

2006

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Terrorism (Extraordinary Temporary Powers) Bill 2006

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2006

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Terrorism (Extraordinary Temporary Powers) Bill 2006

A Bill for

An Act to provide extraordinary temporary powers to prevent and respond to terrorist acts, and for related purposes

1 **Preamble**

- 2 1 This Act is based on an agreement between the Commonwealth,
3 State and Territory Governments adopted at the special meeting of
4 the Council of Australian Governments (COAG) on
5 counter-terrorism held in Canberra on 27 September 2005.
- 6 2 At the meeting, COAG considered the evolving security
7 environment in the context of the terrorist attacks in London in
8 July 2005 and agreed that there was a clear case for Australia's
9 counter-terrorism laws to be strengthened.
- 10 3 Leaders agreed that any strengthened counter-terrorism laws must
11 be necessary, effective against terrorism, contain appropriate
12 safeguards against abuse (such as parliamentary and judicial
13 review), and be exercised in a way that is evidence-based,
14 intelligence-led and proportionate.
- 15 4 The Legislative Assembly wishes to enact legislation in accordance
16 with the COAG agreement in recognition of the clear need for laws
17 to combat terrorism.
- 18 5 The community needs to be protected from acts of terrorism. If law
19 enforcement agencies have evidence that a terrorist act is imminent
20 or has happened, they need to be able to respond appropriately to
21 prevent it or investigate and reduce its impact.
- 22 6 The Legislative Assembly considers that extraordinary measures are
23 justified in extreme circumstances where available evidence is
24 insufficient to enable suspected terrorists to be detained under
25 existing criminal law.
- 26 7 The Legislative Assembly is committed to fully implementing
27 United Nations resolutions relating to terrorism by adopting
28 counter-terrorism measures that are consistent with international
29 human rights obligations.

1 8 In particular, the Legislative Assembly is committed to taking
2 measures to protect our community against terrorist activity that
3 respect and promote the values reflected in, and the rights and
4 freedoms guaranteed by, the International Covenant on Civil and
5 Political Rights.

6 9 In enacting these extraordinary temporary measures, the Legislative
7 Assembly, therefore, considers that it is critical that Australia's
8 fundamental legal principles (such as the rule of law, respect for the
9 legal process, the separation of powers, and respect for human
10 rights) be preserved.

11 The Legislative Assembly for the Australian Capital Territory therefore enacts
12 as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Terrorism (Extraordinary Temporary Powers)*
4 *Act 2006*.

5 **2 Commencement**

6 This Act commences on a day fixed by the Minister by written
7 notice.

8 *Note 1* The naming and commencement provisions automatically commence on
9 the notification day (see Legislation Act, s 75 (1)).

10 *Note 2* A single day or time may be fixed, or different days or times may be
11 fixed, for the commencement of different provisions (see Legislation
12 Act, s 77 (1)).

13 *Note 3* If a provision has not commenced within 6 months beginning on the
14 notification day, it automatically commences on the first day after that
15 period (see Legislation Act, s 79).

16 **3 Dictionary**

17 The dictionary at the end of this Act is part of this Act.

18 *Note 1* The dictionary at the end of this Act defines certain terms used in this
19 Act, and includes references (*signpost definitions*) to other terms
20 defined elsewhere.

21 For example, the signpost definition ‘*serious harm*—see the Criminal
22 Code, dictionary.’ means that the term ‘serious harm’ is defined in that
23 dictionary and the definition applies to this Act.

24 *Note 2* A definition in the dictionary (including a signpost definition) applies to
25 the entire Act unless the definition, or another provision of the Act,
26 provides otherwise or the contrary intention otherwise appears (see
27 Legislation Act, s 155 and s 156 (1)).

1 **4** **Notes**

2 A note included in this Act is explanatory and is not part of this Act.

3 *Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of
4 notes.

5 **5** **Offences against Act—application of Criminal Code etc**

6 Other legislation applies in relation to offences against this Act.

7 *Note 1* *Criminal Code*

8 The Criminal Code, ch 2 applies to all offences against this Act (see
9 Code, pt 2.1).

10 The chapter sets out the general principles of criminal responsibility
11 (including burdens of proof and general defences), and defines terms
12 used for offences to which the Code applies (eg *conduct*, *intention*,
13 *recklessness* and *strict liability*).

14 *Note 2* *Penalty units*

15 The Legislation Act, s 133 deals with the meaning of offence penalties
16 that are expressed in penalty units.

17 **6** **Meaning of terrorist act**

18 (1) An act is a *terrorist act* if—

19 (a) it does any of the following:

20 (i) causes serious harm that is physical harm to a person;

21 (ii) causes serious damage to property;

22 (iii) causes a person's death;

23 (iv) endangers the life of someone other than the person doing
24 the act;

25 (v) creates a serious risk to the health or safety of the public;

26 (vi) seriously interferes with, seriously disrupts, or destroys,
27 an electronic system; and

- 1 (b) it is done with the intention of advancing a political, religious
2 or ideological cause; and
- 3 (c) it is done with the intention of—
- 4 (i) coercing, or influencing by intimidation, the government
5 of the Territory, the Commonwealth, a State, another
6 Territory or a foreign country, or of part of a State,
7 another Territory or foreign country; or
- 8 (ii) intimidating the public.
- 9 (2) However, an act is not a *terrorist act* if—
- 10 (a) it is advocacy, protest, dissent or industrial action; and
- 11 (b) it is not intended to do any of the following:
- 12 (i) cause serious harm that is physical harm to a person;
- 13 (ii) cause a person's death;
- 14 (iii) endanger the life of someone other than the person doing
15 the act;
- 16 (iv) create a serious risk to the health or safety of the public.
- 17 (3) A reference in this section to a person or property is a reference to a
18 person or property wherever situated, whether in or outside the ACT
19 (including outside Australia).
- 20 (4) In this section:
- 21 *electronic system* includes any of the following electronic systems:
- 22 (a) an information system;
- 23 (b) a telecommunications system;
- 24 (c) a financial system;
- 25 (d) a system used for the delivery of essential government
26 services;

1 (e) a system used for, or by, an essential public utility;

2 (f) a system used for, or by, a transport system.

3 *public* includes the public (or any section of the public) of a State,
4 another Territory or a foreign country.

5 **7 Extraterritoriality of terrorist act no barrier**

6 To remove any doubt, the functions under this Act in relation to a
7 terrorist act may be exercised whether the terrorist act has been, is
8 being, or is likely to be carried out, in or outside the ACT (including
9 outside Australia).

1 **Part 2 Preventative detention orders**

2 **Division 2.1 Preventative detention orders—**
3 **preliminary**

4 **8 Purpose—pt 2**

5 The purpose of this part is to allow a person to be taken into custody
6 and detained for up to 14 days as a measure of last resort—

- 7 (a) to prevent a terrorist act that is imminent and is, in any event,
8 expected to happen some time within the next 14 days; or
9 (b) to preserve evidence of, or relating to, a terrorist act that
10 happened within the last 28 days.

11 *Note* Section 58 (Questioning of detained person prohibited) provides that,
12 while a person is detained under a preventative detention order, the
13 person may only be questioned for very limited purposes.

14 **9 Definitions—pt 2**

15 In this part:

16 *corresponding preventative detention law* means—

- 17 (a) the Commonwealth Criminal Code, division 105 (Preventative
18 detention orders); or
19 (b) a law of a State or another Territory that provides for
20 preventative detention of people in relation to terrorist acts,
21 including any law of a State or another Territory that is
22 declared by regulation to be a corresponding preventative
23 detention law.

24 *corresponding preventative detention order* means an order
25 (however described) for a person's detention under a corresponding
26 preventative detention law.

1 ***identification material***, for a person, means—

- 2 (a) prints of the person’s hands, fingers, feet or toes; or
3 (b) recordings of the person’s voice; or
4 (c) samples of the person’s handwriting; or
5 (d) photographs (including video recordings) of the person.

6 ***interim preventative detention order*** (or ***interim order***) means an
7 interim preventative detention order made under section 20.

8 ***part 2 application***—each of the following is a ***part 2 application***:

- 9 (a) an application for a preventative detention order for a person;
10 (b) an application to extend, or further extend, the period for which
11 a preventative detention order (including an interim order) is to
12 be in force for a person;
13 (c) an application to reinstate a preventative detention order;
14 (d) an application to set aside or amend a preventative detention
15 order (including an interim order) made for a person;
16 (e) an application for a prohibited contact order, or to set aside a
17 prohibited contact order, made in relation to a person’s
18 detention under a preventative detention order.

19 ***preventative detention order*** means a preventative detention order
20 made under section 18, and includes—

- 21 (a) the order as extended, or further extended under division 2.4;
22 and
23 (b) an interim order.

24 ***prohibited contact order*** means an order made under section 32.

- 1 **10 Police officer with functions under preventative detention**
2 **orders**
- 3 If—
- 4 (a) 2 or more police officers are detaining, or involved in the
5 detention of, a person under a detention order at a particular
6 time; and
- 7 (b) a function (other than a power) is expressed in this part to be
8 imposed on the police officer detaining the person;
- 9 the function is imposed at that time on the most senior of the police
10 officers.

11 **Division 2.2 Preventative detention orders—**
12 **general provisions**

13 **11 No preventative detention orders for children**

- 14 (1) A preventative detention order cannot be applied for, or made, for a
15 child.

16 *Note 1* **Child** means an individual who is under 18 years old (see Legislation
17 Act, dict, pt 1).

18 *Note 2* An application for a preventative detention order for a person must
19 include the following (see s 17 (1) (g), (h) and (m)):

- 20 • a statement about the information the applicant has about the
21 person's age
- 22 • the inquiries the applicant has made about the person's age
- 23 • a statement that the applicant is satisfied that the person for whom
24 the order is sought is not a child.

- 25 (2) If a person is being detained under a preventative detention order,
26 and the police officer detaining the person suspects, or has any
27 grounds to suspect, that the person may be a child—

- 28 (a) the police officer must immediately make reasonable inquiries
29 about the person's age; and

1 (b) if, after making the inquiries, the police officer believes, on
2 reasonable grounds, that the person is a child, the police officer
3 must immediately release the person from detention under the
4 order.

5 (3) A police officer commits an offence if the police officer fails to
6 comply with subsection (2) (a) or (b).

7 Maximum penalty: 200 penalty units, imprisonment for 2 years or
8 both.

9 **12 Restrictions on multiple preventative detention orders**

10 (1) If—

11 (a) a preventative detention order, or corresponding preventative
12 detention order, is made for a person on the basis of assisting
13 in preventing a terrorist act happening within a particular
14 period; and

15 (b) the person is detained under the order;

16 a preventative detention order cannot be applied for, or made, under
17 this Act for the person on the basis of assisting in preventing the
18 same terrorist act happening within that period.

19 *Note* It will be possible to apply for, and make, another preventative
20 detention order for the person on the basis of preserving evidence of, or
21 relating to, the terrorist act if it happens.

22 (2) If—

23 (a) a preventative detention order, or corresponding preventative
24 detention order, is made for a person on the basis of assisting
25 in preventing a terrorist act happening within a particular
26 period; and

27 (b) the person is detained under the order;

28 a preventative detention order cannot be applied for, or made, under
29 this Act for the person on the basis of assisting in preventing a

- 1 different terrorist act happening within that period unless the
2 application, or the order, is based on information that became
3 available only after the order mentioned in paragraph (a) was made.
- 4 (3) If—
- 5 (a) a preventative detention order, or corresponding preventative
6 detention order, is made for a person on the basis of preserving
7 evidence of, or relating to, a terrorist act; and
- 8 (b) the person is detained under the order;
- 9 a preventative detention order cannot be applied for, or made, under
10 this Act for the person on the basis of preserving evidence of, or
11 relating to, the same terrorist act.
- 12 (4) If—
- 13 (a) a preventative detention order is made for a person on the basis
14 of particular information; and
- 15 (b) the person is detained under the order;
- 16 a preventative detention order cannot be applied for, or made, under
17 this Act for the person solely on the basis of the same information.
- 18 (5) Subsections (1) to (4) do not apply to—
- 19 (a) the making of a preventative detention order for a person for a
20 terrorist act after the making of an interim preventative
21 detention order for the person for the same terrorist act; or
- 22 (b) an order extending, or further extending, a preventative
23 detention order; or
- 24 (c) the making of a preventative detention order for a person after
25 the making of a corresponding preventative detention order; or
- 26 (d) an order reinstating a preventative detention order.

1 **13 Rights in relation to hearing of part 2 applications**

2 (1) This section applies to a part 2 application other than an application
3 to which section 20 (Making interim preventative detention order)
4 applies.

5 *Note* **Part 2 application** is defined in s 9.

6 (2) The person is entitled—

7 (a) to be served with a copy of the application; and

8 (b) to be given written notice of the place, date and time the
9 application is to be heard.

10 (3) The person is entitled to be present at the hearing of an application
11 to which this section applies in person or, if the Supreme Court
12 directs, by videolink.

13 (4) The person is entitled to be represented at the hearing by a lawyer of
14 the person's choice.

15 (5) To remove any doubt, subsection (4) does not entitle the person to
16 require the legal aid commission to provide a particular lawyer for
17 the person.

18 (6) The person (or the person's lawyer) is entitled to present evidence at
19 the hearing, call witnesses, examine and cross-examine witnesses,
20 and make submissions.

21 (7) This section—

22 (a) is additional to any other rights of the person; but

23 (b) is subject to the Supreme Court's inherent jurisdiction to
24 regulate its proceedings.

25 *Note* The Legislation Act, s 170 and s 171 deal with the application of the
26 privilege against selfincrimination and client legal privilege.

27 (8) To remove any doubt, the Supreme Court may hear the application
28 in the absence of the person (or the person's lawyer) if satisfied that
29 the person was properly notified of the hearing.

- 1 **14 Appointment of PIM for applications etc**
- 2 (1) This section applies to a part 2 application.
- 3 (2) The applicant must give the legal aid commission—
- 4 (a) a copy of the application; and
- 5 (b) written notice of the place, date and time the application is to
- 6 be heard.
- 7 (3) On receiving a copy of the application under subsection (2), the
- 8 legal aid commission must appoint a person from the public interest
- 9 monitor panel under section 62 to be the public interest monitor
- 10 (*PIM*) for the application.
- 11 (4) The PIM is entitled to be present at the hearing of the application, to
- 12 ask questions of anyone giving evidence to the court and to make
- 13 any submissions to the court.
- 14 **15 Notifying public advocate about applications etc**
- 15 (1) This section applies to a part 2 application.
- 16 (2) If the application relates to a preventative detention order proposed
- 17 to be made or made for a person with impaired decision-making
- 18 ability, the applicant must give the public advocate—
- 19 (a) a copy of the application; and
- 20 (b) written notice of the place, date and time the application is to
- 21 be heard.
- 22 (3) The public advocate is entitled to be present at the hearing of the
- 23 application, to ask questions of anyone giving evidence to the court
- 24 and to make any submissions to the court.

