

Western Australia

**Terrorism (Preventative Detention)
Act 2006**

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Terrorism (Preventative Detention) Act 2006

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Western Australia

Terrorism (Preventative Detention) Act 2006

An Act to authorise temporary detention in order to prevent the occurrence of a terrorist act or preserve evidence of, or relating to, a recent terrorist act; and for other purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Terrorism (Preventative Detention) Act 2006*¹.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. Object

The object of this Act is to allow a person to be taken into custody and detained for a short period of time in order to —

- (a) prevent a terrorist act occurring in the near future; or
- (b) preserve evidence of, or relating to, a recent terrorist act.

4. Terms used in this Act

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

allegation of misconduct has the meaning given to that term in the *Corruption and Crime Commission Act 2003* section 4;

ASIO Act means the *Australian Security Intelligence Organisation Act 1979* of the Commonwealth;

Commissioner means the Commissioner of Police appointed under the *Police Act 1892* or a person acting in that office;

corresponding law means —

- (a) Division 105 of the Criminal Code of the Commonwealth and the regulations and other instruments made under that Division; or
- (b) a law of another State or a Territory that provides for preventative detention of persons in relation to terrorist acts (including any law of another State or a Territory that is declared by the regulations to be a corresponding law);

Corruption and Crime Commission means the Corruption and Crime Commission under the *Corruption and Crime Commission Act 2003*;

detention centre has the meaning given to that term in the *Young Offenders Act 1994* section 3;

evidence of, or relating to, a terrorist act includes anything that —

- (a) was or may have been used;
- (b) is or may be being used; or
- (c) is about to be or may be used,

to do a terrorist act or in preparing to do a terrorist act;

identification material, in relation to a person, means —

- (a) an identifying particular of the person; or
- (b) a recording of the person's voice or a sample of the person's handwriting;

identifying particular has the meaning given to that term in the *Criminal Investigation (Identifying People) Act 2002* section 17;

Inspector of Custodial Services means the Inspector of Custodial Services under the *Inspector of Custodial Services Act 2003*;

institution means a prison or a detention centre;

issuing authority means an issuing authority appointed under section 7;

judge means a judge of the Supreme Court;

lawyer means an Australian lawyer within the meaning of that term in the *Legal Profession Act 2008* section 3;

lock-up has the same meaning as that term has in the *Prisons Act 1981*;

national security has the meaning given to that term in section 8 of the *National Security Information (Criminal and Civil Proceedings) Act 2004* of the Commonwealth;

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Parliamentary Commissioner means the Parliamentary Commissioner for Administrative Investigations under the *Parliamentary Commissioner Act 1971*;

permitted detention period has the meaning given to that term in section 13(2)(b)(ii);

place means any land, building or structure, or a part of any land, building or structure;

preventative detention order means an order made under section 13;

prison has the meaning given to that term in the *Prisons Act 1981* section 3(1);

prohibited contact order means an order made under section 17 or 18;

reasonably suspects has the meaning given to that term by section 5;

seizable item means anything that —

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

senior police officer means a police officer of or above the rank of Superintendent;

terrorist act has the meaning given to that term in section 6.

- (2) A reference in section 13(3)(a) or (5) or 15(4) or (6) to a number of days is a reference to the number of hours in that number of days.
- (3) Notes in this Act are provided to assist understanding and do not form part of this Act.

[Section 4 amended by No. 21 of 2008 s. 710.]

5. Meaning of “reasonably suspects”

For the purposes of this Act, a person *reasonably suspects* something at a relevant time if the person personally has grounds at the time for suspecting the thing and those grounds (even if they are subsequently found to be false or non-existent), when judged objectively, are reasonable.

6. Meaning of “terrorist act”

- (1) For the purposes of this Act, an action or threat of action is a *terrorist act* if —
- (a) the action falls within subsection (2) and does not fall within subsection (3);
 - (b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and
 - (c) the action is done or the threat is made with the intention of —
 - (i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or
 - (ii) intimidating the public, or a section of the public.
- (2) Action falls within this subsection if it —
- (a) causes a person’s death;
 - (b) causes serious physical harm to a person;
 - (c) endangers a person’s life, other than the life of the person doing the act;
 - (d) creates a serious risk to the health or safety of the public;
 - (e) causes serious damage to property; or
 - (f) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to —
 - (i) an information system;

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- (ii) a telecommunications system;
 - (iii) a financial system;
 - (iv) a system used for the delivery of essential government services;
 - (v) a system used for, or by, an essential public utility;
 - (vi) a system used for, or by, a transport system.
- (3) Action falls within this subsection if it —
- (a) is advocacy, protest, dissent or industrial action; and
 - (b) is not intended —
 - (i) to cause a person's death;
 - (ii) to cause serious physical harm to a person;
 - (iii) to endanger a person's life, other than the life of the person doing the act;
 - (iv) to create a serious risk to the health or safety of the public.
- (4) In this section —
- (a) a reference to any person or property is a reference to any person or property wherever situated, within or outside the State (including within or outside Australia); and
 - (b) a reference to the public includes a reference to the public of another State or Territory or of a country other than Australia.

Note. This section is consistent with the definition of "terrorist act" used in Part 5.3 of the Criminal Code of the Commonwealth.

7. Issuing authorities

- (1) The Governor may, in writing, appoint a judge or retired judge as an issuing authority for preventative detention orders.

- (2) A judge or retired judge cannot be appointed as an issuing authority unless —
 - (a) the judge or retired judge has consented in writing to the appointment; and
 - (b) the consent is in force.
- (3) The period of appointment and, in the case of a retired judge, the terms and conditions of appointment of an issuing authority are as set out in the instrument of appointment.

8. Police officer on whom functions as to preventative detention are imposed

If —

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

the function is imposed at that time on whichever of those police officers is highest in order of rank and seniority.

Part 2 — Preventative detention orders

9. Basis for applying for and making preventative detention orders

- (1) For the purposes of this Part a person is a *person to whom section 9 applies* if —
- (a) the person —
 - (i) is going to engage in a terrorist act;
 - (ii) possesses a thing that is connected with the preparation for, or the engagement of a person in, a terrorist act; or
 - (iii) has done an act in preparation for, or planning, a terrorist act;
- and
- (b) making a preventative detention order in relation to the person would substantially assist in preventing a terrorist act occurring.
- (2) A terrorist act referred to in subsection (1) must be one —
- (a) that is imminent; and
 - (b) that is expected to occur, in any event, at some time in the next 14 days.
- (3) For the purposes of this Part a person is also a *person to whom section 9 applies* if —
- (a) a terrorist act has occurred within the last 28 days; and
 - (b) it is necessary to detain the person under a preventative detention order so as to preserve evidence of, or relating to, the terrorist act.

10. Authorising police officers to apply for a preventative detention order

- (1) The Commissioner may authorise a police officer to apply for a preventative detention order in relation to a person.

- (2) The Commissioner must not authorise a police officer to apply for a preventative detention order in relation to a person unless the Commissioner is satisfied that there are reasonable grounds to believe that —
 - (a) the person is a person to whom section 9 applies; and
 - (b) detaining the person for the period for which the person is to be sought to be detained under the order is reasonably necessary for the purpose of —
 - (i) substantially assisting in preventing a terrorist act occurring; or
 - (ii) preserving any evidence referred to in section 9(3)(b).
- (3) An authorisation by the Commissioner must be in writing but, if it is not practicable to issue it in writing because of an urgent need to issue it —
 - (a) it may be issued orally; and
 - (b) if it is issued orally, it must be put in writing as soon as practicable after it is issued.

11. Application for a preventative detention order

- (1) Only a police officer authorised under section 10 may apply for a preventative detention order.
- (2) An application for a preventative detention order must be made to an issuing authority.
- (3) An application for a preventative detention order must —
 - (a) set out the facts and other grounds on which the applicant considers that the preventative detention order should be made;
 - (b) specify the period for which the applicant is seeking to have the person detained under the order and set out the facts and other grounds on which the applicant considers that the person should be detained for that period;

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- (c) set out the information (if any) that the applicant has about the person's age or capacity to manage his or her affairs; and
- (d) set out the following —
 - (i) the outcomes and particulars of all previous applications for preventative detention orders in relation to the person including information about any periods for which the person has been detained under another preventative detention order;
 - (ii) the information (if any) that the applicant has about the outcomes and particulars of applications under a corresponding law for the person's detention including any information about periods for which the person has been detained under an order for the person's detention made under a corresponding law;
 - (iii) the information (if any) that the applicant has about any control order (including any interim control order) made in relation to the person under Division 104 of the Criminal Code of the Commonwealth.

