence if –
 - (a) the subject is being detained under a preventative detention order; and
 - (b) the subject intentionally discloses to another person –
 - (i) the fact that a preventative detention order has been made in relation to the subject; or
 - (ii) the fact that the subject is being detained; or
 - (iii) the fact that a prohibited contact order has been made in relation to the subject's detention; and
 - (c) the disclosure occurs while the subject is being detained under the order; and

- (d) the disclosure is not one that the subject is entitled to make under section 33, 34 or 36.

Penalty: Imprisonment for a term not exceeding 5 years.

- (2) A person (the “**lawyer**”) commits an offence if –
 - (a) a person being detained under a preventative detention order (the “**detainee**”) contacts the lawyer under section 34, or a person with whom the detainee has contact under section 36 contacts the lawyer as mentioned in subsection (3)(e)(ii) of this section; and
 - (b) the lawyer intentionally discloses to another person –
 - (i) the fact that a preventative detention order has been made in relation to the detainee; or
 - (ii) the fact that the detainee is being detained; or
 - (iii) any information that the detainee or other person gives the lawyer in the course of the contact; and
 - (c) the disclosure occurs while the detainee is being detained under the order; and
 - (d) the disclosure is not made for the purposes of –
 - (i) proceedings in a court for a remedy relating to the preventative detention order, a

prohibited contact order or the treatment of the detainee in connection with the detainee's detention under the preventative detention order; or

(ii) a complaint to the Ombudsman under the *Ombudsman Act 1978* in relation to the application for, or making of, the preventative detention order or a prohibited contact order or the treatment of the detainee by a police officer in connection with the detainee's detention under the preventative detention order; or

(iii) making representations to the senior police officer nominated under section 18(4) in relation to the preventative detention order, or another police officer involved in the detainee's detention, about the exercise of powers under the order, the performance of obligations in relation to the order or the treatment of the detainee in connection with the detainee's detention under the order.

Penalty: Imprisonment for a term not exceeding 5 years.

- (3) A person (the “**parent/guardian**”) commits an offence if –
- (a) a person being detained under a preventative detention order (the

- “**detainee**”) has contact with the parent/guardian under section 36; and
- (b) the parent/guardian intentionally discloses to another person –
 - (i) the fact that a preventative detention order has been made in relation to the detainee; or
 - (ii) the fact that the detainee is being detained; or
 - (iii) any information that the detainee gives the parent/guardian in the course of the contact; and
 - (c) the other person is not a person with whom the detainee has also had contact under section 36 while being detained under the order; and
 - (d) the disclosure occurs while the detainee is being detained under the order; and
 - (e) the disclosure is not made for the purposes of –
 - (i) a complaint to the Ombudsman under the *Ombudsman Act 1978* in relation to the application for, or the making of, the preventative detention order or a prohibited contact order or the treatment of the detainee by a police officer in connection with the detainee’s detention under the preventative detention order; or

- (ii) contacting a lawyer whom the detainee is entitled to contact under section 34 for any purpose for which the detainee is entitled to contact that lawyer under that section; or
- (iii) making representations to the senior police officer nominated under section 18(4) in relation to the preventative detention order, or another police officer involved in the detainee's detention, about the exercise of powers under the order, the performance of obligations in relation to the order or the treatment of the detainee in connection with the detainee's detention under the order.

Penalty: Imprisonment for a term not exceeding 5 years.

- (4) To avoid doubt, a person does not contravene subsection (2) or (3) merely by letting another person know that the detainee is safe but is not able to be contacted for a specified period or for the time being (if the preventative detention order prohibits a period being specified).
- (5) A person (the “**interpreter**”) commits an offence if –
 - (a) the interpreter is an interpreter who assists in monitoring the contact that a person being detained under a preventative detention order (the “**detainee**”) has with someone while the

detainee is being detained under the order; and

- (b) the interpreter intentionally discloses to another person –
 - (i) the fact that a preventative detention order has been made in relation to the detainee; or
 - (ii) the fact that the detainee is being detained; or
 - (iii) any information that the interpreter obtains in the course of assisting in the monitoring of that contact; and
- (c) the disclosure occurs while the detainee is being detained under the order.

Penalty: Imprisonment for a term not exceeding 5 years.

- (6) A person (the “**disclosure recipient**”) commits an offence if –
 - (a) a person (the “**earlier discloser**”) discloses to the disclosure recipient –
 - (i) the fact that a preventative detention order has been made in relation to a person; or
 - (ii) the fact that a person is being detained under a preventative detention order; or
 - (iii) any information that a person who is being detained under a

- preventative detention order communicates to a person while the person is being detained under the order; and
- (b) the disclosure by the earlier discloser to the disclosure recipient contravenes –
 - (i) subsection (1), (2), (3) or (5); or
 - (ii) this subsection; and
 - (c) the disclosure recipient intentionally discloses that information to another person; and
 - (d) the disclosure by the disclosure recipient occurs while the person referred to in paragraph (a)(i), (ii) or (iii) is being detained under the order; and
 - (e) the disclosure is not made to a person exercising authority under the preventative detention order or implementing or enforcing the order or with responsibility for the safety or wellbeing of the person being detained under the order.