1 **Division 2.3** **Preventative detention orders—**
2 **applications for and making**

3 **16** **Applying for preventative detention order**

- 4 (1) A senior police officer may apply to the Supreme Court for a
5 preventative detention order for a person.
- 6 (2) The senior police officer may make the application only if—
7 (a) subsection (3) or (5) applies; and
8 (b) the making of the application has been approved, in writing, by
9 the chief police officer.
- 10 (3) Subject to subsection (4), this subsection applies if the senior police
11 officer—
12 (a) suspects, on reasonable grounds, that the person—
13 (i) intends, and has the capacity, to carry out a terrorist act;
14 or
15 (ii) possesses something connected with the preparation for,
16 or carrying out of, a terrorist act; or
17 (iii) has done an act in preparation for, or planning, a terrorist
18 act; and
19 (b) is satisfied, on reasonable grounds—
20 (i) that it is reasonably necessary to detain the person to
21 prevent a terrorist act; and
22 (ii) that detaining the person under the order is the least
23 restrictive way of preventing the terrorist act mentioned in
24 subparagraph (i); and
25 (iii) that detaining the person for the period for which the
26 person is to be detained under the order is reasonably
27 necessary to prevent the terrorist act.

- 1 (4) For subsection (3), the terrorist act must be imminent and, in any
2 event, be expected to happen some time within the next 14 days.
- 3 (5) This subsection applies if the senior police officer is satisfied, on
4 reasonable grounds—
- 5 (a) that a terrorist act has happened within the last 28 days; and
- 6 (b) that it is reasonably necessary to detain the person to preserve
7 evidence in the ACT or elsewhere of, or relating to, the
8 terrorist act; and
- 9 (c) that detaining the person under the order is the only effective
10 way of preserving the evidence mentioned in paragraph (b);
11 and
- 12 (d) that detaining the person for the period for which the person is
13 to be detained under the order is reasonably necessary to
14 preserve the evidence.

15 **17 Application for preventative detention order—contents**
16 **etc**

- 17 (1) An application under section 16 by a senior police officer for a
18 preventative detention order for a person must—
- 19 (a) be in writing; and
- 20 (b) state the following particulars about the person for whom the
21 order is sought:
- 22 (i) the person's full name;
- 23 (ii) the address of the place where the person is living;
- 24 (iii) the address of the place where the person usually lives;
25 and
- 26 (c) state whether an interim order is applied for and, if it is applied
27 for—

- 1 (i) state that the person is not in custody, or being detained,
2 under a territory law or a law of the Commonwealth, a
3 State or another Territory; and
- 4 (ii) state that the person has not been detained under a
5 corresponding preventative detention order for the same
6 terrorist act; and
- 7 (iii) set out the facts and other grounds on which the officer
8 considers that an interim order should be made for the
9 person; and
- 10 (d) set out the facts and other grounds on which the officer
11 considers a preventative detention order should be made for the
12 person; and
- 13 (e) state the period for which the person is to be detained under a
14 preventative detention order and set out the facts and other
15 grounds on which the officer considers that the person should
16 be detained for that period; and
- 17 (f) state that the officer does not suspect that any of the facts and
18 other grounds relied on in making the application are based on
19 information obtained, directly or indirectly, from torture; and
- 20 *Note* **Torture** is defined in s 96 (3).
- 21 (g) set out the information that the officer has about the person's
22 age and decision-making ability; and
- 23 (h) state that the officer is satisfied that the person is not a child;
24 and
- 25 *Note* **Child** means an individual who is under 18 years old (see
26 Legislation Act, dict, pt 1).
- 27 (i) state whether the officer suspects, or has any grounds to
28 suspect, that the person has impaired decision-making ability;
29 and

- 1 (j) set out the following:
- 2 (i) particulars of all preventative detention orders previously
3 made for the person;
- 4 (ii) particulars of all periods for which the person has been
5 detained under a preventative detention order;
- 6 (iii) the outcomes and particulars of all applications previously
7 made and proceedings previously taken by or in relation
8 to the person under this part; and
- 9 (k) set out the following (to the extent that the officer has the
10 information):
- 11 (i) particulars of all corresponding preventative detention
12 orders previously made for the person;
- 13 (ii) particulars of all periods for which the person has been
14 detained under corresponding preventative detention
15 orders;
- 16 (iii) the outcomes and particulars of all applications (however
17 described) previously made, and all proceedings
18 previously taken, by or in relation to the person under
19 corresponding preventative detention laws;
- 20 (iv) particulars of all orders previously made for the person
21 under the Commonwealth Criminal Code, division 104
22 (Control orders);
- 23 (v) the outcomes and particulars of all requests and
24 applications (however described) previously made, and all
25 proceedings previously taken, by or in relation to the
26 person under the Commonwealth Criminal Code,
27 division 104;
- 28 (vi) particulars of all periods for which the person has been
29 detained under the *Australian Security Intelligence*
30 *Organisation Act 1979* (Cwlth), part 3, division 3 (Special

1 powers relating to terrorism offences) within the last
2 3 months; and

3 *Note* Disclosure of this information is not required if the
4 disclosure would be an offence against that Act (see s (6)).

5 (l) set out—

6 (i) the information (if any) the officer has about any child or
7 person with impaired decision-making ability the person
8 lives with or is responsible for; and

9 (ii) if the officer has information that the person lives with, or
10 is responsible for, a child or person with impaired
11 decision-making ability—the provisions that are proposed
12 for the order, or the arrangements otherwise proposed, to
13 protect the interests of the child or person; and

14 (m) set out the inquiries the officer has made about the matters
15 mentioned in paragraphs (f), (g), (k) and (l).

16 (2) If the person has impaired decision-making ability, the application
17 must state—

18 (a) whether the person may be contacted under section 54 (Person
19 with impaired decision-making ability to be contacted by
20 public advocate) within 24 hours after being detained under the
21 order; and

22 (b) if the person should not be contacted under section 54 within
23 24 hours after being detained under the order because the
24 contact would significantly increase the risk of a terrorist act
25 happening or seriously undermine the effectiveness of the
26 order—

27 (i) the grounds for preventing the contact; and

28 (ii) the period as soon as possible after the end of the 24-hour
29 period when the person must be contacted under that
30 section.

- 1 (3) If—
- 2 (a) a preventative detention order, or corresponding preventative
- 3 detention order, has been made for the person on the basis of
- 4 assisting in preventing a terrorist act happening within a
- 5 particular period; and
- 6 (b) the person was detained under the order; and
- 7 (c) the application is made on the basis of assisting in preventing a
- 8 different terrorist act happening within that period;
- 9 the application must specifically identify the information on which
- 10 the application is based that became available only after the order
- 11 mentioned in paragraph (a) was made.
- 12 *Note* See s 12 (2) (Restrictions on multiple preventative detention orders).
- 13 (4) If—
- 14 (a) a preventative detention order has been made for the person on
- 15 the basis of particular information; and
- 16 (b) the person was detained under the order;
- 17 the application must specifically identify the additional information
- 18 on the basis of which the application is made.
- 19 *Note* See s 12 (6) (Restrictions on multiple preventative detention orders).
- 20 (5) The application must include a statement by the applicant that the
- 21 application fully discloses all matters of which the applicant is
- 22 aware that are, or may be, relevant to the making of a decision on
- 23 the application, whether they are favourable or adverse to a decision
- 24 to make the order.
- 25 (6) However, the applicant is not required to disclose information
- 26 mentioned in subsection (1) (k) (vi) if the disclosure would be an
- 27 offence against the *Australian Security Intelligence Organisation*
- 28 *Act 1979* (Cwlth).

1 (7) The information in the application must be sworn on oath by the
2 applicant.

3 *Note 1* **Oath** includes affirmation and *swear* an oath includes make an
4 affirmation (see Legislation Act, dict, pt 1).

5 *Note 2* The Criminal Code, ch 7 contains offences for perjury and making false
6 or misleading statements in a legal proceeding.

7 **18 Making preventative detention order**

8 (1) The Supreme Court may make a preventative detention order for a
9 person on application under section 16.

10 (2) However, the Supreme Court must not make a preventative
11 detention order (other than an interim order) for a person if the
12 person has not been—

13 (a) served with a copy of the application; and

14 (b) given written notice of the place, date and time the application
15 is to be heard.

16 *Note* For the making of interim preventative detention orders see s 20.

17 (3) Also, the Supreme Court may make a preventative detention order
18 for the person only if subsection (4) or (6) applies.

19 (4) Subject to subsection (5), this subsection applies if the Supreme
20 Court is satisfied, on reasonable grounds—

21 (a) that the person—

22 (i) intends, and has the capacity, to carry out a terrorist act;
23 or

24 (ii) possesses something connected with the preparation for,
25 or carrying out of, a terrorist act; or

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

- 1 (b) that it is reasonably necessary to detain the person to prevent a
2 terrorist act; and
- 3 (c) that detaining the person under the order is the least restrictive
4 way of preventing the terrorist act mentioned in paragraph (b);
5 and
- 6 (d) that detaining the person for the period for which the person is
7 to be detained under the order is reasonably necessary to
8 prevent the terrorist act.
- 9 (5) For subsection (4), the terrorist act must be imminent and, in any
10 event, be expected to happen some time within the next 14 days.
- 11 (6) This subsection applies if the Supreme Court is satisfied, on
12 reasonable grounds—
- 13 (a) that a terrorist act has happened within the last 28 days; and
- 14 (b) that it is reasonably necessary to detain the person to preserve
15 evidence in the ACT or elsewhere of, or relating to, the
16 terrorist act; and
- 17 (c) that detaining the person under the order is the only effective
18 way of preserving the evidence mentioned in paragraph (b);
19 and
- 20 (d) that detaining the person for the period for which the person is
21 to be detained under the order is reasonably necessary to
22 preserve the evidence.
- 23 (7) If the person has impaired decision-making ability, the court must
24 also consider the following in deciding whether to make a
25 preventative detention order for the person:
- 26 (a) the nature and extent of the person's impairment;
- 27 (b) any other way it may be appropriate to deal with the person
28 under a territory law.

- 1 (8) If the Supreme Court makes a preventative detention order (other
2 than an interim order) for a person, the court must—
- 3 (a) when making the order, give its reasons for making the order;
4 and
- 5 (b) ensure that reasonable steps are taken to explain to the person
6 (and in language the person can readily understand) the effect
7 of the order.

8 **19 Supreme Court may require further information—**
9 **preventative detention application**

10 If the Supreme Court asks the applicant for further information
11 about the application, the court may refuse to make a preventative
12 detention order (including an interim order) on the application
13 unless the information is given to the court in the way the court
14 requires.

15 **Examples of how information may be required**

- 16 1 the court may require evidence to be given on oath before the court
17 2 the court may require information to be given by affidavit

18 *Note* An example is part of the Act, is not exhaustive and may extend, but
19 does not limit, the meaning of the provision in which it appears (see
20 Legislation Act, s 126 and s 132).

21 **20 Making interim preventative detention order**

- 22 (1) This section applies if—
- 23 (a) an application for a preventative detention order for a person is
24 made to the Supreme Court under section 16 without the
25 person being served with a copy of the application, or being
26 given notice of the place, date and time of the hearing; and
- 27 (b) the application states that an interim order is applied for.
- 28 (2) The Supreme Court may make an interim preventative detention
29 order for the person pending hearing and making a final decision on
30 the application if satisfied, on reasonable grounds, that—

- 1 (a) the person is not in custody, or being detained, under a territory
2 law or a law of the Commonwealth, a State or another
3 Territory; and
- 4 (b) the person has not been detained under a corresponding
5 preventative detention order for the same terrorist act; and
- 6 (c) taking the person into custody, and detaining the person,
7 pending hearing and making a final decision on the application
8 is reasonably necessary to—
- 9 (i) prevent a terrorist act; or
10 (ii) preserve evidence of, or relating to, a terrorist act.
- 11 (3) To remove any doubt, the Supreme Court may make an interim
12 order for the person only if section 18 (4) or (6) also applies.
- 13 (4) The interim order may be made in the absence of, and without
14 notice to, the person (or any representative of the person).
- 15 (5) If the Supreme Court makes an interim order for the person, the
16 court must—
- 17 (a) when making the interim order, give its reasons for making the
18 order; and
- 19 (b) fix the date and time when the hearing of the application is to
20 be resumed.
- 21 (6) The date and time fixed must be no later than 24 hours after the
22 interim order is made.
- 23 (7) As soon as possible after the person is detained under the interim
24 order, the police officer detaining the person must give the person—
- 25 (a) a copy of the application; and
26 (b) written notice of the place, date and time of the resumed
27 hearing.

-
- 1 **21 Preventative detention order—contents etc**
- 2 (1) A preventative detention order (including an interim order) for a
- 3 person is an order that the person may be taken into custody and
- 4 detained, or detained, during a period that—
- 5 (a) starts when the order has effect under section 22 (1); and
- 6 (b) ends at the time (the *end time*) stated in the order.
- 7 (2) The end time for an interim order must be no later than 24 hours
- 8 after the person is first detained under the order.
- 9 (3) The end time for any other preventative detention order must be—
- 10 (a) no later than 7 days after the person is first detained under the
- 11 order; and
- 12 (b) no later than 14 days after the person is first taken into custody
- 13 and detained, or detained, under any preventative detention
- 14 order, or corresponding preventative detention order, for the
- 15 same terrorist act.
- 16 (4) The preventative detention order must be in writing.
- 17 (5) The preventative detention order must state—
- 18 (a) the person’s name; and
- 19 (b) the address of the place where the person is living; and
- 20 (c) the address of the place where the person usually lives; and
- 21 (d) the date and time when the order is made; and
- 22 (e) the period during which the person may be detained under the
- 23 order.
- 24 (6) If the person has impaired decision-making ability, the preventative
- 25 detention order may provide that the period each day for which the
- 26 person is entitled to have contact with a stated person under
- 27 section 53 (Special contact rules for people with impaired
- 28 decision-making ability) is the stated period of longer than 2 hours.

- 1 (7) Also, if the person has impaired decision-making ability, the
2 preventative detention order may state both of the following:
- 3 (a) that the person may not be contacted under section 54 (Person
4 with impaired decision-making ability to be contacted by
5 public advocate) within 24 hours after being detained under the
6 order;
- 7 (b) that the person must be contacted under section 54 after the
8 end of the 24-hour period within a period stated in the order.
- 9 (8) However, if the person has impaired decision-making ability and the
10 preventative detention order is an interim order, the order may state
11 that the person may not be contacted under section 54 while being
12 detained under the interim order.
- 13 (9) The only basis for a decision under subsection (7) or (8) is that
14 preventing the contact is necessary because the contact would
15 significantly increase the risk of a terrorist act happening or
16 seriously undermine the effectiveness of the preventative detention
17 order.
- 18 (10) The preventative detention order may include provision for the
19 person to have contact with a child of the person in addition to the
20 provision for contact under section 50 (Contact with family
21 members etc).
- 22 (11) A reference in subsection (3) to a number of days is a reference to
23 the number of hours in that number of days.

24 **22 Start and end of effect of preventative detention order**

- 25 (1) A preventative detention order (including an interim order) for a
26 person starts to have effect—
- 27 (a) if the order states that it is to start when a stated interim order,
28 or stated corresponding preventative detention order, then in
29 force for the person ceases to have effect—at that time; or
- 30 (b) in any other case—when it is made.