12. Procedure for applying for preventative detention order

- (1) In this section —

remote communication means any way of communicating at a distance including by telephone, fax, email and radio.
- (2) A reference in this section to making an application includes a reference to giving information in support of the application.
- (3) This section applies to and in respect of an application for a preventative detention order.
- (4) The application must be made in person before an issuing authority unless —
 - (a) a preventative detention order is needed urgently; and

- (b) the applicant reasonably suspects that an issuing authority is not available within a reasonable distance of the applicant,

in which case —

- (c) it may be made to an issuing authority by remote communication; and
- (d) the issuing authority must not make a preventative detention order unless satisfied about the matters in paragraphs (a) and (b).

- (5) The application must be made in writing unless —

- (a) the application is made by remote communication; and
- (b) it is not practicable to send the issuing authority written material,

in which case —

- (c) it may be made orally; and
- (d) the issuing authority must make a written record of the application and any information given in support of it.

- (6) The application must be made on oath unless —

- (a) the application is made by remote communication; and
- (b) it is not practicable for the issuing authority to administer an oath to the applicant or the issuing authority is not a judge,

in which case —

- (c) it may be made in an unsworn form; and
- (d) if the issuing authority makes a preventative detention order, the applicant must as soon as practicable send the issuing authority an affidavit verifying the application and any information given in support of it.

- (7) If on an application made by remote communication an issuing authority makes a preventative detention order, the issuing

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authority must, if practicable, send a copy of the original order to the applicant by remote communication, but otherwise —

- (a) the issuing authority must give the applicant by remote communication any information that must be set out in the order;
 - (b) the applicant must complete a form of a preventative detention order with the information received and give the issuing authority a copy of the form as soon as practicable after doing so; and
 - (c) the issuing authority must attach the copy of the form to the original order and any affidavit received from the applicant and make them available for collection by the applicant.
- (8) The copy of the original order sent, or the form of the order completed, as the case may be, under subsection (7) has the same force and effect as the original order.
- (9) If, when an application for a preventative detention order is made, the person in relation to whom an order is being sought is in detention under —
- (a) another preventative detention order; or
 - (b) an order for the person's detention made under a corresponding law,

notice of the application must be given to the person.

13. Preventative detention orders

- (1) On an application made under section 11 or a direction under section 22(8)(c), an issuing authority may make a preventative detention order in relation to a person if the issuing authority is satisfied, on reasonable grounds, that —
- (a) the person is a person to whom section 9 applies; and

- (b) detaining the person for the period for which the person is to be detained under the order is reasonably necessary for the purpose of —
 - (i) substantially assisting in preventing a terrorist act occurring; or
 - (ii) preserving any evidence referred to in section 9(3)(b).
- (2) A preventative detention order is an order in writing that the person specified in the order —
 - (a) may, if not then in custody, be taken into custody; and
 - (b) may be kept in detention during the period that —
 - (i) starts when the person is first taken into custody, or is first in detention, under the order; and
 - (ii) ends a specified period of time (the *permitted detention period*) after the person is first taken into custody, or is first in detention, under the order.
- (3) The permitted detention period must not exceed —
 - (a) 14 days; or
 - (b) if a shorter period is necessary in order to comply with section 15(4) or (6), that shorter period.
- (4) A preventative detention order must specify —
 - (a) the name of the person in relation to whom it is made;
 - (b) the permitted detention period;
 - (c) the date on which, and the time at which, the order is made; and
 - (d) if applicable, the day and time after which the person may not be taken into custody under the order.
- (5) The day and time specified under subsection (4)(d) must be fixed so that the time is not more than 7 days after the order is made.

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- (6) If the person in relation to whom the order is made —
- (a) is under 18 years of age; or
 - (b) is incapable of managing his or her affairs,

the order may provide that the aggregate period each day for which the person is entitled to have contact with another person or other persons under section 45(2) is the period of more than 2 hours that is specified in the order.

14. Duration of preventative detention orders

- (1) A preventative detention order in relation to a person comes into force when it is made.

Note: The order comes into force when it is made and authorises the person to be taken into custody, if necessary (see section 13(2)(a)). The period for which the person may be detained under the order only starts when the person is first taken into custody, or is first in detention, under the order (see section 13(2)(b)).

- (2) A preventative detention order under which the person concerned is required to be taken into custody ceases to have effect on the day and at the time specified in the order if the person has not been taken into custody under the order by then.
- (3) If a preventative detention order does not cease to have effect under subsection (2), it ceases to have effect as soon as one of the following occurs —
- (a) the period during which the person concerned may be kept in detention under the order ends;
 - (b) the order is revoked under section 20(2) or as directed under section 22(8);
 - (c) the order is quashed, or declared to be void, under section 22(8); or
 - (d) the order expires under section 60(2).

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

15. Multiple preventative detention orders

- (1) In this section —
- preservation order*** means —
- (a) a preventative detention order; or
 - (b) an order for detention under a corresponding law, made on the basis of preserving evidence of, or relating to, a terrorist act;
- prevention order*** means —
- (a) a preventative detention order; or
 - (b) an order for detention under a corresponding law, made on the basis of preventing a terrorist act from occurring.
- (2) More than one preventative detention order can be made authorising the detention of the same person in relation to the same terrorist act.
- (3) A preventative detention order can be made even if the person concerned is under detention (or temporarily released from detention) under a prevention order or preservation order in relation to the same terrorist act or a different terrorist act, and in that case the preventative detention order can be made so as to take effect on the expiration of the other order.
- (4) On an application for a preventative detention order to be made on the basis of preventing a terrorist act from occurring, the permitted detention period under the order cannot exceed 14 days when aggregated with any period or periods of actual detention of the person concerned under another prevention order, or other prevention orders, in relation to that terrorist act that was or were based on —
- (a) the same occurrence time information as; or
 - (b) occurrence time information consistent with,
- the occurrence time information put to the issuing authority in support of the application.

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- (5) In subsection (4) —
occurrence time information means information as to when the terrorist act is expected to occur.
- (6) On an application for a preventative detention order to be made on the basis of preserving evidence of, or relating to, a terrorist act, the permitted detention period under the order cannot exceed 14 days when aggregated with any period or periods of actual detention of the person concerned under another preservation order, or other preservation orders, in relation to that terrorist act.

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

- (1) A preventative detention order cannot be applied for, or made, in relation to a person who is under 16 years of age.
- (2) If —
- (a) a person is in detention under a preventative detention order (or something that purports to be a preventative detention order); and
 - (b) the police officer who is detaining the person is satisfied on reasonable grounds that the person is under 16 years of age,

the police officer must release the person, as soon as practicable, from detention under the order.

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

- (1) A police officer who applies to an issuing authority for a preventative detention order in relation to a person (the *subject*) may also apply to the issuing authority for a prohibited contact order in relation to the subject's detention under the preventative detention order.

- (2) An application cannot be made under subsection (1) unless the Commissioner's authorisation under section 10 specifies that the police officer may make such an application.
- (3) The application must set out —
 - (a) the terms of the order sought; and
 - (b) the facts and other grounds on which the police officer considers that the order should be made.
- (4) If the issuing authority —
 - (a) makes the preventative detention order; and
 - (b) is satisfied, on reasonable grounds, that making the prohibited contact order will assist in achieving the purpose of the preventative detention order,

the issuing authority may make a prohibited contact order that the subject is not, while in detention under the preventative detention order, to contact a person specified in the prohibited contact order.

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

- (1) If a preventative detention order is in force in relation to a person (the *subject*), the Commissioner may authorise a police officer to apply for a prohibited contact order in relation to the subject's detention under the preventative detention order.
- (2) An authorisation by the Commissioner must be in writing but, if it is not practicable to issue it in writing because of an urgent need to issue it —
 - (a) it may be issued orally; and
 - (b) if it is issued orally, it must be put in writing as soon as practicable after it is issued.
- (3) Only a police officer authorised under subsection (1) may apply for a prohibited contact order under this section.

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- (4) Section 12(1) to (6) apply in relation to an application for a prohibited contact order under this section as if references in those subsections to a preventative detention order were references to a prohibited contact order.
- (5) The application must be made to an issuing authority and must set out —
 - (a) the terms of the order sought; and
 - (b) the facts and other grounds on which the police officer considers that the order should be made.
- (6) If the issuing authority is satisfied, on reasonable grounds, that making the prohibited contact order will assist in achieving the purpose for which the preventative detention order was made, the issuing authority may make a prohibited contact order that the subject is not, while in detention under the preventative detention order, to contact a person specified in the prohibited contact order.

19. Form and notification of prohibited contact order

- (1) A prohibited contact order must be in writing.
- (2) Section 12(7) and (8) apply in relation to a prohibited contact order as if references in those subsections to a preventative detention order were references to a prohibited contact order.

20. Revocation of preventative detention order or prohibited contact order

- (1) If —
 - (a) a preventative detention order is in force in relation to a person; and
 - (b) the police officer who is detaining the person under the order is satisfied that the grounds on which the order was made have ceased to exist,

the police officer must apply to an issuing authority for the revocation of the order.

