



Queensland

Terrorism (Preventative Detention) Bill 2005



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2005

A Bill

for

**An Act to authorise preventative detention in connection with
terrorist acts, and for other purposes**

The Parliament of Queensland enacts—	1
Part 1	Preliminary
	2
1 Short title	3
This Act may be cited as the <i>Terrorism (Preventative Detention) Act 2005</i> .	4 5
2 Commencement	6
This Act commences on a day to be fixed by proclamation.	7
3 Object	8
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—	9 10
(a) prevent a terrorist act occurring in the near future; or	11
(b) preserve evidence of, or relating to, a recent terrorist act.	12
<i>Note—</i>	13
Section 53 provides that, while a person is being detained under a preventative detention order, the person may only be questioned for very limited purposes.	14 15 16
4 Definitions	17
The dictionary in the schedule defines particular words used in this Act.	18 19
5 Act binds all persons	20
(1) This Act binds all persons, including the State, and so far as the legislative power of the Parliament permits, the other States and the Commonwealth.	21 22 23
(2) Nothing in this Act makes a State or the Commonwealth liable to be prosecuted for an offence.	24 25

6	Extraterritoriality of terrorist act no barrier	1
	To remove any doubt, it is declared that powers and functions conferred by this Act in relation to a terrorist act or suspected terrorist act may be exercised whether the terrorist act or suspected terrorist act has been, is being, or is likely to be committed in Queensland or outside Queensland.	2 3 4 5 6
7	Issuing authority	7
	(1) The <i>issuing authority</i> for an initial order is a senior police officer.	8 9
	(2) The <i>issuing authority</i> for a final order is—	10
	(a) a judge; or	11
	(b) a retired judge.	12
	(3) For an application to the issuing authority to extend, or further extend, or to revoke, a preventative detention order, the <i>issuing authority</i> is—	13 14 15
	(a) for an initial order—the senior police officer who made the order or another senior police officer; or	16 17
	(b) for a final order—the judge or retired judge who made the order or another judge or retired judge.	18 19
	(4) A judge or retired judge can not perform a function as the issuing authority unless—	20 21
	(a) the judge or retired judge has consented in writing to performing the function; and	22 23
	(b) the consent is in force.	24
	(5) A senior police officer can not delegate a power to make orders under this Act other than to another senior police officer.	25 26 27

Part 2	Preventative detention orders	1
Division 1	General	2
8	Basis for applying for, and making, a preventative detention order	3 4
(1)	A police officer may apply for a preventative detention order for a person only if the police officer meets the requirements of subsection (3) or (5).	5 6 7
(2)	The issuing authority may make a preventative detention order for a person only if the issuing authority meets the requirements of subsection (3) or (5).	8 9 10
(3)	The police officer or issuing authority meets the requirements of this subsection if the police officer or issuing authority is satisfied—	11 12 13
(a)	there are reasonable grounds to suspect that the person—	14 15
(i)	will engage in a terrorist act; or	16
(ii)	possesses a thing that is connected with the preparation for, or the engagement of a person in, a terrorist act; or	17 18 19
(iii)	has done an act in preparation for, or in planning, a terrorist act; and	20 21
(b)	making the order would substantially assist in preventing a terrorist act occurring; and	22 23
(c)	detaining the person for the period for which the person is to be detained under the order is reasonably necessary for the purpose of substantially assisting in preventing a terrorist act occurring.	24 25 26 27
(4)	For subsection (3), a terrorist act must be imminent and, in any event, be expected to occur at some time in the next 14 days.	28 29 30
(5)	Also, the police officer or issuing authority meets the requirements of this subsection if the police officer or issuing authority is satisfied on reasonable grounds—	31 32 33

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	(a) a terrorist act has occurred within the last 28 days; and	1
	(b) it is necessary to detain the person to preserve evidence in Queensland or elsewhere of, or relating to, the terrorist act; and	2 3 4
	(c) detaining the person for the period for which the person is to be detained under the order is reasonably necessary for the purpose of preserving the evidence.	5 6 7
	(6) The issuing authority may refuse to make a preventative detention order unless the police officer applying for the order gives the issuing authority any further information that the issuing authority requests about the facts and other grounds on which the police officer making the application considers the order should be made.	8 9 10 11 12 13
9	No preventative detention order for person under 16 years of age	14 15
	(1) A preventive detention order can not be applied for, or made, for a person who is under 16 years of age.	16 17
	(2) If—	18
	(a) a person is being detained under a preventative detention order or a purported preventative detention order; and	19 20
	(b) the police officer who is detaining the person is satisfied on reasonable grounds that the person is under 16 years of age;	21 22 23
	the police officer must release the person, as soon as practicable, from detention under the order or purported order.	24 25
10	Multiple preventative detention orders	26
	Subject to sections 11 and 12, any number of preventative detention orders of any type may be made for a person.	27 28
11	Restrictions on subject matter of multiple preventative detention orders	29 30
	(1) Nothing in subsections (2) to (4) prevents the making of—	31