Penalty: Imprisonment for a term not exceeding 5 years.

- (7) A person (the “**monitor**”) commits an offence if –
 - (a) the monitor is –
 - (i) a police officer who monitors; or

(ii) an interpreter who assists in monitoring –

contact that a person being detained under a preventative detention order (the “**detainee**”) has with a lawyer under section 34 while the detainee is being detained under the order; and

- (b) information is communicated in the course of that contact; and
- (c) the information is communicated for one of the purposes referred to in section 34(1); and
- (d) the monitor intentionally discloses that information to another person.

Penalty: Imprisonment for a term not exceeding 5 years.

39. Questioning of person prohibited while person is detained

- (1) A police officer must not question a person while the person is being detained under a preventative detention order except for the purposes of –
 - (a) determining whether the person is the person in relation to whom the order is made; or
 - (b) ensuring the safety and wellbeing of the person being detained; or

- (c) allowing the police officer to comply with a requirement of this Act in relation to the person's detention under the order.
- (2) A police officer must not question a person while the person is being detained under an order made under a corresponding preventative detention law.

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

40. Taking identification material

- (1) A police officer must not take identification material from a person who is being detained under a preventative detention order except in accordance with this section.
- (2) A police officer who is of or above the rank of sergeant may take identification material from the person, or cause identification material from the person to be taken, if –
 - (a) the person consents in writing; or
 - (b) the police officer believes on reasonable grounds that it is necessary to do so for the purpose of confirming the person's identity as the person in relation to whom the order is made.
- (3) A police officer may use such force as is necessary and reasonable in the circumstances to take identification material from a person under this section.

- (4) Subject to this section, a police officer must not take identification material (other than hand prints, fingerprints, footprints or toeprints) from the person if the person –
- (a) is under 18 years of age; or
 - (b) is incapable of managing his or her affairs –
- unless a magistrate orders that the material be taken.
- (5) In deciding whether to make such an order, the magistrate must have regard to –
- (a) the age, or any disability, of the person; and
 - (b) such other matters as it thinks fit.
- (6) The taking of identification material from a person who –
- (a) is under 18 years of age; or
 - (b) is incapable of managing his or her affairs –
- must be done in the presence of –
- (c) a parent or guardian of the person; or
 - (d) if a parent or guardian of the person is not acceptable to the person, another appropriate person.
- (7) Despite this section, identification material may be taken from a person who is under 18 years of age and is capable of managing his or her affairs if –

- (a) subsections (8) and (9) are satisfied; or
 - (b) subsection (8) or (9) is satisfied (but not both) and a magistrate orders that the material be taken.
- (8) For the purposes of subsection (7) this subsection is satisfied if the person agrees in writing to the taking of the material.
- (9) For the purposes of subsection (7) this subsection is satisfied if either –
- (a) a parent or guardian of the person; or
 - (b) if a parent or guardian is not acceptable to the person, another appropriate person –
- agrees in writing to the taking of the material.
- (10) A reference in this section to an “appropriate person” in relation to a person (the “**subject**”) who is under 18 years of age, or incapable of managing his or her affairs, is a reference to a person who –
- (a) is capable of representing the subject’s interests; and
 - (b) as far as is practicable in the circumstances, is acceptable to the subject and the police officer who is detaining the subject; and
 - (c) is none of the following:
 - (i) a police officer;
 - (ii) an AFP member or an AFP employee;

- (iii) a member (however described) of a police force of another State or of a Territory;
- (iv) an officer or employee of the Australian Security Intelligence Organisation.

41. Use of identification material

- (1) This section applies if identification material is taken under section 40 from a person being detained under a preventative detention order.
- (2) The material may be used only for the purpose of determining whether the person is the person in relation to whom the order is made.
- (3) To avoid doubt, if the person is being detained in a prison under the preventative detention order, the material may be provided to the Director of Corrective Services and used by him or her only for the purpose of identifying the person on his or her reception into the prison.
- (4) If –
 - (a) a period of 12 months elapses after the identification material is taken; and
 - (b) proceedings in respect of –
 - (i) the preventative detention order; or
 - (ii) the treatment of the person in connection with the person's detention under the order –

have not been brought, or have been brought and discontinued or completed, within that period –

the material (including any material provided to the Director of Corrective Services) must be destroyed as soon as practicable after the end of that period.

42. Offences of contravening safeguards

(1) A person commits an offence if –

(a) the person does an act or omits to perform an act; and

(b) the act or omission contravenes –

(i) section 26(1); or

(ii) section 27; or

(iii) section 34; or

(iv) section 39(1) or (2); or

(v) section 40(1); or

(vi) section 41(2).