- (2) If —
- (a) a preventative detention order is in force in relation to a person; and
 - (b) an issuing authority is satisfied, on application by a police officer, that the grounds on which the order was made have ceased to exist,

the issuing authority must revoke the order and the police officer must release the person from detention.

- (3) If —
- (a) a prohibited contact order is in force in relation to a person's detention under a preventative detention order; and
 - (b) the police officer who is detaining the person under the preventative detention order is satisfied that the grounds on which the prohibited contact order was made have ceased to exist,

the police officer must apply to an issuing authority for the revocation of the prohibited contact order.

- (4) If —
- (a) a prohibited contact order is in force in relation to a person's detention under a preventative detention order; and
 - (b) an issuing authority is satisfied, on application by a police officer, that the grounds on which the prohibited contact order was made have ceased to exist,

the issuing authority must revoke the prohibited contact order.

21. Status of person making preventative detention order

- (1) An issuing authority who —
- (a) makes or revokes a preventative detention order; or

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- (b) makes or revokes a prohibited contact order in relation to a person's detention under a preventative detention order,

has, in the performance of duties under this Act, the same protection and immunity as a judge.

- (2) A function of —

- (a) making or revoking a preventative detention order; or
- (b) making or revoking a prohibited contact order in relation to a person's detention under a preventative detention order,

that is conferred on a judge is conferred on the judge in a personal capacity and not as a court or a member of a court.

Part 3 — Review of preventative detention orders

22. Review by Supreme Court

(1) In this section —

remote communication means communicating by way of a videolink or other device by which, at the same time, the judge or judges constituting the court can see and hear a person who is at another place and who would otherwise be attending the court in person, and vice versa;

review proceedings means proceedings under subsection (2) for the review of a preventative detention order.

(2) As soon as practicable after a person (the *subject*) is first taken into custody, or is first in detention, under a preventative detention order the police officer detaining the subject must bring the subject before the General Division of the Supreme Court for a review of the order.

(3) If the preventative detention order was made by a judge, the court in the review proceedings is not to be constituted by or so as to include that judge.

(4) The Supreme Court may —

- (a) relieve the police officer from the duty under subsection (2) to bring the subject before the court; and
- (b) conduct the review proceedings by remote communication,

if satisfied that it is appropriate in the circumstances to do so.

(5) The following persons may adduce evidence (including by calling witnesses or producing material), or make submissions, to the Supreme Court in the review proceedings —

- (a) a police officer;
- (b) a lawyer representing a police officer;

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- (c) the subject;
 - (d) a lawyer acting for the subject.
- (6) If the subject —
- (a) is under 18 years of age; or
 - (b) is incapable of managing his or her affairs,
- a person with whom the subject can have contact under section 45(2) may make submissions to the Supreme Court in the review proceedings.
- (7) Subsections (3), (5) and (6) do not otherwise limit the power of the Supreme Court to control the review proceedings.
- (8) In the review proceedings the Supreme Court may exercise any of the following powers —
- (a) it may confirm the order;
 - (b) it may quash the order and release the subject from detention;
 - (c) it may remit the matter to an issuing authority with a direction to revoke the order and replace it with a new preventative detention order such that the period for which the subject may be in detention is reduced;
 - (d) it may give directions about the making of further preventative detention orders in relation to the subject;
 - (e) if the subject has been released from detention, it may declare the order to have been void.

23. Powers may be exercised while review is in progress

Subject to any direction made by the Supreme Court in proceedings under section 22(2) for the review of a preventative detention order —

- (a) an issuing authority may, during the course of the proceedings, exercise powers under this Act —
 - (i) to revoke the order; or

- (ii) to make a further preventative detention order in relation to the person concerned;
- and
- (b) the police officer detaining the person concerned may exercise powers under this Act to release the person concerned from detention during the course of the proceedings.

Part 4 — Carrying out preventative detention orders

24. Power to detain person under preventative detention order

- (1) While a preventative detention order is in force in relation to a person —
 - (a) any police officer may take the person into custody; and
 - (b) any police officer may keep the person in detention.
- (2) When a preventative detention order is made, the Commissioner must nominate a senior police officer (the ***nominated senior police officer***) to oversee the exercise of powers under, and the performance of duties in relation to, the preventative detention order.
- (3) The nominated senior police officer must be someone who was not involved in the making of the application for the preventative detention order.
- (4) The nominated senior police officer must —
 - (a) oversee the exercise of powers under, and the performance of duties in relation to, the preventative detention order;
 - (b) without limiting paragraph (a), ensure that sections 20 and 22(2) are complied with in relation to the preventative detention order; and
 - (c) receive and consider any representations that are made under subsection (5).
- (5) The following persons —
 - (a) the person in relation to whom a preventative detention order is in force;
 - (b) a lawyer acting for the person in relation to the preventative detention order;
 - (c) a person with whom the person can have contact under section 45(2),

are entitled to make representations to the nominated senior police officer about —

- (d) the exercise of powers under, and the performance of duties in relation to, the preventative detention order;
- (e) without limiting paragraph (d), compliance with section 20 or 22(2) in relation to the preventative detention order; and
- (f) the person's treatment in connection with the person's detention under the preventative detention order.

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

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

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

26. Exercising powers, general matters

- (1) Schedule 1 applies in relation to exercising any power in this Part.
- (2) A person in relation to whom a police officer is about to exercise, or is exercising, a power in this Part may request the officer to identify himself or herself.
- (3) A police officer requested by a person to identify himself or herself must —
 - (a) give the person the officer's surname and rank; and
 - (b) if the officer is not in uniform, show the person evidence that the officer is a police officer.

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- (4) Subsections (2) and (3) do not affect the operation of the *Criminal Investigation (Identifying People) Act 2002* section 16.

27. Personal details of certain people may be obtained

- (1) This section must be read as one with the *Criminal Investigation (Identifying People) Act 2002*.
- (2) In this section, a term that is not defined in this Act has the meaning given to it by the *Criminal Investigation (Identifying People) Act 2002*.
- (3) If a police officer reasonably suspects that a person whose personal details are unknown to the officer may be able to assist the police officer in executing a preventative detention order, the officer may exercise the powers in the *Criminal Investigation (Identifying People) Act 2002* section 16 as if the person were reasonably suspected by the officer to be able to assist in the investigation of a suspected offence.
- (4) The *Criminal Investigation (Identifying People) Act 2002* section 16, with any necessary changes, applies to and in respect of the exercise of the powers in subsection (3) as if the powers were conferred by that Act.

28. Power to enter places

- (1) Subject to subsection (2), if —
- (a) a preventative detention order is in force in relation to a person; and
 - (b) a police officer believes on reasonable grounds that the person is on, at or in any place,

the police officer may enter the place for the purpose of searching the place for the person or taking the person into custody.

- (2) A police officer must not enter any place that is used for residential purposes at any time during the period commencing

at 9 p.m. on a day and ending at 6 a.m. on the following day unless the police officer believes on reasonable grounds that —

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

29. Use of force

In the course of —

- (a) taking a person into custody under a preventative detention order; or
- (b) preventing the escape of a person who is being detained by a police officer under a preventative detention order,

a police officer —

- (c) must not use more force, or subject the person to greater indignity, than is reasonably necessary in the circumstances; and
- (d) must not use force which causes death or grievous bodily harm unless that force is used lawfully in self-defence or defence of another.

30. Power to search people

- (1) If a police officer who takes a person into custody under a preventative detention order, or who is present when the person is taken into custody, reasonably suspects —

- (a) that it is prudent to search the person in order to ascertain whether the person is carrying any seizable items; or
- (b) that the person is carrying any seizable items or evidence of, or relating to, a terrorist act,

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the police officer may do a basic search or strip search (as defined in Schedule 2 clause 1) of the person at, or soon after, the time when the person is taken into custody, and seize any seizable items or evidence of, or relating to, a terrorist act found as a result of the search.

- (2) Schedule 2 applies in relation to a search of a person under this section.
- (3) A police officer must not do a strip search of a person under subsection (1) unless the officer reasonably suspects —
 - (a) that a strip search is necessary; and
 - (b) that the seriousness and urgency of the situation require a strip search to be done.
- (4) This section does not affect the carrying out of any search that may lawfully be carried out when a person is taken into detention, or is in detention, in an institution or lock-up.

31. Warrant under Part III Division 3 of the *Australian Security Intelligence Organisation Act 1979*

- (1) This section applies if —
 - (a) a person is in detention under a preventative detention order;
 - (b) a warrant under the ASIO Act Part III Division 3 is in force in relation to the person; and
 - (c) a copy of the warrant is given to the police officer who is detaining the person under the preventative detention order.
- (2) The police officer must take such steps as are necessary to ensure that the person may be dealt with in accordance with the warrant.
- (3) Without limiting subsection (2), the police officer may, under section 32, release the person from detention under the

preventative detention order so that the person may be dealt with in accordance with the warrant.