- 1 (2) A preventative detention order (including an interim order) for a
2 person ceases to have effect when whichever of the following first
3 happens:
- 4 (a) the end of 48 hours after the order is made if the person has not
5 been detained under the order;
- 6 (b) the end of—
- 7 (i) the period stated in the order as the period during which
8 the person may be detained under the order; or
- 9 (ii) if the order is extended, or further extended, under
10 division 2.4—the period as extended, or further extended;
- 11 (c) the order lapses under section 42 (Release of person from
12 preventative detention);
- 13 (d) the order is set aside under division 2.6;
- 14 (e) the order ceases to have effect under section 101 (2) (Expiry of
15 Act etc).

16 **Division 2.4 Preventative detention orders—**
17 **extensions**

18 **23 Supreme Court may extend interim order**

- 19 (1) This section applies if the Supreme Court makes an interim
20 preventative detention order for a person.
- 21 (2) The Supreme Court may, by order—
- 22 (a) adjourn, or further adjourn, the resumed hearing of the
23 application for a preventative detention order for the person;
24 and
- 25 (b) extend, or further extend, the period for which the interim
26 order is in force until the adjourned hearing.

- 1 (3) The period as extended, or further extended, must be stated in the
2 order and must end no later than 24 hours after the person is first
3 detained under the order.
- 4 (4) Also, if the person has impaired decision-making ability, the
5 extension, or further extension, may state that the person may not be
6 contacted under section 54 (Person with impaired decision-making
7 ability to be contacted by public advocate) while being further
8 detained under the interim order.
- 9 (5) The only basis for a decision under subsection (4) is that preventing
10 the contact is necessary because the contact would significantly
11 increase the risk of a terrorist act happening or seriously undermine
12 the effectiveness of the interim order.

13 **24 Application for extension of preventative detention order**

- 14 (1) If a preventative detention order (other than an interim order) is in
15 force for a person, a senior police officer may apply to the Supreme
16 Court for an extension, or further extension, of the period for which
17 the order is in force for the person.
- 18 (2) The senior police officer may make the application only if the police
19 officer is satisfied, on reasonable grounds, that the extension, or
20 further extension, is reasonably necessary for the purpose for which
21 the order was made.
- 22 *Note* See s 18 (4) (b) and (6) (b) for the purpose for which a preventative
23 detention order may be made.
- 24 (3) The application must—
- 25 (a) be in writing; and
- 26 (b) set out the facts and other grounds on which the police officer
27 considers that the extension, or further extension, is reasonably
28 necessary for the purpose for which the order was made; and
- 29 (c) set out the outcomes and particulars of all previous
30 applications for extensions, or further extensions, of the order.

- 1 (4) Also, if the person has impaired decision-making ability, the
2 application must state—
- 3 (a) whether the person may be contacted under section 54 (Person
4 with impaired decision-making ability to be contacted by
5 public advocate) within 24 hours after being further detained
6 under the order; and
- 7 (b) if the person should not be contacted under section 54 within
8 24 hours after being further detained under the order because
9 the contact would significantly increase the risk of a terrorist
10 act happening or seriously undermine the effectiveness of the
11 order—
- 12 (i) the grounds for preventing the contact; and
- 13 (ii) the period as soon as possible after the end of the 24-hour
14 period when the person must be contacted under that
15 section.
- 16 (5) The application must include a statement by the applicant that the
17 application fully discloses all matters of which the applicant is
18 aware that are, or may be, relevant to the making of a decision on
19 the application, whether they are favourable or adverse to a decision
20 on the application.
- 21 (6) The information in the application must be sworn on oath by the
22 applicant.
- 23 *Note 1* **Oath** includes affirmation and *swear* an oath includes make an
24 affirmation (see Legislation Act, dict, pt 1).
- 25 *Note 2* The Criminal Code, ch 7 contains offences for perjury and making false
26 or misleading statements in a legal proceeding.

1 **25 Supreme Court may require further information—**
2 **extension application**

3 If the Supreme Court asks the applicant for further information
4 about the application, the court may refuse to extend, or further
5 extend, the period for which the order is in force unless the
6 information is given to the court in the way the court requires.

7 **Examples of how information may be required**

- 8 1 the court may require evidence to be given on oath before the court
9 2 the court may require information to be given by affidavit

10 *Note* An example is part of the Act, is not exhaustive and may extend, but
11 does not limit, the meaning of the provision in which it appears (see
12 Legislation Act, s 126 and s 132).

13 **26 Supreme Court may extend preventative detention order**

14 (1) The Supreme Court may, on application under section 24 and by
15 order, extend, or further extend, the period for which the
16 preventative detention order is in force if satisfied, on reasonable
17 grounds, that the extension, or further extension, is reasonably
18 necessary for the purpose for which the order was made.

19 *Note* See s 18 (4) (b) and (6) (b) for the purpose for which a preventative
20 detention order may be made.

21 (2) The period as extended, or further extended, must be stated in the
22 order and must end—

23 (a) no later than 7 days after the person is first detained under the
24 order as extended, or further extended; and

25 (b) no later than 14 days after the person is first taken into custody
26 and detained, or detained, under any preventative detention
27 order, or corresponding preventative detention order, for the
28 same terrorist act.

- 1 (3) Also, if the person has impaired decision-making ability, the
2 extension, or further extension, may state both of the following:
- 3 (a) that the person may not be contacted under section 54 (Person
4 with impaired decision-making ability to be contacted by
5 public advocate) within 24 hours after being further detained
6 under the order;
- 7 (b) that the person must be contacted under section 54 after the
8 end of the 24-hour period within a period stated in the order.
- 9 (4) The only basis for a decision under subsection (3) is that preventing
10 the contact is necessary because the contact would significantly
11 increase the risk of a terrorist act happening or seriously undermine
12 the effectiveness of the preventative detention order.
- 13 (5) A reference in subsection (2) to a number of days is a reference to
14 the number of hours in that number of days.

15 **Division 2.5 Preventative detention orders—**
16 **reinstatements**

17 **27 Application for reinstatement of preventative detention**
18 **order**

- 19 (1) This section applies if a preventative detention order (the *original*
20 *order*) for a person lapsed under section 42 because the person was
21 detained under—
- 22 (a) the *Crimes Act 1914* (Cwlth) in relation to an offence against
23 the Commonwealth Criminal Code, part 5.3 (Terrorism); or
- 24 (b) the *Australian Security Intelligence Organisation Act 1979*
25 (Cwlth), part 3, division 3 (Special powers relating to terrorism
26 offences).
- 27 (2) A senior police officer may apply to the Supreme Court for
28 reinstatement of the original order.

1 (3) The senior police officer may make the application only if the police
2 officer is satisfied, on reasonable grounds, that the reinstatement is
3 reasonably necessary for the purpose for which the original order
4 was made.

5 *Note* See s 18 (4) (b) and (6) (b) for the purpose for which a preventative
6 detention order may be made.

7 (4) The application must—

8 (a) be in writing; and

9 (b) set out the facts and other grounds on which the police officer
10 considers that the reinstatement is reasonably necessary for the
11 purpose for which the order was made.

12 **28 Supreme Court may require further information—**
13 **reinstatement application**

14 If the Supreme Court asks the applicant for further information
15 about the application, the court may refuse to reinstate the original
16 order unless the information is given to the court in the way the
17 court requires.

18 **Examples of how information may be required**

19 1 the court may require evidence to be given on oath before the court

20 2 the court may require information to be given by affidavit

21 *Note* An example is part of the Act, is not exhaustive and may extend, but
22 does not limit, the meaning of the provision in which it appears (see
23 Legislation Act, s 126 and s 132).

1 **29** **Supreme Court may reinstate preventative detention**
2 **order**

3 (1) The Supreme Court may, on application under section 27 and by
4 order, reinstate the original order if satisfied, on reasonable grounds,
5 that the reinstatement is reasonably necessary for the purpose for
6 which the original order was made.

7 *Note* See s 18 (4) (b) and (6) (b) for the purpose for which a preventative
8 detention order may be made.

9 (2) The period during which the person may be taken into custody and
10 detained, or detained, under the order as reinstated must be stated in
11 the order under this section and must not be longer than the
12 maximum period for which the person could have been detained
13 under the original order immediately before the original order
14 lapsed.

15 **30** **Start and end of effect of reinstated preventative**
16 **detention order**

17 A preventative detention order for a person that is reinstated under
18 this division starts to have effect when the order reinstating the
19 original order is made and ceases to have effect when whichever of
20 the following first happens:

21 (a) the end of the period stated in the original order as the period
22 during which the person may be detained under the original
23 order;

24 (b) the end of 48 hours after the order is made if the person has not
25 been detained under the order;

26 (c) if the order is extended, or further extended, under
27 division 2.4—the end of the period as extended, or further
28 extended;

29 (d) the order lapses under section 42 (Release of person from
30 preventative detention);

- 1 (e) the order is set aside under division 2.6;
2 (f) the order ceases to have effect under section 101 (2) (Expiry of
3 Act etc).

4 **Division 2.6 Preventative detention orders—**
5 **setting aside and amending**

6 **31 Setting aside or amending preventative detention orders**

- 7 (1) The person for whom a preventative detention order has been made,
8 or a senior police officer, may apply to the Supreme Court for the
9 order to be set aside or amended.
- 10 (2) However, if the police officer detaining the person under the
11 preventative detention order is satisfied that the grounds on which
12 the order was made do not exist, or no longer exist, then—
- 13 (a) if the officer is a senior police officer—the officer must apply
14 to the Supreme Court under subsection (1) for the order to be
15 set aside; and
- 16 (b) if the officer is not a senior police officer—the officer must tell
17 a senior police officer in writing and, if the senior police
18 officer is satisfied that the grounds on which the order was
19 made do not exist or no longer exist, the senior police officer
20 must apply to the Supreme Court under subsection (1) for the
21 order to be set aside.
- 22 (3) On application under subsection (1), the Supreme Court—
- 23 (a) must, by order, set aside the preventative detention order if
24 satisfied that the grounds on which the order was made do not
25 exist or no longer exist; and
- 26 (b) may, by order, set the preventative detention order aside if
27 satisfied that it is appropriate that the order be set aside
28 because of—

- 1 (i) new facts and circumstances that have arisen since the
2 order was made, extended or last extended; or
- 3 (ii) facts and circumstances that were not before the court
4 when the order was made, extended or last extended.
- 5 (4) If the Supreme Court sets the preventative detention order aside, the
6 police officer detaining the person under the order must give written
7 notice of the setting aside of the order to the chief executive.
- 8 (5) If the person has been detained under the preventative detention
9 order and the Supreme Court sets the order aside, the court may
10 order the Territory to pay compensation to the person for the
11 detention if the court considers that, because of facts and
12 circumstances not before the court when the order was made,
13 extended or last extended, the order should not have been made,
14 extended or last extended.
- 15 (6) On application under subsection (1), the Supreme Court may amend
16 the preventative detention order if satisfied that it is appropriate that
17 the order be amended because of—
- 18 (a) new facts and circumstances that have arisen since the order
19 was made, extended or last extended; or
- 20 (b) facts and circumstances that were not before the court when the
21 order was made, extended or last extended.

22 **Division 2.7 Preventative detention orders—**
23 **prohibited contact orders**

24 **32 Prohibited contact orders**

- 25 (1) If a senior police officer applies to the Supreme Court for a
26 preventative detention order for a person, the police officer may also
27 apply to the Supreme Court for a prohibited contact order in relation
28 to the person's detention under the preventative detention order.

- 1 (2) If a preventative detention order is in force for the person, a senior
2 police officer may apply to the Supreme Court for a prohibited
3 contact order in relation to the person's detention under the
4 preventative detention order.
- 5 (3) A senior police officer may apply for a prohibited contact order in
6 relation to a person's detention under a preventative detention order
7 only if the officer is satisfied, on reasonable grounds, that the
8 prohibited contact order is reasonably necessary for 1 or more of the
9 following purposes:
- 10 (a) to avoid jeopardising action that is being taken to prevent a
11 terrorist act;
- 12 (b) to prevent serious harm to a person;
- 13 (c) to preserve evidence of, or relating to, a terrorist act;
- 14 (d) to prevent interference with the gathering of information
15 about—
- 16 (i) a terrorist act; or
- 17 (ii) the preparation for, or the planning of, a terrorist act;
- 18 (e) to avoid jeopardising—
- 19 (i) the arrest of a person who is suspected of having
20 committed an offence against the Commonwealth
21 Criminal Code, part 5.3 (Terrorism) or another serious
22 offence; or
- 23 (ii) the taking into custody of a person for whom a
24 preventative detention order is in force or for whom a
25 preventative detention order is likely to be made; or
- 26 (iii) the service on a person of a control order under the
27 Commonwealth Criminal Code, division 104.

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- 1 (4) An application under this section must—
2 (a) be in writing; and
3 (b) set out the terms of the order sought; and
4 (c) set out the facts and other grounds on which the applicant
5 considers the order should be made; and
6 (d) state that the applicant does not suspect that any of the facts
7 and other grounds relied on in making the application are based
8 on information obtained, directly or indirectly, from torture;
9 and
10 (e) set out the inquiries the applicant has made about the matter
11 mentioned in paragraph (d).
- 12 (5) The application must include a statement by the applicant that the
13 application fully discloses all matters of which the applicant is
14 aware that are, or may be, relevant to the making of a decision on
15 the application, whether they are favourable or adverse to a decision
16 to make the order.
- 17 (6) The information in the application must be sworn on oath by the
18 applicant.
- 19 *Note 1* **Oath** includes affirmation and *swear* an oath includes make an
20 affirmation (see Legislation Act, dict, pt 1).
- 21 *Note 2* The Criminal Code, ch 7 contains offences for perjury and making false
22 or misleading statements in a legal proceeding.
- 23 (7) The Supreme Court may make a prohibited contact order prohibiting
24 the person for whom a preventative detention order has been made
25 from contacting, while the person is detained under the preventative
26 detention order, the person or people stated in the prohibited contact
27 order if the court is satisfied, on reasonable grounds, that the
28 prohibited contact order is reasonably necessary for 1 or more of the
29 purposes mentioned in subsection (3).

1 **33** **Supreme Court may require further information—**
2 **prohibited contact application**

3 If the Supreme Court asks the applicant for further information
4 about the application, the court may refuse to make a prohibited
5 contact order on the application unless the information is given to
6 the court in the way the court requires.

7 **Examples of how information may be required**

- 8 1 the court may require evidence to be given on oath before the court
9 2 the court may require information to be given by affidavit

10 *Note* An example is part of the Act, is not exhaustive and may extend, but
11 does not limit, the meaning of the provision in which it appears (see
12 Legislation Act, s 126 and s 132).

13 **34** **Setting aside prohibited contact orders**

14 (1) The person in relation to whom a prohibited contact order has been
15 made, or a senior police officer, may apply to the Supreme Court for
16 the order to be set aside.

17 (2) However, if the police officer detaining the person under the
18 relevant preventative detention order is satisfied that the grounds on
19 which the prohibited contact order was made do not exist, or no
20 longer exist, then—

21 (a) if the officer is a senior police officer—the officer must apply
22 to the Supreme Court under subsection (1) for the order to be
23 set aside; and

24 (b) if the officer is not a senior police officer—the officer must tell
25 a senior police officer in writing and, if the senior police
26 officer is satisfied that the grounds on which the order was
27 made do not exist or no longer exist, the senior police officer
28 must apply to the Supreme Court under subsection (1) for the
29 order to be set aside.