Penalty: Imprisonment for a term not exceeding 2 years.

(2) A person commits an offence if the person does an act or omits to perform an act and the act or omission contravenes section 30.

Penalty: Imprisonment for a term not exceeding 5 years.

PART 6 – MISCELLANEOUS

43. Standard of proof

Any question of fact to be decided by a court on an application under this Act is to be decided on the balance of probabilities.

44. Nature of proceedings

- (1) Proceedings on an application under this Act are civil in nature, except as otherwise provided by this Act.
- (2) Despite subsection (1), the rules regulating the practice and procedure of a court in civil proceedings do not apply to a proceeding on an application under this Act.
- (3) Proceedings before a court under this Act are subject to the operation of the *National Security Information (Criminal and Civil Proceedings) Act 2004* of the Commonwealth.

45. False or misleading information or documents

A police officer must not, in connection with an application to a senior police officer for a preventative detention order or a prohibited contact order, do either of the following:

- (a) give information (whether orally or in writing) that the police officer knows to be false or misleading in a material particular;

- (b) produce a document that the police officer knows to be false or misleading in a material particular without –
 - (i) indicating to the senior police officer that it is false or misleading, and the respect in which it is false or misleading; and
 - (ii) providing correct information to that senior police officer, if the police officer is in possession of, or can reasonably acquire, the correct information.

Penalty: Imprisonment for a term not exceeding 12 months.

46. Police officer detaining person under a preventative detention order

If –

- (a) a number of police officers are detaining, or involved in the detention of, a person under a preventative detention order at a particular time; and
- (b) a power or obligation is expressed in this Act to be conferred or imposed on the police officer detaining the person –

the power or obligation is conferred or imposed at that time on the most senior of those police officers.

47. Ombudsman, &c., functions and powers not affected

This Act does not affect a function or power of the Ombudsman under the *Ombudsman Act 1978*.

48. Law relating to legal professional privilege not affected

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

49. Legal proceedings in relation to orders

- (1) Proceedings may be brought in a court for a remedy in relation to –
 - (a) a preventative detention order; or
 - (b) a prohibited contact order; or
 - (c) the treatment of a person in connection with the person's detention under a preventative detention order.
- (2) If –
 - (a) a person applies to a court for –
 - (i) review of the application for, or the making of, a preventative detention order or a prohibited contact order or the person's treatment in connection with the person's detention under a preventative detention order; or

(ii) a remedy in relation to the application for, or the making of, a preventative detention order or a prohibited contact order or the person's treatment in connection with the person's detention under a preventative detention order; and

(b) the person applies to the court for an order under this subsection –

the court may order the Commissioner of Police to give to the court, and the parties to the proceedings, the information that was put before the Supreme Court or the senior police officer (as the case requires) when the application for the order was made.

(3) Subsection (2) does not require information to be given to the court, or the parties to the proceedings, if the disclosure of the information is likely to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004* of the Commonwealth).

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

- (1) This section applies to proceedings before the Supreme Court in connection with applications for the making, varying or revocation of preventative detention orders or prohibited contact orders.
- (2) Any such proceedings must be heard in the absence of the public.

- (3) The Supreme Court may, in connection with any such proceedings, do anything necessary or convenient to suppress the publication of the whole or any part of the proceedings or of the evidence given in the proceedings as it considers necessary to secure the suppression of the publication of the proceedings or evidence given in the proceedings.

51. Annual report

- (1) The Minister must, as soon as practicable after each 30 June, cause to be prepared a report about the operation of this Act during the year ended on that 30 June.
- (2) Without limiting subsection (1), a report relating to a year must include the following matters:
 - (a) the number of preventative detention orders made by a senior police officer under section 7 during the year and the number of applications for such orders made during the year;
 - (b) the number of preventative detention orders made by the Supreme Court under section 7 during the year and the number of applications for such orders made during the year;
 - (c) whether a person was taken into custody or detained under each of those orders and, if so, for how long the person was detained;
 - (d) particulars of any complaints in relation to the detention of a person under a

preventative detention order made or referred during the year to the Ombudsman under the *Ombudsman Act 1978*;

- (e) the number of prohibited contact orders made under sections 14 and 15 during the year and the number of applications for such orders made during the year.
- (3) The Minister must cause a copy of the report to be laid before each House of the Parliament by not later than 31 October after the year to which it relates.
 - (4) The report may be included in the annual report of the Department.

52. Regulations

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

53. Administration of Act

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

- (a) the administration of this Act is assigned to the Minister for Justice and Industrial Relations; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

54. Sunset provision

- (1) A preventative detention order, or a prohibited contact order, that is in force on the tenth anniversary of the day on which this Act commences ceases to be in force at that time.
- (2) A preventative detention order or a prohibited contact order cannot be applied for, or made, after the tenth anniversary of the day on which this Act commences.