- (4) To avoid doubt, the fact that the person is released from detention under the preventative detention order so that the person may be —
- (a) questioned under the warrant before a prescribed authority appointed under the ASIO Act section 34B; or
 - (b) detained under the warrant in connection with that questioning,

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

[Section 31 amended by No. 1 of 2008 s. 4.]

32. Release of person from preventative detention

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

Note: A person may be released, for example, so that the person may be arrested and otherwise dealt with for a suspected offence.

- (2) The police officer who releases the person from detention under the preventative detention order must give the person a signed written statement that the person is being released from that detention and identifies the police officer who signs it.
- (3) Subsection (2) does not apply if the police officer releases the person from detention so that the person may —
- (a) be dealt with in accordance with a warrant under the ASIO Act Part III Division 3; or
 - (b) be dealt with under the provisions of Division 4 of Part IAA, or Part IC, of the *Crimes Act 1914* of the Commonwealth; or

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- (c) be dealt with according to law in relation to a suspected offence (whether or not the offence is one that the person is suspected of committing).
- (4) In subsection (3)(c) —
dealt with includes taken into custody, questioned, examined, searched, required to provide identification material or subjected to having identification material taken.
- (5) To avoid doubt, a person may be taken to have been released from detention under a preventative detention order even if —
 - (a) the person is informed that he or she is being released from detention under the order; and
 - (b) the person is taken into custody on some other basis immediately after the person is informed that he or she is being released from detention under the order.
- (6) To avoid doubt, a person is taken not to be detained under a preventative detention order during a period during which the person is released from detention under the order.

Note: During this period, the provisions of this Part that apply to a person who is in detention under a preventative detention order (for example, section 40(1) which deals with the people the person may contact) do not apply to the person.

- (7) To avoid doubt —
 - (a) the release of the person under subsection (1) from detention under the preventative detention order does not extend the period for which the preventative detention order remains in force; and
- Note: This means that the time for which the person may be detained under the order continues to run while the person is released.
- (b) a person released under subsection (1) from detention under a preventative detention order may again be taken into custody and kept in detention under the order at any time while the order remains in force in relation to the person.

[Section 32 amended by No. 1 of 2008 s. 5.]

33. Arrangement for person to be in detention in a prison or detention centre

- (1) A senior police officer may arrange for a person who is in detention under a preventative detention order to be detained under the order —
- (a) in the case of a person who has reached 18 years of age — in a prison; or
 - (b) in the case of a person who is under 18 years of age — in an appropriate prison or a detention centre.

Note: Under section 16 a preventative detention order cannot be made in relation to a person who is under 16 years of age.

- (2) An arrangement under subsection (1) for detention in a prison may be made with —
- (a) the chief executive officer of the department principally assisting the Minister administering the *Prisons Act 1981* to administer that Act; or
 - (b) a person authorised by that chief executive officer to agree to such arrangements.
- (3) An arrangement under subsection (1) for detention in a detention centre may be made with —
- (a) the chief executive officer of the department principally assisting the Minister administering the *Young Offenders Act 1994* to administer that Act; or
 - (b) a person authorised by that chief executive officer to agree to such arrangements.
- (4) If an arrangement is made under subsection (1) —
- (a) the preventative detention order is taken to order the person to be detained in the institution and authorise the person in charge of the institution to keep the person in detention while the order is in force;

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- (b) the entitlements of the person under the *Prisons Act 1981* section 53 and Parts VI and VIII as a prisoner, or the *Young Offenders Act 1994* as a detainee, have effect subject to sections 40, 44 and 46 and to any prohibited contact order made in relation to the person's detention under the preventative detention order;
 - (c) the entitlements of the person under sections 41, 43 and 45 have effect subject to the *Prisons Act 1981* and the *Young Offenders Act 1994*, and, in particular, the person is not entitled to communicate with anyone else by email;
 - (d) section 39 applies in relation to the person's detention under the order at the institution as if —
 - (i) the person in charge of it; or
 - (ii) any other person involved in the subject's detention at the institution,were a person exercising authority under the order or implementing or enforcing the order;
 - (e) the senior police officer who makes the arrangement is taken, while the person is in detention at the institution, to be the police officer detaining the person for the purposes of sections 20, 22 and 32 and Parts 5 and 6; and
 - (f) the person in charge of the institution must notify the Inspector of Custodial Services as soon as practicable after the person's detention in the institution begins.
- (5) Subsection (4)(b) applies in relation to —
- (a) the *Prisons Act 1981* sections 62 and 64 (but not section 67(1)); and
 - (b) the *Young Offenders Act 1994* section 8(c),
- as if they conferred entitlements on the person.

34. Inspector of Custodial Services to be notified of detention

- (1) As soon as practicable after a person is first taken into custody under a preventative detention order, the senior police officer nominated under section 24(2) in relation to the order must —
 - (a) give the Inspector of Custodial Services a copy of the order; and
 - (b) notify the Inspector of Custodial Services as to the place where the person is being detained.
- (2) The lawfulness of a person's detention under a preventative detention order is not affected by a failure to comply with subsection (1).

Part 5 — Informing person detained about preventative detention order

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

- (1) As soon as practicable after a person is first taken into custody, or is first in detention, under a preventative detention order, the police officer who is detaining the person under the order must inform the person of the matters covered by subsection (2).
- (2) The matters covered by this subsection are —
 - (a) the fact that the preventative detention order has been made in relation to the person;
 - (b) the requirement for there to be a review of the order under Part 3 and the fact that the person will have an opportunity to be heard on the review of the order;
 - (c) the period during which the person may be kept in detention under the order;
 - (d) if the period of detention is less than the maximum permissible under this Act — the fact that an application may be made for a further preventative detention order;
 - (e) the person's entitlement under section 41 to contact family members and others;
 - (f) the person's entitlement under section 42(1) to contact the Parliamentary Commissioner;
 - (g) the person's entitlement under section 42(2) to contact the Corruption and Crime Commission;
 - (h) the person's entitlement under section 43 to contact a lawyer;
 - (i) if section 45 applies to the person, the person's entitlement under that section to contact parents, guardians and others;
 - (j) the restrictions that apply as to the disclosures that the person is entitled to make while the person is in

detention under the order, and the consequences of failing to comply with those restrictions;

- (k) the restrictions that apply to the people the person may contact while the person is in detention under the order;
- (l) the fact that the person may seek from a court a remedy relating to —
 - (i) the order; or
 - (ii) the treatment of the person in connection with the person's detention under the order;

and

- (m) the surname, rank and contact telephone number of the senior police officer nominated under section 24(2) to oversee the exercise of powers under and the performance of duties in relation to the order.
- (3) Subsection (2) does not require the police officer to inform the person in detention of —
- (a) the fact that a prohibited contact order has been made in relation to the person's detention; or
 - (b) the name of a person specified in a prohibited contact order that has been made in relation to the person's detention.
- (4) If the person is detained in an institution, the person in charge of the institution must, as soon as practicable after the person's detention in the institution begins, notify the person of the person's entitlement under section 42(3) to contact the Inspector of Custodial Services.

36. Compliance with duties to inform

- (1) Section 35(1) does not apply if the actions of the person in detention under the preventative detention order prevent the police officer from complying with the relevant provision.
- (2) The police officer detaining the person under the preventative detention order complies with section 35(1) if the police officer

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informs the person in substance of the matters covered by section 35(2) (even if this is not done in language of a precise or technical nature).

- (3) The police officer who is detaining the person under the preventative detention order must arrange for the assistance of an interpreter in complying with section 35(1) if the police officer has reasonable grounds to believe that the person is unable to communicate with reasonable fluency in the English language.
- (4) Without limiting subsection (3), the assistance of the interpreter may be provided by telephone.
- (5) The lawfulness of a person's detention under a preventative detention order is not affected by a failure to comply with section 35(1) or (4) or subsection (3).

37. Copy of preventative detention order and summary of grounds

- (1) As soon as practicable after a person is first taken into custody, or is first in detention, under a preventative detention order, the police officer who is detaining the person under the order must give the person —
 - (a) a copy of the order; and
 - (b) a summary of the grounds on which the order is made.
- (2) To avoid doubt, subsection (1)(b) does not require information to be included in the summary if the disclosure of the information is likely to prejudice national security.
- (3) A police officer does not need to have a copy of the order with him or her, or to produce a copy of the order to the person being taken into custody when the police officer takes the person into custody.

- (4) A person who is in detention under a preventative detention order may request a police officer who is detaining the person to arrange for a copy of —
- (a) the order; or
 - (b) the summary given to the person under subsection (1)(b),

or copies of both the order and the summary, to be given to a lawyer acting for the person in relation to the order.

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

Part 6 — Treatment of person in detention

38. Application of Part

This Part applies to and in relation to a person (referred to in this Part as the *detainee*) who is in detention under a preventative detention order (referred to in this Part as the *PDO*).