- 1 (3) On application under subsection (1), the Supreme Court—
2 (a) must, by order, set aside the prohibited contact order if
3 satisfied that the grounds on which the order was made do not
4 exist or no longer exist; and
5 (b) may, by order, set aside the prohibited contact order if satisfied
6 that it is appropriate that the order be set aside because of—
7 (i) new facts and circumstances that have arisen since the
8 order was made; or
9 (ii) facts and circumstances that were not before the court
10 when the order was made.

11 **Division 2.8 Preventative detention orders—**
12 **carrying out**

13 **35 Power to detain person under preventative detention**
14 **order etc**

- 15 (1) While a preventative detention order is in force for a person—
16 (a) any police officer may take the person into custody; and
17 (b) subject to section 43 (Detention arrangements), any police
18 officer may detain the person.
19 (2) A police officer who exercises a power under subsection (1) in
20 relation to a person must—
21 (a) tell the person the officer's name and rank; and
22 (b) if the police officer is not in uniform—show the person
23 evidence that the police officer is a police officer.
24 (3) The person may also ask the police officer to tell the person—
25 (a) the address of the officer's place of duty; and
26 (b) the officer's identification number.

- 1 (4) A police officer must comply with a request under subsection (3).
2 (5) The lawfulness of a person's detention under a preventative
3 detention order is not affected by a failure to comply with
4 subsection (2) or (4).

5 **36 Nominated senior police officer**

- 6 (1) If a preventative detention order is made for a person (the *detained*
7 *person*), the chief police officer must nominate a senior police
8 officer (the *nominated senior police officer*) to supervise the
9 exercise of functions in relation to the preventative detention order.
- 10 (2) The nominated senior police officer must be someone who was not
11 involved in the making of the application for the preventative
12 detention order.
- 13 (3) The nominated senior police officer must—
- 14 (a) tell the detained person about his or her nomination as
15 nominated senior police officer; and
- 16 (b) supervise the exercise of functions in relation to the
17 preventative detention order; and
- 18 (c) without limiting paragraph (b), ensure compliance with
19 section 31 (2) (Setting aside or amending preventative
20 detention orders) and section 34 (2) (Setting aside prohibited
21 contact orders) in relation to the preventative detention order;
22 and
- 23 (d) receive and consider any representations made under
24 subsection (4) in relation to—
- 25 (i) anything mentioned in paragraph (b) or (c); or
26 (ii) the treatment of the person by anyone exercising authority
27 under the order or implementing or enforcing it.

-
- 1 (4) For subsection (3) (d), representations may be made to the
2 nominated senior police officer by any of the following:
- 3 (a) the detained person;
- 4 (b) a lawyer acting for the detained person;
- 5 (c) the ombudsman;
- 6 (d) if the detained person has impaired decision-making ability—
7 the public advocate or a person with whom the detained person
8 has contact under section 53 (Special contact rules for people
9 with impaired decision-making ability);
- 10 (e) a person exercising authority under the order or implementing
11 or enforcing it.
- 12 (5) The chief police officer may exercise the power under
13 subsection (1) to replace a nominated senior police officer with
14 another nominated senior police officer (a *new nominated senior*
15 *police officer*).
- 16 (6) A new nominated senior police officer must tell the detained person
17 of the senior police officer's nomination.
- 18 (7) The nominated senior police officer (including a new nominated
19 senior police officer) must arrange for the assistance of an
20 interpreter in complying with this section if the officer suspects, or
21 has grounds to suspect, that the detained person cannot, because of
22 inadequate knowledge of the English language or a disability,
23 communicate with reasonable fluency in English.
- 24 (8) Without limiting subsection (7), the assistance of the interpreter may
25 be provided by phone if—
- 26 (a) the detained person agrees; or
- 27 (b) it is not practicable to arrange for the interpreter to attend in
28 person.

1 (9) The lawfulness of a person’s detention under a preventative
2 detention order is not affected by a failure to comply with
3 subsection (7).

4 **37 Endorsement of order with date and time person detained**
5 **under order**

6 (1) As soon as possible after a person is first detained under a
7 preventative detention order, the police officer detaining the person
8 under the order must endorse on the order—

9 (a) the date and time when the person was first detained under the
10 order; and

11 (b) the place where the person was first detained.

12 (2) As soon as possible after the person is transferred to another place
13 of detention under the preventative detention order, the police
14 officer detaining the person must endorse on the order—

15 (a) the date and time when the person was first detained at the
16 other place under the order; and

17 (b) the other place.

18 **38 Power to require name and address**

19 (1) A police officer may require a person to give the police officer the
20 person’s name and home address if the officer believes, on
21 reasonable grounds, that the person may be able to assist the police
22 officer in executing a preventative detention order.

23 (2) The police officer must—

24 (a) tell the person the officer’s name and rank; and

25 (b) if the police officer is not in uniform—show the person
26 evidence that the police officer is a police officer; and

27 (c) tell the person the reason for the requirement and record the
28 reason.

- 1 (3) The person may also ask the police officer to tell the person—
2 (a) the address of the officer’s place of duty; and
3 (b) the officer’s identification number.
- 4 (4) The person must comply with a requirement made of the person
5 under subsection (1) if the police officer complies with
6 subsection (2) and any request made by the person under
7 subsection (3).
- 8 Maximum penalty: 20 penalty units.
- 9 (5) An offence against this section is a strict liability offence.
- 10 (6) The lawfulness of a person’s detention under a preventative
11 detention order is not affected by a failure to comply with
12 subsection (2) or a request made under subsection (3).
- 13 (7) In this section:
- 14 *home address*, of a person, means the address of the place where the
15 person usually lives.

16 **39 Power to enter premises**

- 17 (1) This section applies if —
18 (a) a preventative detention order is in force for a person; and
19 (b) a police officer believes, on reasonable grounds, that the
20 person is on any premises.
- 21 (2) The police officer may enter the premises, using any reasonably
22 necessary force, and with any reasonably necessary assistance from
23 other police officers, at any time of the day or night for the purpose
24 of searching the premises for the person or taking the person into
25 custody.

- 1 (3) However, the police officer must not enter premises (or a part of
2 premises) used for residential purposes at any time between 9 pm on
3 a day and 6 am on the next day unless the police officer believes, on
4 reasonable grounds, that—
- 5 (a) it would not be practicable to take the person into custody,
6 either at the premises or somewhere else, at another time; or
- 7 (b) it is necessary to enter the premises to prevent the
8 concealment, loss or destruction of evidence of, or relating to,
9 a terrorist act.

10 **40 Use of force etc—preventative detention order**

11 A police officer must not, in the course of taking a person into
12 custody or detaining a person under a preventative detention order,
13 use more force, or subject the person to greater indignity than is
14 reasonably necessary—

- 15 (a) to take the person into custody or detain the person; or
16 (b) to prevent the escape of the person after being taken into
17 custody or detained.

18 **41 Search of person taken into custody under preventative
19 detention order**

20 (1) In this section:

21 *seizable item* means anything that—

- 22 (a) would present a danger to a person; or
23 (b) could be used to assist a person to escape from lawful custody;
24 or
25 (c) could be used to contact someone else to operate a device
26 remotely.

- 1 (2) A police officer may, when or soon after a person is taken into
2 custody under a preventative detention order, conduct a frisk search
3 or ordinary search of the person to find out whether the person is
4 carrying a seizable item.
- 5 (3) However, the police officer must not conduct a frisk search or
6 ordinary search of the person for evidence of, or relating to, a
7 terrorist act unless the officer suspects, on reasonable grounds, that
8 the person is carrying evidence of, or relating to, a terrorist act.
- 9 (4) The police officer may seize any seizable item found during the
10 search.
- 11 (5) Schedule 1 applies to a search conducted under this section.

12 **42 Release of person from preventative detention**

- 13 (1) The police officer detaining a person under a preventative detention
14 order may release the person from detention under the order.

15 *Note* A person may be released, for example, so that the person may be
16 arrested and charged with an offence and otherwise dealt with in
17 relation to the charge.

- 18 (2) The police officer who releases the person from detention under the
19 preventative detention order must give the person a signed written
20 statement that the person is being released from that detention.
- 21 (3) The statement must identify the police officer who signs it.
- 22 (4) To remove any doubt, a person is taken to have been released from
23 detention under a preventative detention order if the person is taken
24 into custody, or detained, on some other basis, whether or not the
25 person is told that the person is being released from detention under
26 the order.
- 27 (5) If a person is released from detention under a preventative detention
28 order—
29 (a) the order lapses; and

- 1 (b) the person must not again be taken into custody, or detained,
2 under the order (unless the order is reinstated under
3 division 2.5).

4 **43 Detention arrangements**

- 5 (1) The chief police officer may, with the Minister’s written approval,
6 make written arrangements in relation to the detention of people
7 under preventative detention orders.
- 8 (2) Before seeking the Minister’s approval to arrangements, the chief
9 police officer must consult with the chief executive, the human
10 rights commissioner, the ombudsman and the public advocate about
11 the arrangements.
- 12 (3) The arrangements must be consistent with human rights.
- 13 (4) Without limiting subsections (1) and (3), the arrangements must—
- 14 (a) provide for people detained under preventative detention
15 orders (*detainees*) to be detained in the ACT; and
- 16 (b) identify the places in the ACT where detainees may be
17 detained; and
- 18 (c) provide for—
- 19 (i) the place where each detainee is detained to be recorded;
20 and
- 21 (ii) access to the records; and
- 22 (d) provide for how responsibility for detainees is to be shared
23 between the chief police officer and the chief executive; and
- 24 (e) provide for how detainees are to be transferred between places
25 where they may be detained; and
- 26 (f) provide for the ombudsman to be told about each place where a
27 detainee is detained; and

-
- 1 (g) provide for the human rights commissioner, the ombudsman
2 and the public advocate to be able to visit a place where a
3 detainee is detained; and
- 4 (h) provide for the identification of everyone involved in detaining
5 a detainee; and
- 6 (i) include guidelines about the minimum conditions of detention
7 and standards of treatment for detainees.
- 8 (5) Without limiting subsection (4) (i), the guidelines must—
- 9 (a) provide for detainees to be segregated from people who have
10 been convicted of, or remanded for, offences; and
- 11 (b) provide for detainees to be treated with humanity and respect
12 for the inherent dignity of the human person; and
- 13 (c) provide for standards about the contact detainees may have
14 with other people (including contact that may be allowed under
15 section 50 (1) (f)); and
- 16 (d) take account of the sex and age of detainees; and
- 17 (e) respect the cultural and religious needs of detainees; and
- 18 (f) ensure that detainees are provided with appropriate health care
19 services; and
- 20 (g) ensure that detainees with disabilities are provided with
21 appropriate support.
- 22 (6) The chief police officer must ensure that a copy of the arrangements
23 in force under this section is given to the human rights
24 commissioner, the ombudsman and the public advocate—
- 25 (a) when the arrangements are first made; and
- 26 (b) whenever the arrangements are changed.

- 1 (7) If a person is detained under a preventative detention order in
2 accordance with the arrangements made under this section—
- 3 (a) the nominated senior police officer is taken, for this part, to be
4 the police officer detaining the person; and
- 5 (b) a police officer authorised, in writing, by the chief police
6 officer may, at any time, visit the detained person to exercise
7 functions under this part in relation to the detained person.
- 8 (8) If a person is detained under a preventative detention order at a
9 correctional centre—
- 10 (a) the order is taken to authorise the person in charge of the
11 correctional centre to detain the person while the order is in
12 force in relation to the person and the person is detained at the
13 correctional centre under the arrangements made under this
14 section; and
- 15 (b) section 48 (Humane treatment of detained person) applies in
16 relation to the person's detention at the correctional centre as if
17 the following people were exercising authority under this order
18 or implementing or enforcing it:
- 19 (i) the person in charge of the correctional centre;
- 20 (ii) anyone else involved in detaining the detained person at
21 the correctional centre.
- 22 (9) Subsection (8) is additional to, and does not limit, any other territory
23 law.
- 24 (10) A person commits an offence if—
- 25 (a) the person detains someone under a preventative detention
26 order; and

1 (b) the person engages in conduct in relation to the detained person
2 that contravenes the arrangements under this section.

3 Maximum penalty: 100 penalty units, imprisonment for 1 year or
4 both.

5 (11) In this section:

6 *chief executive* means the chief executive under the *Crimes*
7 *(Sentence Administration) Act 2005*.

8 *human rights*—see the *Human Rights Act 2004*, section 5.

9 **Division 2.9 Preventative detention orders—**
10 **informing detained people**

11 **44 Effect of preventative detention order etc to be explained**
12 **to detained person**

13 (1) As soon as possible after a person is first detained under a
14 preventative detention order, the police officer detaining the person
15 under the order must tell the person about the matters mentioned in
16 subsection (2).

17 *Note* A contravention of this subsection does not affect the lawfulness of the
18 person's detention under the order (see s 46 (6)).

19 (2) The police officer must tell the person about the following:

20 (a) if the preventative detention order is an interim order—the
21 following:

22 (i) the fact that the Supreme Court has made a preventative
23 detention order for the person's detention pending hearing
24 and making a final decision on the application for a
25 preventative detention order for the person;

26 (ii) the date and time fixed for the hearing of the application
27 to be resumed;

28 (iii) the effect of the order;

- 1 (b) the period during which the person may be detained under the
2 order;
- 3 (c) the person's rights to contact people while the person is
4 detained under the order and how the rights may be exercised;
- 5 (d) without limiting paragraph (c), the person's rights under
6 section 52 (Contact with lawyer etc) to contact a lawyer and, in
7 particular, the person's right to contact the legal aid
8 commission for assistance to choose a lawyer;
- 9 (e) the restrictions that apply to contacting people while the person
10 is detained under the order;
- 11 (f) whether an application can be made for an extension, or further
12 extension, of the period for which the order is to be in force for
13 the person;
- 14 (g) the person's right to complain to the ombudsman in relation
15 to—
- 16 (i) the application for the order; or
- 17 (ii) the person's treatment by anyone exercising authority
18 under the order or implementing or enforcing it; or
- 19 (iii) the person's detention, or continued detention, under the
20 order;
- 21 (h) the fact that the person may apply to the Supreme Court to set
22 aside or amend the order or seek from the court any other
23 remedy relating to the person's treatment by anyone exercising
24 authority under the order or implementing or enforcing it;
- 25 (i) the name and work phone number of the senior police officer
26 nominated under section 36 (Nominated senior police officer)
27 to supervise the exercise of functions in relation to the order;

- 1 (j) the right of the person and the other people mentioned in
2 section 36 (4) to make representations to the nominated senior
3 police officer and the matters mentioned in section 36 (3) (d)
4 about which the representations may be made.

5 **45 Detained person to be told about extension of order**

6 If a preventative detention order is extended, or further extended,
7 under division 2.4, the police officer detaining the person under the
8 order must tell the person about the extension, or further extension,
9 as soon as possible after the extension, or further extension, is made.

10 *Note* A contravention of this section does not affect the lawfulness of the
11 person's detention under the order (see s 46 (6)).