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- (a) a final order for a person for a terrorist act following the making of an initial order for the person for the same terrorist act; or
- (b) an order extending, or further extending, an existing preventative detention order; or
- (c) any order following the making of an order for a person's detention under a corresponding law of the Commonwealth.
- (2) If—
- (a) a preventative detention order, or an order for a person's detention under a corresponding law of another State, is made for a person on the basis of assisting in preventing a terrorist act occurring within a particular period; and
- (b) the person is taken into custody under the order;
- a preventative detention order can not be applied for, or made, under this Act for the person on the basis of assisting in preventing the same terrorist act occurring within that period.
- Note—*
- It will be possible to apply for, and make, another preventative detention order for the person on the basis of preserving evidence of, or relating to, the terrorist act if it occurs.
- (3) If—
- (a) a preventative detention order, or an order for a person's detention under a corresponding law of another State, is made for a person on the basis of assisting in preventing a terrorist act occurring within a particular period; and
- (b) the person is taken into custody under the order;
- a preventative detention order can not be applied for, or made, under this Act for the person on the basis of assisting in preventing a different terrorist act occurring within that period unless the application, or the order, is based on information that became available to be put before the issuing authority only after the order mentioned in paragraph (a) was made.
- (4) If—
- (a) a preventative detention order, or an order for a person's detention under a corresponding law of another State, is

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	made for a person on the basis of preserving evidence of, or relating to, a terrorist act; and	1 2
	(b) the person is taken into custody under the order;	3
	a preventative detention order can not be applied for, or made, under this Act for the person on the basis of preserving evidence of, or relating to, the same terrorist act.	4 5 6
12	Restrictions on period of detention under multiple preventative detention orders	7 8
	(1) The <i>prescribed 24 hour period</i> , for an initial order, is the period that ensures that in no case can a person be detained under the initial order longer than 24 hours after being taken into custody under any preventative detention order, or any order for the person's detention made under a corresponding law, for the same terrorist act.	9 10 11 12 13 14
	(2) The <i>prescribed 14 day period</i> , for a final order, is the period that ensures that in no case can a person be detained under the final order longer than 14 days after being taken into custody under any preventative detention order, or any order for the person's detention made under a corresponding law, for the same terrorist act.	15 16 17 18 19 20
	(3) If, because of the application of subsection (1) or (2), a period is nil for a particular order, the order can not be made.	21 22
13	Presence or absence at application for order of detainee and other persons	23 24
	(1) This section applies in relation to an application for a preventative detention order or the extension, or further extension, of a preventative detention order for a person (an <i>application</i> and the <i>detainee</i>).	25 26 27 28
	(2) Unless expressly provided for in relation to an application, the detainee, or a representative of the detainee, is not entitled to be given notice of the application, to be present at the application or to make representations in relation to the application.	29 30 31 32 33
	(3) Subject to subsection (2), no person other than the following persons may be present at an application—	34 35

	(a) the issuing authority and anyone assisting the issuing authority;	1 2
	(b) the applicant and any person assisting the applicant in the application;	3 4
	(c) if the detainee is permitted to be at the application under another provision of this Act—the detainee and any person assisting the detainee in the application.	5 6 7
	(4) Despite subsection (3), the issuing authority, in the public interest, may further limit those who may be present at a particular application.	8 9 10
14	General provisions that apply if the PIM must be notified about an application to an issuing authority	11 12
	(1) This section applies to an application to an issuing authority about which the PIM is required to be notified.	13 14
	(2) The applicant must give the PIM—	15
	(a) a copy of the application; and	16
	(b) notice of the place, date and time the application will be heard.	17 18
	(3) The PIM is entitled to be present when the application is heard, to ask questions of any person giving information to the issuing authority and to make any representations to the issuing authority.	19 20 21 22
	(4) Without limiting subsection (3), the PIM is entitled to make representations to the issuing authority in the issuing authority's presence or by phone, fax, email or any other reasonable way.	23 24 25 26
Division 2	Initial orders	27
15	Application for initial order	28
	(1) A police officer may apply to the issuing authority for an initial preventative detention order for a person in relation to a terrorist act (an <i>initial order</i>).	29 30 31
	(2) The application must be in writing and state—	32