39. Humane treatment of detainee

(1) The detainee —

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

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

(2) The Inspector of Custodial Services may, at any time, review the detainee's detention under the PDO to determine whether subsection (1) is being complied with in relation to the detainee.

(3) The Inspector of Custodial Services may, at any time, report to —

- (a) the Commissioner; and
- (b) the senior police officer nominated under section 24(2) in relation to the PDO,

on any matter relating to a review under subsection (2) and give advice or make recommendations as the Inspector of Custodial Services considers appropriate in relation to the matter.

(4) For the purposes of this section the Inspector of Custodial Services may exercise any power conferred by the *Inspector of Custodial Services Act 2003* whether or not the place where the detainee is being detained is a place referred to in section 19 of that Act.

40. Restriction on contact with other people

- (1) Except as provided by sections 41, 42, 43 or 45, the detainee —
- (a) is not entitled to contact another person; and
 - (b) may be prevented from contacting another person.

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

- (2) Subsection (1) does not apply to contact with a person performing functions in connection with the detainee's detention under the PDO.
- (3) Sections 41, 43 and 45 have effect subject to any prohibited contact order made in relation to the detainee's detention.

41. Contacting family members and home or work associates

- (1) The detainee is entitled to contact —
- (a) one family member of the detainee;
 - (b) if the detainee —
 - (i) lives with another person and that other person is not a family member of detainee; or
 - (ii) lives with other people and those other people are not family members of the detainee,that other person or one of those other people;
 - (c) if the detainee is employed — the detainee's employer;
 - (d) if the detainee employs people in a business — one of the people the detainee employs in that business;
 - (e) if the detainee engages in a business together with another person or other people — that other person or one of those other people; and
 - (f) if the police officer detaining the detainee agrees to the person contacting another person — that other person,

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

- (2) To avoid doubt, the detainee is not entitled, under subsection (1), to disclose —
- (a) the fact that a preventative detention order has been made in relation to the detainee;
 - (b) the fact that the detainee is in detention; or
 - (c) the period for which the subject is to be kept in detention.
- (3) In this section —
- family member*** of the detainee means —
- (a) the detainee's spouse or de facto partner;
 - (b) a parent, step-parent or grandparent of the detainee;
 - (c) a child, stepchild or grandchild of the detainee;
 - (d) a brother, sister, stepbrother or stepsister of the detainee; or
 - (e) a guardian or carer of the detainee.

42. Contacting Parliamentary Commissioner, Corruption and Crime Commission or Inspector of Custodial Services

- (1) Without limiting the *Parliamentary Commissioner Act 1971* or the *Prisons Act 1981* section 67, the detainee is entitled to contact the Parliamentary Commissioner to make a complaint in writing in relation to a matter of administration in connection with the detainee's detention under the PDO.
- (2) Without limiting the *Corruption and Crime Commission Act 2003*, the detainee is entitled to contact the Corruption and Crime Commission to make an allegation of misconduct in connection with the detainee's detention under the PDO.
- (3) Without limiting the *Prisons Act 1981* section 67, the detainee is entitled to contact the Inspector of Custodial Services to make

representations that are in connection with the detainee's detention under the PDO and relate to the exercise of the jurisdiction of the Inspector of Custodial Services.

43. Contacting lawyer

- (1) The detainee is entitled to contact a lawyer but solely for the purpose of —
 - (a) obtaining advice from the lawyer about the detainee's legal rights in relation to —
 - (i) the PDO; or
 - (ii) the treatment of the detainee in connection with the detainee's detention under the PDO;
 - (b) arranging for the lawyer to act for the detainee in relation to, and instructing the lawyer in relation to, the review of the PDO by the Supreme Court;
 - (c) arranging for the lawyer to act for the detainee in relation to, and instructing the lawyer in relation to, proceedings in a court for a remedy relating to —
 - (i) the PDO; or
 - (ii) the treatment of the detainee in connection with the detainee's detention under the PDO;
 - (d) arranging for the lawyer to act for the detainee in relation to, and instructing the lawyer in relation to, a complaint under the *Parliamentary Commissioner Act 1971* in relation to a matter of administration in connection with the detainee's detention under the PDO;
 - (e) arranging for the lawyer to make an allegation of misconduct to the Corruption and Crime Commission in connection with the detainee's detention under the PDO;
 - (f) arranging for the lawyer to make representations to the Inspector of Custodial Services that are in connection with the detainee's detention under the PDO, and relate to the exercise of the jurisdiction of the Inspector of Custodial Services; or

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- (g) arranging for the lawyer to act for the detainee in relation to an appearance, or hearing, before a court that is to take place while the detainee is in detention under the PDO.
- (2) The form of contact that the detainee is entitled to have with a lawyer under subsection (1) includes —
 - (a) being visited by the lawyer; and
 - (b) communicating with the lawyer by telephone, fax or email.
- (3) If —
 - (a) the detainee asks to be allowed to contact a particular lawyer under subsection (1); and
 - (b) either —
 - (i) the detainee is not entitled to contact that lawyer because of a prohibited contact order; or
 - (ii) the detainee is not able to contact that lawyer,

the police officer who is detaining the detainee must give the detainee reasonable assistance to choose another lawyer for the detainee to contact under subsection (1).
- (4) In recommending lawyers to the detainee as part of giving the detainee assistance under subsection (3), the police officer who is detaining the detainee may give priority to lawyers who have been given a security clearance at an appropriate level by the Attorney General's Department of the Commonwealth.
- (5) Despite subsection (4) but subject to any prohibited contact order to the contrary, the detainee is entitled under this section to contact a lawyer who does not have a security clearance of the kind referred to in subsection (4).

44. Monitoring contact with family members, home or work associates or lawyer

- (1) The contact the detainee has with another person under section 41 may take place only if it is conducted in such a way that the contact, and the content and meaning of the communication that takes place during the contact, can be effectively monitored by a police officer exercising authority under the PDO.
- (2) Unless the senior police officer nominated under section 24(2) approves otherwise, the contact the detainee has with a lawyer under section 43 may take place only if it is conducted in such a way that the contact, and the content and meaning of the communication that takes place during the contact, can be effectively monitored by a police officer exercising authority under the PDO.
- (3) If subsection (1) or (2) applies, the contact may take place in a language other than English only if the content and meaning of the communication that takes place during the contact can be effectively monitored with the assistance of an interpreter.
- (4) Without limiting subsection (3), the interpreter referred to in that subsection may be a police officer.
- (5) If the detainee indicates that he or she wishes the contact to take place in a language other than English, the police officer who is detaining the detainee must —
 - (a) arrange for the services of an appropriate interpreter to be provided if it is reasonably practicable to do so during the period during which the detainee is being kept in detention; and
 - (b) if it is reasonably practicable to do so — arrange for those services to be provided as soon as practicable.
- (6) Any communication between —
 - (a) the detainee; and

(b) a lawyer,

for a purpose referred to in section 43(1) is not admissible in evidence against the detainee in any proceedings in a court.

- (7) If the lawyer referred to in subsection (2) has a current security clearance to “Secret” level given by the Attorney General’s Department of the Commonwealth, subsection (2) does not apply unless an issuing authority has made an order (a **monitoring order**) authorising the contact the detainee has with the lawyer under section 43 to be monitored.
- (8) Sections 18(1) to (5) and 19 apply in relation to a monitoring order, and an application for a monitoring order, as if references in those provisions to a prohibited contact order were references to a monitoring order.
- (9) An issuing authority may make a monitoring order if it is satisfied, on reasonable grounds, that making the monitoring order will assist in achieving the purpose for which the PDO was made.

45. Special contact rules for people under 18 or incapable of managing their own affairs

- (1) This section applies if the detainee —
- (a) is under 18 years of age; or
 - (b) is incapable of managing his or her affairs.
- (2) The detainee is entitled to have contact with —
- (a) a parent or guardian of the detainee; or
 - (b) another person who —
 - (i) is able to represent the detainee’s interests;
 - (ii) is, as far as practicable in the circumstances, acceptable to the detainee and to the police officer who is detaining the detainee;
 - (iii) is not a police officer;

- (iv) is not employed in duties related to the administration of the police force;
 - (v) is not a member (however described) of a police force of the Commonwealth, another State or a Territory; and
 - (vi) is not an officer or employee of the Australian Security Intelligence Organisation.
- (3) To avoid doubt —
- (a) if the detainee has 2 parents or 2 or more guardians, the detainee is entitled, subject to any prohibited contact order to the contrary, to have contact under subsection (2) with each of those parents or guardians; and
 - (b) the detainee is entitled to disclose the following to a person with whom the detainee has contact under subsection (2) —
 - (i) the fact that the PDO has been made in relation to the detainee;
 - (ii) the fact that the detainee is in detention;
 - (iii) the period for which the detainee is to be kept in detention.
- (4) The form of contact that the detainee is entitled to have with another person under subsection (2) includes —
- (a) being visited by that other person; and
 - (b) communicating with that other person by telephone, fax or email.
- (5) The aggregate period for which the detainee is entitled to have contact with a person or persons each day under subsection (2) is —
- (a) 2 hours; or
 - (b) such longer period as is specified in the PDO.