12 **46 Compliance with obligation to inform**

- 13 (1) Section 44 or section 45 does not apply if the actions of the person
14 detained under the preventative detention order make it
15 impracticable for the police officer to comply with the section.
- 16 (2) If a police officer does not comply with section 44 or section 45, the
17 police officer must record the noncompliance and the reasons for it.
- 18 (3) The police officer detaining the person under the preventative
19 detention order complies with section 44 (1) if the police officer
20 tells the person in substance about the matters mentioned in
21 section 44 (2) (even if this is not done in language of a precise or
22 technical nature).
- 23 (4) The police officer detaining the person under the preventative
24 detention order must arrange for the assistance of an interpreter in
25 complying with section 44 (1) or section 45 if the officer suspects,
26 or has grounds to suspect, that the detained person cannot, because
27 of inadequate knowledge of the English language or a disability,
28 communicate with reasonable fluency in English.

- 1 (5) Without limiting subsection (3), the assistance of the interpreter may
2 be provided by phone if—
3 (a) the detained person agrees; or
4 (b) it is not practicable to arrange for the interpreter to attend in
5 person.
6 (6) The lawfulness of a person’s detention under a preventative
7 detention order is not affected by a failure to comply with
8 section 44 (1), section 45, or subsection (3).

9 **47 Copies of orders to be given to detained person**

- 10 (1) As soon as possible after a person is first detained under an interim
11 preventative detention order, the police officer detaining the person
12 under the order must give the person a copy of the order.
13 (2) As soon as possible after any other order is made in relation to a
14 person detained under this part, the police officer detaining the
15 person must give the person a copy of the order.

16 *Note* This subsection applies to the following orders:

- 17 • a preventative detention order (other than an interim order)
18 • an order extending, or further extending, a preventative detention
19 order
20 • an order setting aside or amending a preventative detention order
21 • a prohibited contact order
22 • an order setting aside a prohibited contact order.

1 **Division 2.10** **Preventative detention orders—**
2 **treatment of detained people**
3 **generally**

4 **48** **Humane treatment of detained person**

5 (1) A person being taken into custody, or detained, under a preventative
6 detention order—

7 (a) must be treated with humanity and respect for the inherent
8 dignity of the human person; and

9 (b) must not be subjected to cruel, inhuman or degrading
10 treatment;

11 by anyone exercising authority under the order or implementing or
12 enforcing it.

13 *Note* See s 43 (8) in relation to detention at a correctional centre.

14 (2) A person commits an offence if the person engages in conduct that
15 contravenes this section.

16 Maximum penalty: 200 penalty units, imprisonment for 2 years or
17 both.

18 **49** **Restriction on contact with other people**

19 (1) While a person is detained under a preventative detention order, the
20 person—

21 (a) is not entitled to contact anyone; and

22 (b) may be prevented from contacting anyone.

23 (2) This section is subject to the following sections:

24 (a) section 50 (Contact with family members etc);

25 (b) section 51 (Contact with human rights commissioner and
26 ombudsman);

- 1 (c) section 52 (Contact with lawyer etc);
2 (d) section 53 (Special contact rules for people with impaired
3 decision-making ability).

4 *Note* A person's entitlement to contact other people under some of these
5 sections is subject to a prohibited contact order (see s 57).

6 **Division 2.11 Preventative detention orders—**
7 **contact provisions**

8 **50 Contact with family members etc**

- 9 (1) A person detained under a preventative detention order is entitled, as
10 soon as possible after the person is detained under the order, to
11 contact the following people once by phone, fax or email:
12 (a) subject to subsection (2), 1 of the person's family members;
13 (b) if the person—
14 (i) lives with someone who is not a family member of the
15 person; or
16 (ii) lives with other people who are not family members of
17 the person;
18 the other person or 1 of the other people;
19 (c) if the person is employed—the person's employer;
20 (d) if the person employs people in a business—1 of the people the
21 person employs in the business;
22 (e) if the person engages in business together with someone or
23 other people—the other person or 1 of the other people;
24 (f) if the police officer detaining the person agrees to the person
25 contacting someone else—the other person.

-
- 1 (2) For subsection (1) (a), if the detained person has 2 parents or 2 or
2 more guardians, the person is entitled to have contact with each of
3 the parents or guardians.
- 4 (3) The detained person is entitled, under subsection (1), to disclose
5 only—
- 6 (a) the fact that the person is being detained under a preventative
7 detention order; and
- 8 (b) the fact that the person is safe; and
- 9 (c) the period for which the person is being detained; and
- 10 (d) for contact with someone under subsection (1) (a) or (b)—
11 where the person is being detained.
- 12 (4) The detained person is also entitled to have the further contact with
13 the person’s family or anyone else that is allowed under the
14 preventative detention order.
- 15 (5) The form of contact that the detained person may have with
16 someone under subsection (4) includes—
- 17 (a) being visited by the person; and
- 18 (b) communicating with the person by phone, fax or email.
- 19 (6) The detained person is entitled to have contact with someone under
20 subsection (4) for the period on any day, and on the days, allowed
21 under the preventative detention order.
- 22 (7) In this section:
- 23 *family member*, of a person, means—
- 24 (a) the person’s domestic partner; or
- 25 (b) a parent, step-parent or grandparent of the person; or
- 26 (c) a child, stepchild or grandchild of the person; or
- 27 (d) a brother, sister, stepbrother or stepsister of the person; or

1 (e) a guardian or carer of the person.

2 **51 Contact with human rights commissioner and**
3 **ombudsman**

4 A person detained under a preventative detention order is entitled to
5 contact, and be contacted by, the human rights commissioner and
6 the ombudsman.

7 **52 Contact with lawyer etc**

8 (1) A person detained under a preventative detention order is entitled to
9 contact a lawyer privately and at any time for the purpose of—

10 (a) obtaining advice from a lawyer about the person’s legal rights
11 in relation to a part 2 application; or

12 *Note* **Part 2 application** is defined in s 9.

13 (b) arranging for a lawyer to act for the person in relation to, and
14 instructing a lawyer in relation to, a proceeding in the Supreme
15 Court relating to a part 2 application; or

16 (c) arranging for a lawyer to act for the person in relation to, and
17 instructing a lawyer in relation to, any other proceeding in a
18 court or tribunal for a remedy in relation to the preventative
19 detention order, including, for example, in relation to—

20 (i) the implementation or enforcement of the order; or

21 (ii) the person’s treatment by anyone exercising authority
22 under the order or implementing or enforcing it; or

23 (iii) the person’s detention under the order; or

24 *Note* An example is part of the Act, is not exhaustive and may extend,
25 but does not limit, the meaning of the provision in which it
26 appears (see Legislation Act, s 126 and s 132).

- 1 (d) arranging for a lawyer to act for the person in relation to, and
2 instructing a lawyer in relation to, a complaint to the
3 ombudsman or other entity in relation to the preventative
4 detention order, including, for example, in relation to—
- 5 (i) the making of the application for the order; or
6 (ii) the implementation or enforcement of the order; or
7 (iii) the person's treatment by anyone exercising authority
8 under the order or implementing or enforcing it; or
9 (iv) the person's detention under the order; or
- 10 (e) arranging for a lawyer to act for the person in relation to an
11 appearance, or hearing, before a court or tribunal that is to take
12 place while the person is detained under the order.
- 13 (2) The form of contact that the person may have with a lawyer under
14 subsection (1) includes—
- 15 (a) being visited by the lawyer; and
16 (b) communicating with the lawyer by phone, fax or email.
- 17 (3) The person is entitled to contact the legal aid commission by phone,
18 fax or email to ask for assistance to choose a lawyer.
- 19 *Note* Under s 41 (2), the police officer detaining the person must tell the
20 person about the person's rights to contact a lawyer and, in particular,
21 the person's right to contact the legal aid commission for assistance to
22 choose a lawyer.
- 23 (4) If the person contacts the legal aid commission, the commission
24 must provide reasonable assistance to the person to choose a lawyer,
25 including by arranging for a suitable lawyer to contact and act for
26 the person if the person asks it to make the arrangements.
- 27 (5) If the person asks the legal aid commission to provide legal
28 representation for the person, the commission must provide the
29 representation or arrange for it to be provided if the person cannot
30 afford the cost of obtaining the assistance from a private lawyer.

- 1 (6) For subsections (4) and (5), the legal aid commission may—
2 (a) arrange for a lawyer to visit the person; and
3 (b) communicate with the person by phone, fax or email at any
4 reasonable time.
- 5 (7) In making arrangements for the person, the legal aid commission
6 may give priority to lawyers who have been given an appropriate
7 security clearance.
- 8 (8) Despite subsection (7) but subject to any prohibited contact order,
9 the person is entitled under this section to contact a lawyer of the
10 person's choice, whether or not the lawyer has an appropriate
11 security clearance.
- 12 (9) Also, subject to any prohibited contact order, the police officer
13 detaining the person must allow the person to have reasonable
14 contact with a lawyer for a purpose other than a purpose mentioned
15 in subsection (1).
- 16 (10) If the police officer detaining the person suspects, or has grounds to
17 suspect, that—
18 (a) the person cannot, because of inadequate knowledge of the
19 English language or a disability, communicate with reasonable
20 fluency in English; and
21 (b) the person may have difficulty in understanding or exercising
22 the person's rights under this section;
23 the officer must give the person reasonable assistance (including, if
24 appropriate, by arranging for the assistance of an interpreter) for the
25 person to understand and exercise the person's rights under this
26 section.
- 27 (11) If the person asks to contact a lawyer or the legal aid commission,
28 the police officer detaining the person must make a written record
29 of—
30 (a) the details of the request; and

1 (b) the date and time the request was made; and

2 (c) the action taken in response to the request.

3 (12) Any communication between a person detained under a preventative
4 detention order and the person's lawyer is subject to legal
5 professional privilege and it is not admissible in evidence against
6 the person in any court proceeding.

7 **53 Special contact rules for people with impaired**
8 **decision-making ability**

9 (1) This section applies if a person detained under a preventative
10 detention order has impaired decision-making ability.

11 (2) The person is entitled, while detained under the order, to have
12 contact with—

13 (a) a parent or guardian of the person; or

14 (b) someone else who—

15 (i) can represent the person's interests; and

16 (ii) is, as far as practicable, acceptable to the person and to
17 the police officer detaining the person; and

18 (iii) is not a police officer; and

19 (iv) is not an AFP employee (within the meaning of the
20 *Australian Federal Police Act 1979* (Cwlth)); and

21 (v) is not a member (however described) of a police force or
22 service of a State or another Territory; and

23 (vi) is not an officer or employee of the Australian Security
24 Intelligence Organisation.

- 1 (3) To remove any doubt—
- 2 (a) if the detained person has 2 parents or 2 or more guardians—
- 3 the person is entitled to have contact under subsection (2) with
- 4 each of the parents or guardians; and
- 5 (b) the person is entitled to disclose to someone with whom the
- 6 person has contact under subsection (2)—
- 7 (i) the fact that the person is being detained under a
- 8 preventative detention order; and
- 9 (ii) the fact that the person is safe; and
- 10 (iii) the period for which the person is being detained; and
- 11 (iv) where the person is being detained; and
- 12 (c) the first contact under subsection (2) must be within 24 hours
- 13 after each of the following:
- 14 (i) the person is first detained under the preventative
- 15 detention order;
- 16 (ii) the person is further detained under an extension, or
- 17 further extension, of the preventative detention order.
- 18 (4) The form of contact that the detained person may have with
- 19 someone under subsection (2) includes—
- 20 (a) being visited by the person; and
- 21 (b) communicating with the person by phone, fax or email.
- 22 (5) The period for which the detained person is entitled to have contact
- 23 under subsection (2) with someone each day is—
- 24 (a) 2 hours; or
- 25 (b) if the preventative detention order allows a longer period—that
- 26 period.

1 (6) Despite subsection (5), the police officer detaining the person may
2 allow the person to have contact with someone under subsection (2)
3 for longer than the period provided for in subsection (5).

4 **54 Person with impaired decision-making ability to be**
5 **contacted by public advocate**

6 (1) This section applies if a person detained under a preventative
7 detention order has impaired decision-making ability.

8 (2) As soon as possible after the person is detained under the
9 preventative detention order, the police officer detaining the person
10 must tell the public advocate about the person's detention.

11 (3) The public advocate may have the contact with the person—

12 (a) that is necessary to ensure the person understands the effect of
13 the preventative detention order; and

14 (b) that is necessary to find out anything about the welfare of the
15 person.

16 (4) The first contact under subsection (3) must be within 24 hours after
17 each of the following:

18 (a) the person is first detained under the preventative detention
19 order;

20 (b) the person is further detained under an extension, or further
21 extension, of the preventative detention order.

22 (5) Despite subsection (4), the first contact mentioned in that
23 subsection—

24 (a) if the preventative detention order is an interim order—must
25 not take place if the order includes a statement to that effect in
26 the order under section 21 (7); or

27 (b) if the preventative detention order is not an interim order and
28 the order includes statements under section 21 (6) about

1 contact with the person under this section—must take place in
2 accordance with the order.

3 (6) A single contact may satisfy more than 1 requirement for a contact
4 under subsection (4).

5 **55 Monitoring contact with family members etc**

6 (1) The contact a person detained under a preventative detention order
7 has with someone under section 50 (Contact with family members
8 etc) or section 53 (Special contact rules for people with impaired
9 decision-making ability) may take place only if it is conducted in a
10 way that the contact, and the content and meaning of the
11 communication that takes place during the contact, can be
12 effectively monitored by a police officer exercising authority under
13 the preventative detention order.

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

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

20 (4) If the detained person asks for the contact to take place in a
21 language other than English, the police officer detaining the person
22 must arrange for an appropriate interpreter to be available for the
23 contact unless it is impracticable to arrange for an appropriate
24 interpreter to be available.

25 **56 Monitoring contact with lawyer**

26 (1) The contact a person detained under a preventative detention order
27 has with the person's lawyer must not be monitored unless a
28 direction under subsection (2) requires the contact between them to
29 be monitored.

- 1 (2) A senior police officer may direct, in writing, that contact between
2 the detained person and a lawyer named in the direction be
3 monitored by a police officer, if the senior police officer believes,
4 on reasonable grounds, that 1 or more of the following
5 consequences may happen if the contact between them is not
6 monitored:
- 7 (a) interference with or harm to evidence of, or relating to, a
8 serious offence;
- 9 (b) interference with or physical harm to a person;
- 10 (c) the alerting of a person who is suspected of having committed
11 a serious offence, but has not been arrested for it;
- 12 (d) interference with the gathering of information about the
13 commission, preparation or instigation of a terrorist act;
- 14 (e) making it more difficult to prevent a terrorist act because a
15 person is alerted;
- 16 (f) making it more difficult to secure a person's apprehension for a
17 terrorist act because a person is alerted.
- 18 (3) Before giving a direction under subsection (2), the senior police
19 officer must—
- 20 (a) give the legal aid commission written notice that the officer is
21 considering giving a direction under that subsection; and
- 22 (b) consult with the PIM appointed under subsection (4) about the
23 proposed direction; and
- 24 (c) take into account any submissions made by the PIM.
- 25 (4) On receiving notice under subsection (3) (a), the legal aid
26 commission must appoint a person from the public interest monitor
27 panel under section 62 to be the public interest monitor (*PIM*) for
28 the proposed direction under subsection (2).