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| (a) | the facts and other grounds on which the applicant considers the order should be made; and | 1
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| (b) | the period for which the person is to be detained under the order and the facts and other grounds on which the applicant considers that the person should be detained for that period; and | 3
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| (c) | any information that the applicant may have about the person's age; and | 7
8 |
| (d) | the outcomes and particulars of all previous applications for preventative detention orders made for the person; and | 9
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11 |
| (e) | any information that the applicant may have about any periods for which the person has been detained under an order made under a corresponding law; and | 12
13
14 |
| (f) | any information that the applicant may have about any Commonwealth control order made for the person; and | 15
16 |
| (g) | for any children who may reside with or be associated with the person— | 17
18 |
| | (i) the inquiries that have been made to find out whether there are children who reside with or are associated with the person; and | 19
20
21 |
| | (ii) if children reside with or are associated with the person—the information the applicant has about the children and the provisions that are proposed for the initial order to protect the interests of the children. | 22
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| (3) | Also, if the person is a child or of impaired capacity, the application must state— | 27
28 |
| | (a) whether the person may be contacted under section 61 while detained under the order; and | 29
30 |
| | (b) if the person may not be contacted under section 61 because the contact would seriously prejudice national security—the grounds for preventing the contact. | 31
32
33 |
| (4) | If section 11(3) applies to the application, the application must identify the information mentioned in the subsection on which the application is based. | 34
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- (5) The application must also fully disclose all matters of which the applicant is aware, both favourable and adverse to the making of the order. 1
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3
- Note—* 4
- See the Criminal Code, chapters 16 and 20, for relevant offences. 5
- 16 PIM must be notified** 6
- (1) The applicant must notify the PIM of the application under arrangements decided by the PIM. 7
8
- (2) If the PIM is not reasonably able to be contacted for the application— 9
10
- (a) the application may proceed without the PIM being notified; and 11
12
- (b) the PIM must be notified as soon as possible and given any information requested by the PIM that the PIM would have been entitled to obtain for or during the application. 13
14
15
16
- Example of when PIM is not reasonably able to be contacted—* 17
- The public interest monitor and any deputy public interest monitor are telephoned but do not answer the phone or return calls when asked to call back. 18
19
20
- 17 Issuing authority may make initial order** 21
- (1) On application by the police officer, the issuing authority may make an initial order under this section for the person. 22
23
- (2) Subsection (1) has effect subject to the following sections— 24
- section 8 (Basis for applying for, and making, a preventative detention order) 25
26
 - section 9 (No preventative detention order for person under 16 years of age) 27
28
 - section 11 (Restrictions on subject matter of multiple preventative detention orders) 29
30
 - section 12 (Restrictions on period of detention under multiple preventative detention orders). 31
32
- (3) An initial order is an order that the person may be— 33

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| (a) | taken into custody; and | 1 |
| (b) | detained during the period that— | 2 |
| (i) | starts at the later of the following— | 3 |
| (A) | when the order is made; | 4 |
| (B) | if another preventative detention order, or an | 5 |
| | order for the detention of the person under a | 6 |
| | corresponding law, is in force for the person | 7 |
| | for the same terrorist act—when the other | 8 |
| | order ceases to have effect; and | 9 |
| (ii) | ends a stated period of time after the person is first | 10 |
| | taken into custody under the order. | 11 |
| (4) | The order must be in writing. | 12 |
| (5) | The period of time stated in the order under subsection | 13 |
| | (3)(b)(ii) must not be more than the prescribed 24 hour period. | 14 |
| (6) | An initial order must state— | 15 |
| (a) | the name of the person for whom the order is made; and | 16 |
| (b) | the period during which the person may be detained | 17 |
| | under the order; and | 18 |
| (c) | the date on which, and the time at which, the order is | 19 |
| | made; and | 20 |
| (d) | the date and time after which the person may not be | 21 |
| | taken into custody under the order. | 22 |
| (7) | If the person is— | 23 |
| (a) | a child; or | 24 |
| (b) | of impaired capacity; | 25 |
| | the order may provide that the period each day for which the | 26 |
| | person is entitled to have contact with another person under | 27 |
| | section 60(2) is the period of more than 2 hours that is stated | 28 |
| | in the order. | 29 |
| (8) | Also, if the person is a child or of impaired capacity, the | 30 |
| | application may state that the person may not be contacted | 31 |
| | under section 61 while being detained under the order. | 32 |