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- (6) Despite subsection (5), the police officer who is detaining the detainee may permit the detainee to have contact with a person or persons under subsection (2) for longer than the period provided for in subsection (5).
- (7) The contact that the detainee has with a person under subsection (2) must be conducted in such a way that the content and meaning of any communication that takes place during the contact can be effectively monitored by a police officer exercising authority under the PDO.
- (8) If the communication that takes place during the contact takes place in a language other than English, the contact may continue only if the content and meaning of the communication in that language can be effectively monitored with the assistance of an interpreter.
- (9) Without limiting subsection (8), the interpreter referred to in that subsection may be a police officer.
- (10) If the detainee indicates that he or she wishes the communication that takes place during the contact to take place in a language other than English, the police officer who is detaining the detainee must —
 - (a) arrange for the services of an appropriate interpreter to be provided if it is reasonably practicable to do so during the period during which the detainee is being kept in detention; and
 - (b) if it is reasonably practicable to do so — arrange for those services to be provided as soon as practicable.
- (11) The entitlements of the detainee under this section are in addition to those that the detainee has under sections 41 and 43.

46. Disclosure offences

- (1) If the detainee, while in detention under the PDO, discloses to another person —

- (a) the fact that a preventative detention order has been made in relation to the detainee;
- (b) the fact that the detainee is in detention; or
- (c) the period for which the detainee is to be kept in detention,

the detainee commits a crime unless the disclosure is one that the detainee is entitled to make under section 42, 43 or 45.

Penalty: imprisonment for 5 years.

- (2) Subsection (3) applies to a lawyer (the *lawyer*) who —
 - (a) is given a copy of the PDO, or a summary of the grounds on which the PDO is made, under section 37(5); or
 - (b) is contacted by the detainee under section 43.
- (3) If the lawyer, while the detainee is in detention under the PDO, discloses to another person —
 - (a) the fact that a preventative detention order has been made in relation to the detainee;
 - (b) the fact that the detainee is in detention;
 - (c) the period for which the detainee is to be kept in detention; or
 - (d) any information that the lawyer —
 - (i) has as a result of being given the copy or summary mentioned in subsection (2)(a); or
 - (ii) is given by the detainee in the course of the contact mentioned in subsection (2)(b),

the lawyer commits a crime unless the disclosure is made —

- (e) for the purposes of proceedings in the Supreme Court for a review of the PDO;
- (f) for the purposes of proceedings in a court for a remedy relating to the PDO or the treatment of the detainee in connection with the detainee's detention under the PDO;

- (g) for the purposes of a complaint under the *Parliamentary Commissioner Act 1971* in relation to a matter of administration in connection with the detainee's detention under the PDO;
- (h) for the purposes of making an allegation of misconduct to the Corruption and Crime Commission in connection with the detainee's detention under the PDO;
- (i) for the purposes of making representations to the Inspector of Custodial Services that are in connection with the detainee's detention under the PDO and relate to the exercise of the jurisdiction of the Inspector of Custodial Services; or
- (j) for the purposes of making representations to the senior police officer nominated under section 24(2) in relation to the PDO, or another police officer involved in the detainee's detention, about —
 - (i) the exercise of powers under, or the performance of duties in relation to, the PDO; or
 - (ii) the treatment of the detainee in connection with the detainee's detention under the PDO.

Penalty: imprisonment for 5 years.

- (4) If the detainee has contact with a person (the *parent/guardian*) under section 45 and the parent/guardian, while the detainee is in detention under the PDO, discloses to another person —
 - (a) the fact that a preventative detention order has been made in relation to the detainee;
 - (b) the fact that the detainee is in detention;
 - (c) the period for which the detainee is to be kept in detention; or
 - (d) any information that the detainee gives the parent/guardian in the course of the contact,

the parent/guardian commits a crime unless the disclosure is made —

- (e) to a person with whom the detainee has also had contact under section 45 while in detention under the PDO;
- (f) for the purposes of a complaint under the *Parliamentary Commissioner Act 1971* in relation to a matter of administration in connection with the detainee's detention under the PDO;
- (g) for the purposes of making an allegation of misconduct to the Corruption and Crime Commission in connection with the detainee's detention under the PDO;
- (h) for the purposes of making representations to the Inspector of Custodial Services that are in connection with the detainee's detention under the PDO and relate to the exercise of the jurisdiction of the Inspector of Custodial Services; or
- (i) for the purposes of making representations to the senior police officer nominated under section 24(2) in relation to the PDO, or another police officer involved in the detainee's detention, about —
 - (i) the exercise of powers under, or the performance of duties in relation to, the PDO; or
 - (ii) the treatment of the detainee in connection with the detainee's detention under the PDO.

Penalty: imprisonment for 5 years.

- (5) To avoid doubt, a person does not contravene subsection (4) merely by letting another person know that the detainee is safe but is not able to be contacted for the time being.
- (6) In subsection (7) —
interpreter means an interpreter who assists in monitoring the contact that the detainee has with someone while the detainee is in detention under the PDO.
- (7) If an interpreter, while the detainee is in detention under the PDO, discloses to another person —

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- (a) the fact that a preventative detention order has been made in relation to the detainee;
- (b) the fact that the detainee is in detention;
- (c) the period for which the detainee is to be kept in detention; or
- (d) any information that the interpreter obtains in the course of assisting in the monitoring of that contact,

the interpreter commits a crime.

Penalty: imprisonment for 5 years.

(8) If —

- (a) a person (the *earlier discloser*) intentionally discloses any of the following information to another person (the *disclosure recipient*) —
 - (i) the fact that a preventative detention order has been made in relation to a person;
 - (ii) the fact that a person is in detention under a preventative detention order;
 - (iii) the period for which a person is to be kept in detention under a preventative detention order;
 - (iv) any information that a person communicates to another while the person is in detention under a preventative detention order;
- (b) the disclosure by the earlier discloser to the disclosure recipient contravenes subsection (1), (3), (4) or (7) or this subsection; and
- (c) the disclosure recipient discloses that information to another person while the person referred to in paragraph (a)(i), (ii), (iii) or (iv) is in detention under the PDO,

the disclosure recipient commits a crime.

Penalty: imprisonment for 5 years.

(9) If —

- (a) a person (the *monitor*) is —
 - (i) a police officer who monitors; or
 - (ii) an interpreter who assists in monitoring, contact that the detainee has with a lawyer under section 43 while the detainee is in detention under the PDO;
- (b) information is communicated in the course of that contact;
- (c) the information is communicated for one of the purposes referred to in section 43(1); and
- (d) the monitor discloses that information to another person, the monitor commits a crime.

Penalty: imprisonment for 5 years.

47. Detainee not to be questioned while in detention

A police officer must not question the detainee except for the purposes of —

- (a) determining whether the detainee is the person specified in the PDO;
- (b) ensuring the safety and well being of the detainee; or
- (c) allowing the police officer to comply with a requirement of this Act in relation to the detainee's detention under the PDO.

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

48. Taking identification material

- (1) In this section —

qualified person, in relation to an identifying particular, means a person who is qualified under the *Criminal Investigation (Identifying People) Act 2002* to do the procedure in the course of which the identifying particular is obtained.