- 1 (5) If the senior police officer gives a direction under subsection (2), the
2 officer must—
- 3 (a) give a copy of the direction to—
- 4 (i) the person; and
- 5 (ii) the person’s lawyer; and
- 6 (iii) the nominated senior police officer; and
- 7 (b) record the reasons for giving the direction.
- 8 (6) If a direction under subsection (2) is in force, the contact the
9 detained person has with the lawyer may take place only if it is
10 conducted in a way that the contact, and the content and meaning of
11 the communication that takes place during the contact, can be
12 effectively monitored by a police officer exercising authority under
13 the preventative detention order.
- 14 (7) If subsection (6) applies, the contact may take place in a language
15 other than English only if the content and meaning of the
16 communication that takes place during the contact can be effectively
17 monitored with the assistance of an interpreter.
- 18 (8) Without limiting subsection (7), the interpreter may be a police
19 officer.
- 20 (9) If subsection (6) applies and the detained person asks for the contact
21 to take place in a language other than English, the police officer
22 detaining the person must arrange for an appropriate interpreter to
23 be available for the contact unless it is impracticable to arrange for
24 an appropriate interpreter to be available.
- 25 (10) A communication that is monitored under this section must not be
26 recorded.

- 1 (11) A police officer commits an offence if—
2 (a) the police officer monitors contact between a person detained
3 under a preventative detention order and the person’s lawyer;
4 and
5 (b) the monitoring is not done in accordance with a direction under
6 subsection (2).

7 Maximum penalty: 100 penalty units, imprisonment for 1 year or
8 both.

9 *Note* Any communication between a person detained under a preventative
10 detention order and the person’s lawyer is subject to legal professional
11 privilege and it is not admissible in evidence against the person in any
12 court proceeding (see s 52 (12)).

13 **57 Entitlement to contact subject to prohibited contact order**

14 The following sections have effect subject to any prohibited contact
15 order made in relation to a person’s detention under a preventative
16 detention order:

- 17 • section 50 (Contact with family members etc)
18 • section 52 (Contact with lawyer etc)
19 • section 53 (Special contact rules for people with impaired
20 decision-making ability).

21 **58 Questioning of detained person prohibited**

- 22 (1) A person must not question someone while that person is detained
23 under a preventative detention order except for the purpose of—
24 (a) deciding whether the detained person is the person stated in the
25 order; or
26 (b) ensuring the detained person’s safety and wellbeing; or
27 (c) allowing the person to comply with a requirement of this part
28 in relation to the detained person’s detention under the order.

- 1 (2) A person commits an offence if—
2 (a) the person questions someone while that person is detained
3 under a preventative detention order; and
4 (b) the questioning is not done for a purpose mentioned in
5 subsection (1) (a), (b) or (c).
6 Maximum penalty: 200 penalty units, imprisonment for 2 years or
7 both.
- 8 (3) If a person questions someone while that person is detained under a
9 preventative detention order, the first person must ensure that—
10 (a) a video recording is made of the questioning; or
11 (b) if it is not practicable to make a video recording of the
12 questioning—an audio recording is made of the questioning.
- 13 (4) A recording made under subsection (3) must be kept for at least
14 1 year after the day it is made.
- 15 (5) If a person questions someone in contravention of this section, any
16 answer to a question, and any information, document or thing
17 obtained, directly or indirectly, because of the giving of an answer,
18 are not admissible in evidence against the person in a civil or
19 criminal proceeding.
- 20 (6) This section does not apply in relation to questioning that is part of
21 contact under any of the following sections:
22 • section 50 (Contact with family members etc)
23 • section 51 (Contact with human rights commissioner and
24 ombudsman)
25 • section 52 (Contact with lawyer etc)
26 • section 53 (Special contact rules for people with impaired
27 decision-making ability)
28 • section 54 (Person with impaired decision-making ability to be
29 contacted by public advocate).

1 **Division 2.12** **Preventative detention orders—**
2 **identification material**

3 **59** **Taking identification material**

- 4 (1) A police officer must not take identification material from a person
5 detained under a preventative detention order otherwise than in
6 accordance with this section.
- 7 (2) A police officer of or above the rank of sergeant may take
8 identification material from the person, or cause identification
9 material to be taken from the person, if—
- 10 (a) the person consents in writing; or
- 11 (b) the police officer believes, on reasonable grounds, that it is
12 necessary to take the material to confirm the person’s identity
13 as the person stated in the order.
- 14 (3) A police officer may use the force that is reasonably necessary to
15 take identification material from the person under subsection (2) (b).
- 16 (4) Subject to this section, if the person has impaired decision-making
17 ability, a police officer must not take identification material (other
18 than prints of the person’s hands, fingers, feet or toes) from the
19 person under this section unless the Supreme Court orders that the
20 material be taken.
- 21 (5) If the person has impaired decision-making ability, the taking of
22 identification material from the person must be done in the presence
23 of—
- 24 (a) a parent or guardian of the person; or
- 25 (b) if a parent or guardian of the person is not acceptable to the
26 person—another appropriate person.
- 27 (6) To remove any doubt, this section does not apply to anything done
28 under section 58.

- 1 (7) In this section:
- 2 *appropriate person*, for a person with impaired decision-making
3 ability, means someone who—
- 4 (a) can represent the person’s interests; and
- 5 (b) is, as far as practicable, acceptable to the person and to the
6 police officer detaining the person; and
- 7 (c) is not a police officer; and
- 8 (d) is not an AFP employee (within the meaning of the *Australian
9 Federal Police Act 1979 (Cwlth)*); and
- 10 (e) is not a member (however described) of a police force of a
11 State or another Territory; and
- 12 (f) is not an officer or employee of the Australian Security
13 Intelligence Organisation.

14 **60 Using identification material**

- 15 (1) Identification material taken under section 59 from a person
16 detained under a preventative detention order must not be used by a
17 person for a purpose other than deciding whether the detained
18 person is the person stated in the order.
- 19 (2) A person commits an offence if the person engages in conduct that
20 contravenes subsection (1).
- 21 Maximum penalty: 200 penalty units, imprisonment for 2 years or
22 both.

1 **61 Destroying identification material**

2 (1) The chief police officer must ensure that identification material
3 taken under section 59 from a person detained under a preventative
4 detention order is destroyed no later than the end of whichever of
5 the following periods ends first:

6 (a) if a relevant proceeding has not been started within 1 year after
7 the day the material is taken—1 month after the end of the
8 1-year period;

9 (b) if a relevant proceeding is, or relevant proceedings are, started
10 within 1 year after the day the material is taken—1 month after
11 the proceeding, or the last of the proceedings, is discontinued
12 or finally decided.

13 (2) In this section:

14 *relevant proceeding* means a proceeding in relation to the
15 preventative detention order, including, for example, the detained
16 person's treatment by anyone exercising authority under the order or
17 implementing or enforcing it.

18 *Note* An example is part of the Act, is not exhaustive and may extend, but
19 does not limit, the meaning of the provision in which it appears (see
20 Legislation Act, s 126 and s 132).

21 **Division 2.13 Preventative detention orders—public**
22 **interest monitor panel**

23 **62 Public interest monitor panel**

24 (1) The Minister must appoint people to a public interest monitor panel.

25 *Note 1* For the making of appointments (including acting appointments), see
26 the Legislation Act, pt 19.3.

27 *Note 2* Certain Ministerial appointments require consultation with an Assembly
28 committee and are disallowable (see Legislation Act, div 19.3.3).

- 1 (2) The Minister must not appoint a person to the public interest
2 monitor panel unless satisfied that the person—
- 3 (a) is a lawyer; and
- 4 (b) has qualities and experience making the person suitable to be a
5 public interest monitor (*PIM*); and
- 6 (c) has an appropriate security clearance.
- 7 *Note* The PIM has a role under the following sections:
- 8 • s 14 (Appointment of PIM for applications etc)
- 9 • s 56 (Monitoring contact with lawyer).

1 **Part 3** **Special powers**

2 **Division 3.1** **Special powers—preliminary**

3 **63** **Definitions—pt 3**

4 In this part:

5 *investigative authorisation* means an investigative authorisation
6 given by an order under section 73.

7 *preventative authorisation* means a preventative authorisation given
8 by an order under section 66.

9 *special powers authorisation* means—

10 (a) preventative authorisation; or

11 (b) investigative authorisation.

12 *target area*, in relation to a special powers authorisation, means an
13 area named or described as a target area in the authorisation.

14 *target person*, in relation to a special powers authorisation, means a
15 person named or described as a target person in the authorisation.

16 *target vehicle*, in relation to a special powers authorisation, means a
17 vehicle named or described as a target vehicle in the authorisation.

18 *vehicle* means anything designed or used to transport a person or
19 goods by road, rail, air or water.

20 **Division 3.2** **Special powers authorisation—**
21 **preventative authorisation**

22 **64** **Applying for preventative authorisation**

23 (1) The chief police officer may apply to the Supreme Court or the
24 Magistrates Court for a preventative authorisation.

- 1 (2) The chief police officer may make the application only if—
2 (a) the chief police officer believes, on reasonable grounds, that a
3 terrorist act is happening or will happen some time within the
4 next 14 days; and
5 (b) the chief police officer is satisfied, on reasonable grounds, that
6 the authorisation would substantially assist in preventing the
7 terrorist act, reducing its impact or both; and
8 (c) the making of the application has been approved, in writing, by
9 the Chief Minister.

10 **65 Application for preventative authorisation—contents**

- 11 (1) An application under section 64 for a preventative authorisation
12 must—
13 (a) be in writing; and
14 (b) state when the authorisation sought is to start and end; and
15 (c) describe the general nature of the terrorist act for which the
16 authorisation is sought; and
17 (d) name or describe (if appropriate using a picture, map or other
18 visual depiction) 1 or more of the following:
19 (i) an area in which the powers under division 3.4 may be
20 exercised in relation to the terrorist act;
21 (ii) a person sought in relation to the terrorist act;
22 (iii) a vehicle sought in relation to the terrorist act; and
23 (e) explain why the authorisation sought would substantially assist
24 in preventing the terrorist act, reducing its impact or both; and
25 (f) if the authorisation sought is for or includes an area—explain
26 why it is reasonably necessary for the authorisation to be given
27 for that area; and

- 1 (g) set out the other facts and grounds on which the chief police
2 officer considers the authorisation should be given.

3 **66 Making preventative authorisation order**

4 On application under section 64, the Supreme Court or the
5 Magistrates Court may, by order, authorise the exercise of powers
6 under division 3.4 if the court is satisfied, on reasonable grounds—

- 7 (a) that a terrorist act is happening or will happen some time
8 within the next 14 days; and
9 (b) that the authorisation would substantially assist in preventing
10 the terrorist act, reducing its impact or both; and
11 (c) if the authorisation is for or includes an area—that it is
12 reasonably necessary to give the authorisation for that area.

13 **67 Court may require further information—preventative**
14 **authorisation application**

15 If the Supreme Court or the Magistrates Court asks the chief police
16 officer for further information about the application, the court may
17 refuse to make an order under section 66 on the application unless
18 the information is given to the court in the way the court requires.

19 **Examples of how information may be required**

- 20 1 the court may require evidence to be given on oath before the court
21 2 the court may require information to be given by affidavit

22 *Note* An example is part of the Act, is not exhaustive and may extend, but
23 does not limit, the meaning of the provision in which it appears (see
24 Legislation Act, s 126 and s 132).

25 **68 Preventative authorisation—contents**

- 26 (1) A preventative authorisation must—
27 (a) be in writing; and
28 (b) be directed to all police officers; and

- 1 (c) state that it is a preventative authorisation; and
2 (d) state the time when it starts; and
3 (e) state the time when it ends (unless sooner set aside); and
4 (f) describe the general nature of the terrorist act to which it
5 applies; and
6 (g) name or describe (if appropriate by using a picture, map or
7 other visual depiction) 1 or more of the following:
8 (i) an area in which the powers under division 3.4 may be
9 exercised (a *target area*) in relation to the terrorist act;
10 (ii) a person sought in relation to the terrorist act (a *target*
11 *person*);
12 (iii) a vehicle sought in relation to the terrorist act (a *target*
13 *vehicle*).
14 (2) The time stated under subsection (1) (e) must not be more than
15 7 days after the preventative authorisation is given.
16 (3) The authorisation may include conditions and restrictions on the
17 exercise of the powers under the authorisation.

18 **69 Setting aside or amending preventative authorisation**

19 On application by the chief police officer or an interested person,
20 the Supreme Court or the Magistrates Court may, by order, set aside
21 or amend a preventative authorisation made by the court.

22 **70 No extension of preventative authorisation**

- 23 (1) A preventative authorisation cannot be extended.
24 (2) However, subsection (1) does not prevent the Supreme Court or the
25 Magistrates Court making another special powers authorisation for
26 the same terrorist act, whether the authorisation is to start

1 immediately after the end of the preventative authorisation or at a
2 later time.

3 **Division 3.3 Special powers authorisation—**
4 **investigative authorisation**

5 **71 Applying for investigative authorisation**

6 (1) The chief police officer may apply to the Supreme Court or the
7 Magistrates Court for a investigative authorisation.

8 (2) The chief police officer may make the application only if—

9 (a) the chief police officer believes, on reasonable grounds, that a
10 terrorist act has happened within the last 28 days, is happening
11 or will happen some time within the next 14 days; and

12 (b) the chief police officer is satisfied, on reasonable grounds, that
13 the authorisation would substantially assist in achieving 1 or
14 more of the following purposes:

15 (i) apprehending a person responsible for the terrorist act;

16 (ii) investigating the terrorist act (including preserving
17 evidence of, or relating to, the terrorist act);

18 (iii) reducing the impact of the terrorist act; and

19 (c) the making of the application has been approved, in writing, by
20 the Chief Minister.

21 **72 Application for investigative authorisation—contents**

22 An application under section 71 for an investigative authorisation
23 must—

24 (a) be in writing; and

25 (b) state when the authorisation sought is to start and end; and

- 1 (c) describe the general nature of the terrorist act for which the
2 authorisation is sought; and
- 3 (d) name or describe (if appropriate using a picture, map or other
4 visual depiction) 1 or more of the following:
- 5 (i) an area in which the powers under division 3.4 may be
6 exercised in relation to the terrorist act;
- 7 (ii) a person sought in relation to the terrorist act;
- 8 (iii) a vehicle sought in relation to the terrorist act; and
- 9 (e) explain why the authorisation sought would substantially assist
10 in achieving 1 or more of the purposes mentioned in
11 section 71 (2) (b); and
- 12 (f) if the authorisation sought is for or includes an area—explain
13 why it is reasonably necessary for the authorisation to be given
14 for that area; and
- 15 (g) set out the other facts and grounds on which the chief police
16 officer considers the authorisation should be given.

17 **73 Making investigative authorisation order**

18 On application under section 71, the Supreme Court or the
19 Magistrates Court may, by order, authorise the exercise of powers
20 under division 3.4 if the court is satisfied, on reasonable grounds—

- 21 (a) that a terrorist act has happened within the last 28 days, is
22 happening or will happen some time within the next 14 days;
23 and
- 24 (b) that the authorisation would substantially assist in achieving
25 1 or more of the following purposes:
- 26 (i) apprehending a person responsible for the terrorist act;
- 27 (ii) investigating the terrorist act (including preserving
28 evidence of, or relating to, the terrorist act);

- 1 (iii) reducing the impact of the terrorist act; and
2 (c) if the authorisation is for or includes an area—that it is
3 reasonably necessary to give the authorisation for that area.

4 **74 Court may require further information—investigative**
5 **authorisation application**

6 If the Supreme Court or the Magistrates Court asks the chief police
7 officer for further information about the application, the court may
8 refuse to make an order under section 73 on the application unless
9 the information is given to the court in the way the court requires.

10 **Examples of how information may be required**

- 11 1 the court may require evidence to be given on oath before the court
12 2 the court may require information to be given by affidavit

13 *Note* An example is part of the Act, is not exhaustive and may extend, but
14 does not limit, the meaning of the provision in which it appears (see
15 Legislation Act, s 126 and s 132).

16 **75 Investigative authorisation—contents**

- 17 (1) An investigative authorisation must—
18 (a) be in writing; and
19 (b) be directed to all police officers; and
20 (c) state that it is an investigative authorisation; and
21 (d) state the time when it starts; and
22 (e) state the time when it ends (unless sooner set aside); and
23 (f) describe the general nature of the terrorist act to which it
24 applies; and
25 (g) name or describe (if appropriate by using a picture, map or
26 other visual depiction) 1 or more of the following:
27 (i) an area in which the powers under division 3.4 may be
28 exercised (a **target area**) in relation to the terrorist act;

- 1 (ii) a person sought in relation to the terrorist act (a *target*
2 *person*);
- 3 (iii) a vehicle sought in relation to the terrorist act (a *target*
4 *vehicle*).
- 5 (2) The time stated under subsection (1) (e) must not be more than
6 24 hours after the investigative authorisation is given.
- 7 (3) The authorisation may include conditions and restrictions on the
8 exercise of the powers under the authorisation.

9 **76 Setting aside or amending investigative authorisation**

10 On application by the chief police officer or an interested person,
11 the Supreme Court or the Magistrates Court may, by order, set aside
12 or amend an investigative authorisation made by the court.

13 **77 No extension of investigative authorisation**

- 14 (1) An investigative authorisation cannot be extended.
- 15 (2) However, subsection (1) does not prevent the Supreme Court or the
16 Magistrates Court making another special powers authorisation for
17 the same terrorist act, whether the authorisation is to start
18 immediately after the end of the investigative authorisation or at a
19 later time.

20 **Division 3.4 Authorised special powers**

21 **78 Exercising authorised special powers—general**
22 **provisions**

- 23 (1) While a special powers authorisation is in force, the powers under
24 this division may be exercised by any police officer, subject to any
25 conditions or restrictions in the authorisation, for the purposes of—
- 26 (a) for a preventative authorisation—preventing the terrorist act to
27 which the authorisation applies, reducing its impact or both;
28 and

- 1 (b) for an investigative authorisation, 1 or more of the following
2 purposes:
- 3 (i) apprehending a person responsible for the terrorist act to
4 which the authorisation applies;
- 5 (ii) investigating the terrorist act (including preserving
6 evidence of, or relating to, the terrorist act);
- 7 (iii) reducing the impact of the terrorist act.
- 8 (2) A police officer may exercise the powers—
- 9 (a) without any other authority; and
- 10 (b) even if the officer does not have a copy of the special powers
11 authorisation.
- 12 (3) Subsection (4) applies to a power under any of the following
13 provisions:
- 14 (a) section 79 (Power to require personal details under special
15 powers);
- 16 (b) section 80 (Power to search people under special powers);
- 17 (c) section 81 (Power to search vehicles under special powers);
- 18 (d) section 83 (Power to enter and search premises under special
19 powers).
- 20 (4) Before a police officer exercises the power in relation to a person,
21 the officer must—
- 22 (a) tell the person the reason for exercising the power; and
- 23 (b) if the police officer is not in uniform—show the person
24 evidence that the police officer is a police officer.
- 25 (5) Subsection (6) applies to a power under any of the following
26 provisions:
- 27 (a) section 82 (Power to move vehicles under special powers);

- 1 (b) section 83 (Power to enter and search premises under special
2 powers);
- 3 (c) section 84 (Power to cordon target area etc under special
4 powers);
- 5 (d) section 85 (Power to seize things under special powers).
- 6 (6) Before, when or as soon as possible after a police officer exercises
7 the power in relation to a person, the officer must—
- 8 (a) if asked by the person—tell the person the reason for
9 exercising the power; and
- 10 (b) if the police officer is not in uniform—show the person
11 evidence that the police officer is a police officer.
- 12 (7) The lawfulness of the exercise of special powers under a special
13 powers authorisation is not affected by a failure to comply with
14 subsection (4) or (6).
- 15 (8) If a person was searched, or a person’s vehicle or premises were
16 searched, under this part, the person may, not later than 1 year after
17 the day of the search, ask the chief police officer, in writing, for a
18 written statement that the search was conducted in accordance with
19 this Act.
- 20 (9) The chief police officer must either—
- 21 (a) give the person the written statement asked for; or
- 22 (b) tell the person, in writing, that the chief police officer cannot
23 give the written statement asked for and explain why.

24 **79 Power to require personal details under special powers**

- 25 (1) A police officer may require a person to give the officer all or any of
26 the person’s personal details if the details are unknown to the officer
27 and the officer suspects, on reasonable grounds, that the person—
- 28 (a) is a target person; or

- 1 (b) is in the company of a target person in suspicious
2 circumstances; or
- 3 (c) is about to enter, is in or on, or has recently left, a target
4 vehicle; or
- 5 (d) is about to enter, is in, or has recently left, a target area.
- 6 (2) If the police officer suspects, on reasonable grounds, that a personal
7 detail given by the person is false, the officer may require the person
8 to provide proof of the correctness of the detail.
- 9 (3) A person commits an offence if—
- 10 (a) a police officer makes a requirement of the person under
11 subsection (1) or (2); and
- 12 (b) the person fails to comply with the requirement.
- 13 Maximum penalty: 20 penalty units.
- 14 *Note* **Fail** includes refuse (see Legislation Act, dict, pt 1).
- 15 (4) Subsection (3) does not apply if the person has a reasonable excuse.
- 16 (5) In this section:
- 17 **personal details**, of a person, means—
- 18 (a) the person's full name; or
- 19 (b) the person's date of birth; or
- 20 (c) the address of the place where the person is living; or
- 21 (d) the address of the place where the person usually lives.

22 **80 Power to search people under special powers**

- 23 (1) A police officer may stop and search a person, and anything in the
24 person's possession or under the person's control, if the officer
25 suspects, on reasonable grounds, that the person—
- 26 (a) is a target person; or

- 1 (b) is in the company of a target person in suspicious
2 circumstances; or
- 3 (c) is about to enter, is in or on, or has recently left, a target
4 vehicle; or
- 5 (d) is about to enter, is in, or has recently left, a target area.
- 6 (2) Schedule 1 applies to a search conducted under this section.
- 7 (3) A police officer may detain a person for as long as is reasonably
8 necessary to conduct a search under this section.
- 9 (4) A person commits an offence if—
- 10 (a) a police officer makes a requirement of the person under this
11 section (including under schedule 1 as it applies in relation to
12 this section); and
- 13 (b) the person fails to comply with the requirement.
- 14 Maximum penalty: 50 penalty units, imprisonment for 6 months or
15 both.
- 16 *Note* **Fail** includes refuse (see Legislation Act, dict, pt 1).
- 17 (5) Subsection (4) does not apply if the person has a reasonable excuse.

18 **81 Power to search vehicles under special powers**

- 19 (1) A police officer may stop and search a vehicle, and anything in or
20 on the vehicle, if the officer suspects, on reasonable grounds, that—
- 21 (a) the vehicle is a target vehicle; or
- 22 (b) a person who is about to enter, is in or on, or has recently left,
23 the vehicle is a target person; or
- 24 (c) the vehicle is about to enter, is in, or has recently left, a target
25 area.
- 26 (2) A police officer may detain a vehicle for as long as is reasonably
27 necessary to conduct a search under this section.

- 1 (3) A police officer may detain a person who is in or on a vehicle
2 stopped under this section for as long as is reasonably necessary to
3 conduct a search under this section.

4 **82 Power to move vehicles under special powers**

- 5 (1) A police officer may move or cause to be moved a vehicle that is
6 parked or left standing in a target area if the officer considers, on
7 reasonable grounds, that the vehicle is—
8 (a) a danger to other vehicles or people in the target area; or
9 (b) causing or likely to cause traffic congestion in the target area;
10 or
11 (c) hindering the exercise of powers under this division in the
12 target area.
13 (2) A police officer acting under this section may—
14 (a) enter a vehicle, using any reasonably necessary force, for the
15 purpose of moving it; and
16 (b) move the vehicle, or cause it to be moved, to the nearest
17 convenient place.

18 **83 Power to enter and search premises under special**
19 **powers**

- 20 (1) A police officer may enter and search premises in a target area.
21 (2) A police officer may enter and search any premises for a target
22 person or target vehicle if the officer suspects, on reasonable
23 grounds, that the person or vehicle is at, on or in the premises.
24 (3) A police officer may detain a person who is at, on or in premises
25 entered under this section for as long as is reasonably necessary to
26 conduct a search of the premises.

- 1 **84 Power to cordon target area etc under special powers**
- 2 (1) A police officer may cordon off a target area or any part of it.
- 3 (2) If an area is cordoned off—
- 4 (a) the cordon may include any form of physical barrier, including
- 5 a roadblock on any road in or near the target area; and
- 6 (b) reasonable steps must be taken to ensure that the existence of
- 7 the cordon is apparent to people approaching the cordon; and
- 8 (c) a police officer must remain near the cordoned off area.
- 9 (3) A police officer may require a person—
- 10 (a) not to enter; or
- 11 (b) to leave; or
- 12 (c) to remain in;
- 13 a target area or a cordoned off area.
- 14 (4) A police officer may require a person in charge of a vehicle—
- 15 (a) not to take the vehicle into; or
- 16 (b) to remove the vehicle from; or
- 17 (c) not to remove the vehicle from;
- 18 a target area or a cordoned off area.
- 19 (5) A person commits an offence if—
- 20 (a) a police officer makes a requirement of the person under
- 21 subsection (3) or (4); and
- 22 (b) the person fails to comply with the requirement.
- 23 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 24 both.
- 25 *Note* **Fail** includes refuse (see Legislation Act, dict, pt 1).

1 (6) Subsection (5) does not apply if the person has a reasonable excuse.

2 **85 Power to seize things under special powers**

3 (1) A police officer may, in relation to a search under this division,
4 seize—

5 (a) all or part of a thing (including a vehicle) that the officer
6 suspects, on reasonable grounds, may be used, or may have
7 been used, to carry out a terrorist act; or

8 (b) all or part of a thing (including a vehicle) that the officer
9 suspects, on reasonable grounds, may provide evidence of, or
10 relating to, a serious offence (whether or not related to a
11 terrorist act).

12 (2) A power under this section to seize a thing includes—

13 (a) power to remove the thing from the place where it is found;
14 and

15 (b) power to guard the thing at, in or on the place where it is
16 found.

17 **86 Use of force by police under div 3.4**

18 (1) A police officer exercising a power under this division may use the
19 force that is reasonably necessary for exercising the power
20 (including force reasonably necessary to break into premises or a
21 vehicle or anything in or on premises, a vehicle or a person).

22 (2) However, the officer must take all reasonable steps to ensure that
23 any harm to a person or damage to a thing or premises arising from
24 the exercise of a power under this division by the officer is not more
25 than is reasonably necessary for the effective exercise of the power.

1 **Division 3.5 Authorised special powers—**
2 **miscellaneous**

3 **87 Damage etc to be minimised**

- 4 (1) In the exercise, or purported exercise, of a power under this part, a
5 police officer must take all reasonable steps to ensure that the
6 officer, and anyone assisting the officer, causes as little
7 inconvenience, detriment and damage as practicable.
- 8 (2) If a police officer, or a person assisting a police officer, damages
9 anything in the exercise or purported exercise of a power under this
10 part, the officer must give written notice of the particulars of the
11 damage to the person the officer believes, on reasonable grounds, is
12 the owner of the thing.
- 13 (3) If the damage happens at premises entered under this part in the
14 absence of the occupier, the notice may be given by leaving it,
15 secured conspicuously, at the premises.

16 **88 Compensation for exercise of special powers**

- 17 (1) A person may claim compensation from the Territory if the person
18 suffers loss or expense because of the exercise, or purported
19 exercise, of a power under this part by a police officer or a person
20 assisting a police officer.
- 21 (2) Compensation may be claimed and ordered in a proceeding for—
22 (a) compensation brought in a court of competent jurisdiction; or
23 (b) an offence against this Act brought against the person making
24 the claim for compensation.
- 25 (3) A court may order the payment of reasonable compensation for the
26 loss or expense only if it is satisfied it is just to make the order in the
27 circumstances of the particular case.

- 1 (4) A regulation may prescribe matters that may, must or must not be
2 taken into account by the court in considering whether it is just to
3 make the order.

4 **89 Power to give directions to departments etc for special**
5 **powers**

- 6 (1) The chief police officer may, to facilitate the exercise of another
7 power under this part, give the responsible chief executive of a
8 department or territory entity directions in relation to the exercise of
9 functions of the department or entity.

- 10 (2) The responsible chief executive is authorised and required to
11 comply with the direction.

- 12 (3) In this section:

13 *department*—see the *Financial Management Act 1996*, dictionary.

14 *responsible chief executive*, of a department or territory entity—see
15 the *Auditor-General Act 1996*, dictionary.

16 *territory entity*—see the *Auditor-General Act 1996*, dictionary.

17 **90 Return of things seized etc under special powers**

- 18 (1) A police officer who seizes a thing in exercising a power under this
19 part must return the thing to the owner or person who had lawful
20 possession of it before it was seized if the officer is satisfied that—

21 (a) its retention as evidence is not required; and

22 (b) it is lawful for the person to have possession of the thing.

- 23 (2) This section is subject to any order made under section 91 (Disposal
24 of seized property on application to court).

- 1 **91 Disposal of seized property on application to court**
- 2 (1) On application by an interested person, a court may, order that
- 3 property seized by a police officer exercising a power under this
- 4 part—
- 5 (a) be delivered to the person who appears to be lawfully entitled
- 6 to the property; or
- 7 (b) if that person cannot be ascertained—be dealt with as the court
- 8 considers appropriate.
- 9 (2) On application under subsection (1), the court may do any 1 or more
- 10 of the following:
- 11 (a) adjust rights to property as between people who appear to be
- 12 lawfully entitled to the same property or the same or different
- 13 parts of property;
- 14 (b) make a finding or order about the ownership and delivery of
- 15 property;
- 16 (c) make a finding or order about the liability for and payment of
- 17 expenses incurred in keeping property in police custody;
- 18 (d) if the person who is lawfully entitled to the property cannot be
- 19 ascertained—order that the property be forfeited to the
- 20 Territory;
- 21 (e) make incidental or ancillary orders.
- 22 **92 Records of exercise of authorised special powers**
- 23 (1) The chief police officer must ensure that records are made about the
- 24 exercise of powers under this part.
- 25 (2) A record made in relation to the exercise of a power under this part
- 26 must be kept for at least 7 years after the day the power is exercised.

- 1 (3) A regulation may make provision in relation to the keeping of
2 records under this part.

3 **Examples of provisions that may be prescribed by regulation**

- 4 1 the scope, nature and content of records
5 2 who must make records and when they must be made
6 3 the storage of, or access to, records

7 *Note* An example is part of the Act, is not exhaustive and may extend, but
8 does not limit, the meaning of the provision in which it appears (see
9 Legislation Act, s 126 and s 132).