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- (2) A police officer must not take identification material, or cause identification material to be taken, from the detainee except in accordance with this section.
- (3) A police officer may take, or cause the taking of, identification material (other than an identifying particular) from the detainee if —
 - (a) the detainee consents in writing; or
 - (b) the police officer believes on reasonable grounds that it is necessary to do so for the purpose of confirming the detainee's identity as the person specified in the PDO.
- (4) A police officer may cause a qualified person to take an identifying particular from the detainee if —
 - (a) the detainee consents in writing; or
 - (b) the police officer believes on reasonable grounds that it is necessary to do so for the purpose of confirming the detainee's identity as the person specified in the PDO.
- (5) Schedule 1 applies in relation to exercising the power in subsections (3) and (4).
- (6) Subject to this section, a police officer must not take, or cause the taking of, identification material from the detainee if the detainee —
 - (a) is under 18 years of age; or
 - (b) is incapable of managing his or her affairs,unless a Magistrate orders that the material be taken.
- (7) Subsection (6) does not apply to taking —
 - (a) a print of the detainee's hands (including fingers), feet (including toes) or ears; or
 - (b) a photograph of the detainee or of any of the detainee's features.
- (8) In deciding whether to make an order under subsection (6), the Magistrate must have regard to —

- (a) the age, or any disability, of the detainee; and
 - (b) such other matters as the Magistrate thinks fit.
- (9) If the detainee —
- (a) is under 18 years of age; or
 - (b) is incapable of managing his or her affairs,
- the taking of identification material from the detainee must be done in the presence of —
- (c) a parent or guardian of the detainee; or
 - (d) if a parent or guardian of the detainee is not acceptable to the detainee — another appropriate person.
- (10) Despite this section, identification material may be taken from the detainee even if he or she is under 18 years of age or is incapable of managing his or her affairs as long as —
- (a) subsections (12) and (13) apply; or
 - (b) subsection (12) or (13) applies (but not both) and a Magistrate orders that the material be taken.
- (11) In deciding whether to make an order under subsection (10)(b), the Magistrate must have regard to the matters set out in subsection (8).
- (12) This subsection applies if the detainee agrees in writing to the taking of the identification material.
- (13) This subsection applies if either —
- (a) a parent or guardian of the detainee; or
 - (b) if a parent or guardian is not acceptable to the detainee — another appropriate person,
- agrees in writing to the taking of the identification material.
- (14) A reference in this section to an **appropriate person** where the detainee is under 18 years of age, or incapable of managing his or her affairs, is a reference to a person who —
- (a) is capable of representing the detainee's interests;

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- (b) as far as is practicable in the circumstances, is acceptable to the detainee and the police officer who is detaining the detainee; and
- (c) is none of the following —
 - (i) a police officer;
 - (ii) a person employed in duties related to the administration of the police force;
 - (iii) a member (however described) of a police force of the Commonwealth, another State or a Territory;
 - (iv) an officer or employee of the Australian Security Intelligence Organisation.

49. Use of identification material

- (1) This section applies if identification material is taken from the detainee under section 48.
- (2) The identification material may be used only for the purpose of determining whether the detainee is the person specified in the PDO.
- (3) If —
 - (a) a period of 12 months elapses after the identification material is taken; and
 - (b) proceedings in respect of —
 - (i) the PDO; or
 - (ii) the treatment of the person in connection with the person's detention under the PDO,have not been brought, or have been brought and discontinued or completed, within that period,the material must be destroyed as soon as practicable after the end of that period.

50. Offences of contravening safeguards

A person commits an offence if —

- (a) the person engages in conduct; and
- (b) the conduct contravenes —
 - (i) section 35(1) or (4);
 - (ii) section 39(1);
 - (iii) section 47;
 - (iv) section 48(2), (6) or (9); or
 - (v) section 49(2).

Penalty: imprisonment for 2 years.

Part 7 — Miscellaneous

51. Commissioner's functions may be performed by others

- (1) In this section —
authorised means authorised under subsection (3);
Deputy Commissioner means a police officer who holds or is acting in the office of Deputy Commissioner.
- (2) The Commissioner's functions in this Act, other than the power in subsection (3), may be performed —
 - (a) if the office of Commissioner is vacant, or if the Commissioner is on leave or out of the State or otherwise unavailable to exercise the functions — by an authorised Deputy Commissioner; or
 - (b) if paragraph (a) applies but every Deputy Commissioner is on leave or out of the State or otherwise unavailable to exercise the functions — by an authorised police officer who holds or is acting in a rank more senior than Superintendent.
- (3) The Commissioner, in writing, may authorise one or more Deputy Commissioners or other police officers who hold or are acting in a rank more senior than Superintendent for the purposes of this section.
- (4) If any of the Commissioner's functions in this Act is performed by a person other than the Commissioner, the person must notify the Commissioner of the fact as soon as practicable.

52. Nature of functions of Magistrate

- (1) A function of making an order conferred on a Magistrate by section 48 is conferred on the Magistrate in a personal capacity and not as a court or a member of a court.
- (2) Without limiting subsection (1), an order made by a Magistrate under section 48 has effect only by virtue of this Act and is not to be taken by implication to be made by a court.

- (3) A Magistrate performing a function of, or connected with, making an order under section 48 has the same protection and immunity as if he or she were performing that function as, or as a member of, the Magistrates Court.

53. Restrictions on publicity about proceedings in Supreme Court

- (1) Despite any rule or practice to the contrary, proceedings under this Act are not to be conducted in public nor publicised in any public list of the Supreme Court's business.
- (2) The Supreme Court must establish appropriate procedures to ensure that information about —
- (a) the Court's proceedings on review of a preventative detention order under this Act; and
 - (b) any other proceedings brought before the Court in relation to a preventative detention order or a prohibited contact order,

is confined within the narrowest possible limits.

- (3) However the Supreme Court is not required to suppress the publication of information under this section if —
- (a) the Minister authorises its publication; or
 - (b) the Court determines that the publication of the information could not conceivably prejudice national security and that its publication should be authorised in the public interest.

54. Quarterly report about preventative detention orders

- (1) In this section —
- quarter* means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.
- (2) The Minister must, by 31 January, 30 April, 31 July and 31 October in each year, cause a report to be prepared about the operation of this Act during the previous quarter.

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- (3) Without limiting subsection (2), a report relating to a financial year must include the following information —
 - (a) the number of preventative detention orders made under section 13 during the quarter;
 - (b) whether a person was taken into custody, or kept in custody, under each of those orders and, if so, how long the person was in detention for;
 - (c) the number of reviews conducted under Part 3 during the quarter and the outcome of them;
 - (d) the number of prohibited contact orders made under sections 17 and 18 during the quarter.
- (4) The Minister must cause the report to be tabled before each House of the Parliament within 14 sitting days of that House after the report is completed.

55. Powers of others not affected

- (1) This Act does not affect —
 - (a) a function under the *Parliamentary Commissioner Act 1971* of the Parliamentary Commissioner;
 - (b) a function under the *Corruption and Crime Commission Act 2003* of the Corruption and Crime Commission, the Commissioner (within the meaning of that Act) or the Parliamentary Inspector;
 - (c) a function under the *Inspector of Custodial Services Act 2003* of the Inspector of Custodial Services; or
 - (d) a function under the *Prisons Act 1981*, or the *Young Offenders Act 1994*, of a visiting justice.
- (2) If a person is in detention under a preventative detention order, the *Parliamentary Commissioner Act 1971* section 23(1b) does not authorise the disclosure of information, or the making of a statement, in relation to the person or the detention unless the Parliamentary Commissioner has first consulted the

Commissioner about disclosing the information or making the statement.

- (3) If a person is in detention under a preventative detention order, the *Inspector of Custodial Services Act 2003* section 46(1) does not authorise the disclosure of information, or the making of a statement, in relation to the person or the detention unless the Inspector of Custodial Services has first consulted the Commissioner about disclosing the information or making the statement.

56. Law relating to legal professional privilege not affected

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

57. Legal proceedings in relation to preventative detention orders

- (1) Proceedings may be brought in a court for a remedy in relation to —
- (a) a preventative detention order; or
 - (b) the treatment of a person in connection with the person's detention under a preventative detention order.
- (2) Without limiting subsection (1) if, under section 22(8), the Supreme Court has quashed a preventative detention order, or declared a preventative detention order to have been void, the person referred to in that section as the subject may apply to the Supreme Court for compensation.
- (3) On an application under subsection (2) the applicant is not entitled to compensation merely because the preventative detention order was quashed or declared to have been void but the Supreme Court may determine that the State should compensate the applicant if it considers that compensation is warranted in the particular circumstances of the case.

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- (4) If the Supreme Court makes a determination under subsection (3), the State is liable to pay the compensation determined by the Court.

58. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

59. Review of Act

- (1) In this section —
first anniversary means the day of the first anniversary of the day on which this Act receives the Royal Assent.
- (2) The Minister must carry out a review of this Act as soon as is practicable after —
- (a) the first anniversary; and
 - (b) the expiry of each 3 yearly interval after the first anniversary.
- (3) The review must review the operation and effectiveness of this Act, whether its provisions are appropriate having regard to its object, and whether it should continue in operation.
- (4) The Minister must prepare a report based on the review and, as soon as practicable after it is prepared, cause it to be tabled before each House of Parliament.

60. Expiry of orders and power to make them

- (1) In this section —
expiry day means the day of the tenth anniversary of the day on which this Act receives the Royal Assent.

- (2) A preventative detention order, or a prohibited contact order, that is in force immediately before the expiry day ceases to be in force at the start of the expiry day.
- (3) A preventative detention order, and a prohibited contact order, cannot be applied for, or made, on or after the expiry day.

Schedule 1 — Ancillary provisions about exercising powers

[s. 26(1), 48(5)]

1. When powers may be exercised

A power in this Act may be exercised at any time of the day or night, unless it is expressly provided otherwise.