- 10 (4) In this section:

11 *this part* includes schedule 1 (Conduct of personal searches) as it
12 applies in relation to this part.

13 **93 Human rights training**

14 The chief police officer must ensure that police officers who
15 exercise powers under this part are adequately trained about their
16 obligations under human rights legislation applying in the ACT.

17 **94 Relationship with other territory laws**

- 18 (1) This part is additional to any other territory law.
19 (2) In particular, this part does not limit the powers that a police officer
20 has under any other territory law.

21 **95 Report to Minister about exercise of special powers etc**

- 22 (1) As soon as possible after a special powers authorisation ends, the
23 chief police officer must give the Minister a written report about the
24 authorisation and the exercise of powers under it.
25 (2) The report must—
26 (a) include a copy of the special powers authorisation or set out its
27 terms; and
28 (b) state the period during which it operated; and

- 1 (c) include a summary of the grounds that were relied on in
2 applying for the authorisation; and
- 3 (d) describe generally the powers that were exercised under the
4 authorisation and how they were exercised; and
- 5 (e) state the result of the exercise of the powers; and
- 6 (f) describe generally any inconvenience to, or adverse impact on,
7 the community, sections of the community, businesses and
8 individuals (other than individuals who were targets of the
9 authorisation) arising out of the exercise of the powers.
- 10 (3) The Minister must present a copy of the report to the Legislative
11 Assembly not later than 6 sitting days after the day the Minister
12 receives the report.
- 13 (4) Before the Minister presents a copy of the report to the Legislative
14 Assembly, the report may be edited to exclude material that, in the
15 Minister's opinion, may be subject to privilege or public interest
16 immunity.
- 17 (5) If the Minister edits the report under subsection (4), the report must
18 state that fact.

1 Part 4 Miscellaneous

2 96 Evidence obtained from torture inadmissible

- 3 (1) In a proceeding under this Act, evidence obtained, directly or
4 indirectly, from torture is inadmissible.
- 5 (2) To remove any doubt, this section applies wherever the torture was
6 carried out, whether in or outside the ACT (including outside
7 Australia).
- 8 (3) In this Act:

9 *torture*—see the *Convention Against Torture and Other Cruel,*
10 *Inhuman or Degrading Treatment or Punishment*, article 1,
11 paragraph 1.

12 *Note* The text of the Convention is set out in the *Crimes (Torture) Act 1988*
13 (Cwlth), schedule.

14 97 Delegation by chief police officer

- 15 (1) The chief police officer may delegate a function under this Act to a
16 senior police officer.

17 *Note* For the making of delegations and the exercise of delegated functions,
18 see the Legislation Act, pt 19.4.

- 19 (2) However, the chief police officer must not delegate the chief police
20 officer's functions under any of the following provisions:
- 21 (a) section 16 (2) (Applying for preventative detention order);
- 22 (b) section 36 (1) and (5) (Nominated senior police officer);
- 23 (c) section 43 (Detention arrangements);
- 24 (d) section 64 (Applying for preventative authorisation);
- 25 (e) section 71 (Applying for investigative authorisation);

1 (f) section 89 (Power to give directions to departments etc for
2 special powers);

3 (g) section 95 (Report to Minister about exercise of special powers
4 etc).

5 **98 Annual report on use and effectiveness of Act**

6 (1) Each report prepared by the chief executive under the *Annual*
7 *Reports (Government Agencies) Act 2004* for a financial year must
8 include a report about the use and effectiveness of this Act during
9 the year.

10 (2) Without limiting subsection (1), the report must include the
11 following information:

12 (a) the number of preventative detention orders (including interim
13 orders) made during the year;

14 (b) for each preventative detention order (including each interim
15 order) made during the year—whether a person was taken into
16 custody and detained, or detained, under the order and, if so,
17 the period for which the person was detained;

18 (c) particulars of any complaints made to the human rights
19 commissioner, the ombudsman or the public advocate during
20 the year in relation to a person's detention under a preventative
21 detention order;

22 (d) if, during the year, the human rights commissioner has reported
23 to the Attorney-General the results of a review under the
24 *Human Rights Act 2004*, section 41 (a) of the effect of this Act
25 (or any part of it) on human rights—a summary of the report;

26 (e) the number of prohibited contact orders made during the year.

27 (3) The chief police officer must give the chief executive the
28 information and other assistance the chief executive needs to
29 comply with subsection (1).

-
- 1 **99** **Transitional provision—references to correctional centre**
- 2 (1) If this section commences before the *Crimes (Sentence*
3 *Administration) Act 2005* commences, a reference in this Act to a
4 correctional centre is a reference to a remand centre or a detention
5 centre under the *Periodic Detention Act 1995*.
- 6 (2) This section expires on the later of the following:
- 7 (a) the commencement of this section;
- 8 (b) the commencement of the *Crimes (Sentence Administration)*
9 *Act 2005*.
- 10 **100** **Review of Act after 3 years of operation**
- 11 The Minister must—
- 12 (a) review the operation and effectiveness of this Act after it has
13 been in operation for 3 years; and
- 14 (b) present a report of the review to the Legislative Assembly
15 before the end of the Act’s 4th year of operation.
- 16 **101** **Expiry of Act etc**
- 17 (1) This Act expires 5 years after the day it commences.
- 18 (2) Any order in force under this Act immediately before its expiry
19 ceases to have effect on the expiry.
- 20 (3) An order may not be made under this Act after its expiry.
- 21 (4) Subsections (2) and (3) have effect despite the Legislation Act,
22 section 84 (Saving of operation of repealed and amended laws).
- 23 **102** **Regulation-making power**
- 24 The Executive may make regulations for this Act.
- 25 *Note* A regulation must be notified, and presented to the Legislative
26 Assembly, under the Legislation Act.

1 **Schedule 1 Conduct of personal searches**

2 (see s 41 and s 80)

3
4 **1.1 Application—sch 1**

5 This schedule applies to a search of a person conducted, or
6 authorised to be conducted, by a police officer under section 41
7 (Search of person taken into custody under preventative detention
8 order) or section 80 (Power to search people under special powers).

9 **1.2 Definitions—sch 1**

10 (1) In this Act:

11 *frisk search*, of a person, means—

- 12 (a) a search of the person conducted by quickly running the hands
13 over the person's outer clothing or by passing an electronic
14 metal detection device over or close to the person's outer
15 clothing; and
- 16 (b) an examination of anything worn or carried by the person that
17 is conveniently and voluntarily removed by the person,
18 including an examination conducted by passing an electronic
19 metal detection device over or close to the thing.

20 *ordinary search*, of a person, means a search of the person or of
21 anything in the person's possession, and may include—

- 22 (a) requiring the person to remove only the person's overcoat,
23 coat, jacket or a similar article of clothing and any footwear,
24 gloves or headwear; and
- 25 (b) an examination of them.

1 *strip search*, of a person, means a search of the person or of
2 anything in the person's possession, and may include—

- 3 (a) requiring the person to remove the person's clothes; and
4 (b) an examination of the person's body (but not of the person's
5 body cavities) and of the person's clothes.

6 (2) In this section:

7 *electronic metal detection device* means an electronic device that
8 can detect the presence of metallic objects.

9 **1.3 Frisk searches and ordinary searches**

10 (1) A police officer who is authorised to search a person may conduct a
11 frisk search or an ordinary search of the person for any purpose for
12 which the search may be conducted.

13 (2) In conducting a frisk search, a police officer may, if the officer has
14 asked the person to remove an overcoat, coat, jacket or similar
15 article of clothing, treat the person's outer clothing as being the
16 person's outer clothing after that article of clothing has been
17 removed.

18 **1.4 Strip searches**

19 (1) A police officer who is authorised to search a person may conduct a
20 strip search of the person if the officer suspects, on reasonable
21 grounds, that—

- 22 (a) the person is a target person; and
23 (b) it is necessary to conduct a strip search of the person to find
24 and seize something; and
25 (c) the thing can only be found and seized by conducting a strip
26 search of the person.

27 (2) If a police officer conducts a strip search, the officer must record the
28 reasons for conducting the search.

- 1 **1.5 Preservation of privacy and dignity during search etc**
- 2 (1) A police officer who conducts a search of a person must—
- 3 (a) comply with this section as far as practicable; and
- 4 (b) if not practicable to comply with this section in any respect—
- 5 record the noncompliance and the reasons for it.
- 6 (2) The police officer must tell the person—
- 7 (a) whether the person will be required to remove clothing during
- 8 the search; and
- 9 (b) if so, why it is necessary to remove the clothing.
- 10 (3) If the person asks for the reasons for the search being conducted in a
- 11 particular way, the police officer must tell the person the reasons.
- 12 (4) The police officer must ask for the person's cooperation.
- 13 (5) The police officer must conduct the search—
- 14 (a) in a way that provides reasonable privacy for the person; and
- 15 (b) as quickly as is practicable.
- 16 (6) The police officer must conduct the least invasive kind of search
- 17 practicable.
- 18 (7) The police officer must not search the genital area of the person
- 19 searched or, for a female, the person's breasts unless the officer
- 20 suspects, on reasonable grounds, that it is necessary to do so for the
- 21 purposes of the search.
- 22 (8) If the person searched is of the opposite sex to the police officer, the
- 23 officer may conduct the search only if the officer believes, on
- 24 reasonable grounds, that the seriousness and urgency of the
- 25 circumstances require the officer to conduct the search.
- 26 (9) If the police officer acts under subsection (8), the officer must
- 27 record the reasons for acting under that subsection.

-
- 1 (10) Subject to subsection (8), a search must be conducted by—
2 (a) a police officer of the same sex as the person searched; or
3 (b) another person of the same sex as the person searched, under
4 the direction of a police officer.
- 5 (11) A search of the person must not be carried out while the person is
6 being questioned.
- 7 (12) If questioning has not been completed before the search is carried
8 out, it must be suspended while the search is carried out.
- 9 (13) If clothing is seized because of the search, the police officer must
10 ensure the person searched is left with or given reasonably
11 appropriate clothing.
- 12 (14) In this section:
13 *questioning*, of a person, means questioning the person or carrying
14 out an investigation (in which the person participates).

15 **1.6 Rules for conduct of strip searches**

- 16 (1) A police officer who conducts a strip search of a person must—
17 (a) comply with this section as far as practicable; and
18 (b) if not practicable to comply with this section in any respect—
19 record the noncompliance and the reasons for it.
- 20 (2) The search must be conducted in a private area or an area that
21 provides reasonable privacy for the person searched.
- 22 (3) Subject to subsection (9), the search must not be conducted in the
23 presence or view of a person who is of the opposite sex to the
24 person searched.
- 25 (4) Except as provided by this section, the search must not be conducted
26 in the presence or view of a person whose presence is not necessary
27 for the search or the safety of everyone present.

Schedule 1 Conduct of personal searches

Section 1.6

- 1 (5) If the police officer suspects, or has grounds to suspect, that the
2 person searched is a child or a person with impaired
3 decision-making ability, the search must be conducted in the
4 presence of a parent or guardian of the person.
- 5 (6) However, if the presence of a parent or guardian is not acceptable to
6 the person searched, the search must be conducted in the presence of
7 someone else who—
- 8 (a) is not a police officer; and
9 (b) can support and represent the interests of the person; and
10 (c) is acceptable to the person.
- 11 (7) The search must not involve—
- 12 (a) the removal of more clothes than is reasonably necessary to
13 conduct the search; or
14 (b) the removal of more clothes at any time than is reasonably
15 necessary to conduct the search; or
16 (c) without limiting paragraph (b), both the upper and lower parts
17 of the person’s body being uncovered at any time.
- 18 (8) The search must not involve more visual inspection of the person’s
19 body than is reasonably necessary to conduct the search and, in
20 particular, any visual inspection of the person’s genital area, anal
21 area, buttocks and, for a female, breasts must be kept to a minimum.
- 22 (9) The search may be conducted in the presence of a doctor or nurse,
23 including a doctor or nurse of the opposite sex to the person
24 searched, if the person has no objection to the doctor or nurse being
25 present.
- 26 (10) The person searched must be allowed to dress in private as soon as
27 the search is finished.
- 28 (11) This section is additional to the other requirements of this Act about
29 searches.

1.7**Search of transgender or intersex person**

- 1 (1) If a transgender or intersex person is searched, the person may
2 require that the search be conducted by either a male or a female.
3
- 4 (2) If the transgender or intersex person requires that the search be
5 conducted by a male, the person is taken, for this schedule, to be
6 male.
- 7 (3) If the transgender or intersex person requires that the search be
8 conducted by a female, the person is taken, for this schedule, to be
9 female.

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- chief police officer
- child
- exercise
- function
- human rights commissioner
- in relation to
- intersex person (see s 169B)
- legal aid commission
- public advocate
- transgender person (see s 169A (1) and (2)).

Commonwealth Criminal Code means the *Criminal Code Act 1995* (Cwlth), schedule.

corresponding preventative detention law—see section 9.

corresponding preventative detention order—see section 9.

death—see the Criminal Code, dictionary.

engage in conduct means—

(a) do an act; or

(b) omit to do an act.

frisk search—see schedule 1, section 1.2.

harm, to a person—see the Criminal Code, dictionary.

identification material, for a person—see section 9.

- 1 ***impaired decision-making ability***—see the *Guardianship and*
2 *Management of Property Act 1991*, section 6.
- 3 ***interim preventative detention order*** (or ***interim order***)—see
4 section 9.
- 5 ***investigative authorisation***—see section 63.
- 6 ***nominated senior police officer***, in relation to a preventative
7 detention order made for a person—see section 36.
- 8 ***ordinary search***—see schedule 1, section 1.2.
- 9 ***part 2 application***—see section 9.
- 10 ***physical harm***, to a person, includes unconsciousness, pain,
11 disfigurement, infection with a disease and any physical contact
12 with the person that the person might reasonably object to in the
13 circumstances (whether or not the person was aware of it at the
14 time).
- 15 ***possession***, of a thing, includes—
- 16 (a) having control over the disposition of the thing; and
- 17 (b) having joint possession of the thing.
- 18 ***premises*** includes—
- 19 (a) land; and
- 20 (b) a structure, building or vehicle; and
- 21 (c) any part of a structure, building or vehicle; and
- 22 (d) any place whether built on or not.
- 23 ***preventative authorisation***—see section 63.
- 24 ***preventative detention order***—see section 9.
- 25 ***prohibited contact order***—see section 9.
- 26 ***senior police officer*** means the chief police officer or another police
27 officer of or above the rank of superintendent.

- 1 *serious harm* —see the Criminal Code, dictionary.
- 2 *serious offence* means an offence punishable by imprisonment for
- 3 life or for a term of 5 years or longer.
- 4 *special powers authorisation*—see section 63.
- 5 *strip search*—see schedule 1, section 1.2.
- 6 *target area*, in relation to a special powers authorisation—see
- 7 section 63.
- 8 *target person*, in relation to a special powers authorisation—see
- 9 section 63.
- 10 *target vehicle*, in relation to a special powers authorisation—see
- 11 section 63.
- 12 *terrorist act*—see section 6.
- 13 *torture*—see section 96.
- 14 *vehicle*—see section 63.

Endnotes

- 1 Presentation speech**
Presentation speech made in the Legislative Assembly on 2006.
- 2 Notification**
Notified under the Legislation Act on 2006.
- 3 Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
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