2. Assistance to exercise powers

- (1) A police officer who may exercise a power in this Act may authorise as many other persons to assist in exercising the power as are reasonably necessary in the circumstances.
- (2) A person so authorised may exercise the power or assist the other to exercise the power, as the case requires.
- (3) Whether requested to do so or not, a person may assist a police officer to exercise a power in this Act if the person reasonably suspects that the officer —
 - (a) is lawfully entitled to exercise the power; and
 - (b) needs assistance for the purpose of doing so.
- (4) A person who under this clause is authorised by a police officer to exercise a power, or is assisting a police officer to exercise a power, must obey any lawful and reasonable directions of the officer when exercising or assisting to exercise the power.

3. Use of force when exercising powers

- (1) When exercising a power in this Act, a police officer may use any force against any person or thing that it is reasonably necessary to use in the circumstances —
 - (a) to exercise the power; and
 - (b) to overcome any resistance to exercising the power that is offered, or that the police officer reasonably suspects will be offered, by any person.
- (2) If under subclause (1) a person uses force, the force may be such as causes damage to the property of another person.

- (3) To the extent of any inconsistency between this clause and section 29, section 29 prevails.

4. Areas may be cordoned off

- (1) In this clause —
authorised, in relation to a cordoned off area, means authorised by a police officer in attendance at the area;
disturb includes to damage, destroy, interfere with and remove.
- (2) In order to facilitate or assist exercising any of the powers in this Act in any place, a police officer may cordon off the place or a part of it.
- (3) In order to cordon off an area, the officer must take reasonable steps to notify people of the existence and boundaries of the area.
- (4) The area cordoned off must not be greater than is reasonably necessary for the purposes for which it is established.
- (5) While an area is cordoned off, a police officer must remain near the area and may take reasonable measures, including giving orders —
- (a) to preserve the evidentiary value of the area or any thing in the area;
 - (b) to secure the area against unauthorised disturbance;
 - (c) to prevent an unauthorised person, animal or vehicle from disturbing the area;
 - (d) to restrict entry to the area to people, animals, and vehicles, that are authorised;
 - (e) to remove an unauthorised person, animal or vehicle from the area;
 - (f) if the area is established in or around a vehicle, to prevent the vehicle from being moved.
- (6) An unauthorised person who, without reasonable excuse (the onus of proving which is on the person), enters a cordoned off area commits an offence.

Penalty: a fine of \$12 000 and imprisonment for 12 months.

cl. 5

- (7) An unauthorised person who, without reasonable excuse (the onus of proving which is on the person), disturbs any thing in a cordoned off area commits an offence.

Penalty: a fine of \$12 000 and imprisonment for 12 months.

5. Returning seized things

A police officer who seizes a thing under this Act must return it to the person who owned it, or had lawful possession of it, when it was seized if the officer is satisfied that —

- (a) the thing does not need to be retained as evidence; and
- (b) it would be lawful for the person to possess the thing.

Schedule 2 — Searching people

[s. 30(2)]

Division 1 — Preliminary

1. Terms used in this Schedule

In this Schedule —

basic search of a person, means a search that complies with clause 2;

frisk search a person, means to quickly and methodically run the hands over the outside of the person's clothing;

private parts of a person, means the person's genital area, anal area, buttocks and, in the case of —

(a) a female; or

(b) a male undergoing a reassignment procedure, as that term is defined in the *Gender Reassignment Act 2000* section 3,

the person's breasts;

strip search of a person, means a search that complies with clause 3.

2. Basic search

A police officer authorised by this Act to do a basic search of a person may do any or all of the following —

(a) scan the person with an electronic or mechanical device, whether hand held or not, to detect any thing;

(b) remove the person's headwear, gloves, footwear or outer clothing (such as a coat or jacket), but not his or her inner clothing or underwear, in order to facilitate a frisk search;

(c) frisk search the person;

(d) search any article removed under paragraph (b).

3. Strip search

(1) A police officer authorised by this Act to do a strip search of a person may do any or all of the following —

(a) remove any article that the person is wearing including any article covering his or her private parts;

- (b) search any article removed under paragraph (a);
 - (c) search the person's external parts, including his or her private parts.
- (2) A police officer authorised by this Act to do a strip search of a person is not entitled to search any of the person's bodily cavities.

4. Ascertaining gender of person

If it is necessary to ascertain the gender of a person before exercising a power in this Act on the person and the gender of the person is uncertain to the officer authorised to exercise the power —

- (a) the officer must ask the person to indicate whether a male or a female should exercise the power on the person and must act in accordance with the answer; and
- (b) in the absence of an answer, the person must be treated as if of the gender that the person outwardly appears to the officer to be.

5. Powers to assist doing searches

A police officer authorised by this Act to do a basic search or a strip search of a person may do any or all of the following —

- (a) stop and detain the person for a reasonable period;
- (b) search any thing being carried by or under the immediate control of the person;
- (c) order the person to remove any thing that might injure the searcher when doing the search from any article that the person is wearing;
- (d) order the person to do anything reasonable to facilitate the search;
- (e) in the case of a strip search, order the person to accompany the searcher to a place where the search can be done in accordance with clause 7(4).

Division 2 — How searches must be done

6. Operation of this Division

A police officer must comply with this Division unless, due to the urgency of the situation or other circumstances, it is not reasonably practicable to do so.

7. General procedure

- (1) This clause operates if a police officer (the *searcher*) is authorised by this Act to do a basic search or a strip search on a person.
- (2) Before the searcher does a basic search or a strip search on the person the searcher must —
 - (a) request the person to consent to the search; and
 - (b) if the person does not consent to the search or withdraws his or her consent, inform the person that it is an offence to obstruct the searcher doing the search.
- (3) If a basic search or a strip search is done on a person —
 - (a) it must be done as quickly as is reasonably practicable;
 - (b) it must not be any more intrusive than is reasonably necessary in the circumstances;
 - (c) it must be done by a person of the same gender as the person being searched unless the person doing it is a doctor or a nurse;
 - (d) the searcher, if he or she proposes to remove any article that the person is wearing, must tell the person why it is considered necessary to do so;
 - (e) the person must be allowed to dress as soon as it is finished;
 - (f) the person must be provided with a reasonably adequate replacement for any article of clothing or footwear seized if, due to the seizure, the person is left without adequate clothing or footwear in the circumstances; and
 - (g) the person must not be questioned while it is being done about any offence that he or she is suspected of having committed.

- (4) If a strip search is done on a person that involves removing any article that the person is wearing or searching the person's private parts —
- (a) any person present while it is done must be of the same gender as the person being searched;
 - (b) it must be done in circumstances affording reasonable privacy to the person;
 - (c) it must not involve the removal of more articles being worn by the person than is reasonably necessary for doing it;
 - (d) the person's private parts must not be searched unless the searcher reasonably suspects it is necessary to do so for the purposes of the search;
 - (e) it must not involve more visual inspection than is reasonably necessary for doing it; and
 - (f) the number of people present while it is done (excluding a person who is present under clause 8) must not be more than is reasonably necessary to ensure it is done effectively and to ensure the safety of all present.

8. Strip searches of protected people

- (1) In this clause —

child means a person who is under 18 years of age and in respect of whom there are no reasonable grounds to suspect that he or she is an incapable person;

incapable person means a person of any age —

- (a) who is unable by reason of a mental disability (which term includes intellectual disability, a psychiatric condition, an acquired brain injury and dementia) to understand the general nature and effect of, and the reason for and the consequences of undergoing, a strip search; or
- (b) who is unconscious or otherwise unable to understand a request made or information given under this Act or to communicate whether or not he or she consents to undergoing a strip search;

protected person means a person who is a child or an incapable person;

responsible person for a child, means —

- (a) a parent of the child;
- (b) a guardian of the child;
- (c) another person who has responsibility for the day to day care of the child; or
- (d) if no person mentioned in another paragraph of this definition is available — a person, or a person in a class of persons, prescribed;

responsible person for an incapable person, means —

- (a) the spouse or de facto partner of the incapable person;
- (b) a parent of the incapable person;
- (c) if the incapable person is under 18 years of age — a guardian of the incapable person;
- (d) if the incapable person has reached 18 years of age — the Public Advocate or a guardian of the incapable person appointed under the *Guardianship and Administration Act 1990*;
- (e) another person who has responsibility for the day to day care of the incapable person; or
- (f) if no person mentioned in another paragraph of this definition is available — a person, or a person in a class of persons, prescribed.

- (2) If a strip search is done on a protected person, it must be done in the presence of a responsible person for the protected person or some other person who can provide the protected person with support and represent his or her interests.

Notes

¹ This is a compilation of the *Terrorism (Preventative Detention) Act 2006* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Terrorism (Preventative Detention) Act 2006</i>	42 of 2006	22 Sep 2006	22 Sep 2006 (see s. 2)
<i>Terrorism (Preventative Detention) Amendment Act 2008</i>	1 of 2008	5 Mar 2008	5 Mar 2008 (see s. 2)
<i>Legal Profession Act 2008</i> s. 710	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)