(9)	The only basis for a decision under subsection (8) is that preventing the contact is necessary because the contact would seriously prejudice national security.	1 2 3
18	Duration of initial order	4
(1)	An initial order for a person starts to have effect when it is made.	5 6
	<i>Note—</i>	7
	The order comes into force when it is made and authorises the person to be taken into custody (see section 17(3)(a)). The period for which the person may then be detained under the order only starts to run when the person is first taken into custody under the order (see section 17(3)(b)(i)).	8 9 10 11 12
(2)	An initial order for the person ceases to have effect at the end of the period of 72 hours after the order is made if the person has not been taken into custody under the order within that period.	13 14 15 16
(3)	If the person is taken into custody under the order within 72 hours after the order is made, the order ceases to have effect when whichever of the following first occurs—	17 18 19
(a)	the end of—	20
(i)	the period stated in the order as the period during which the person may be detained under the order; or	21 22 23
(ii)	if that period is extended or further extended under section 21—that period as extended or further extended;	24 25 26
(b)	the revocation of the order under division 5.	27
	<i>Note—</i>	28
	The order does not cease to have effect merely because the person is released from detention under the order.	29 30
19	Application for extension of initial order	31
(1)	If—	32
(a)	an initial order is made for a person; and	33
(b)	the order is in force for the person;	34

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a police officer may apply to the issuing authority for an extension, or a further extension, of the period for which the order is to be in force for the person.

- (2) The application must be in writing and state—
- (a) the facts and other grounds on which the police officer considers that the extension, or further extension, is reasonably necessary for the purpose for which the order was made; and
- Note—*
- See section 8(3) and (5) for the purpose for which a preventative detention order may be made.
- (b) the outcomes and particulars of all previous applications for extensions, or further extensions, of the order.
- (3) Also, if the person is a child or of impaired capacity, the application must state—
- (a) whether the person may be contacted under section 61 while being further detained under the order; and
- (b) if the person should not be contacted under section 61 while being further detained under the order because the contact would seriously prejudice national security—the grounds for preventing the contact.
- (4) The application must also fully disclose all matters of which the applicant is aware, both favourable and adverse to the making of the order.

20 PIM must be notified

- (1) The applicant must notify the PIM of the application under arrangements decided by the PIM.
- (2) If the PIM is not reasonably able to be contacted for the application—
- (a) the application may proceed without the PIM being notified; and
- (b) the PIM must be notified as soon as possible and given any information requested by the PIM that the PIM would have been entitled to obtain for or during the application.

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Example of when PIM is not reasonably able to be contacted—

The public interest monitor and any deputy public interest monitor are telephoned but do not answer the phone or return calls when asked to call back.

		1
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		4
21	Issuing authority may extend initial order	5
	(1) The issuing authority may extend, or further extend, the period for which the order is to be in force for the person if the issuing authority is satisfied that detaining the person under the order for the period as extended, or further extended, is reasonably necessary for the purpose for which the order was made.	6 7 8 9 10 11
	(2) The extension, or further extension, must be made in writing as an order.	12 13
	(3) The period as extended, or further extended, must end no later than the prescribed 24 hour period after the person is first taken into custody under the order.	14 15 16
	(4) Also, if the person is a child or of impaired capacity, the extension, or further extension, may state that the person may not be contacted under section 61 while being further detained under the order.	17 18 19 20
	(5) The only basis for a decision under subsection (4) is that preventing the contact is necessary because the contact would seriously prejudice national security.	21 22 23
Division 3	Final orders	24
22	Application for final order	25
	(1) A police officer may apply to the issuing authority for a preventative detention order for a person in relation to a terrorist act (a <i>final order</i>).	26 27 28
	(2) The application must be in writing, be sworn and state—	29
	(a) the facts and other grounds on which the applicant considers that the order should be made; and	30 31
	(b) the period for which the person is to be detained or continue to be detained under the order and the facts and	32 33

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| other grounds on which the applicant considers that the person should be detained or continue to be detained for that period; and | 1
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| (c) any information the applicant may have about the person's age; and | 4
5 |
| (d) the outcomes and particulars of all previous applications for preventative detention orders made for the person; and | 6
7
8 |
| (e) any information that the applicant may have about any periods for which the person has been detained under an order made under a corresponding law; and | 9
10
11 |
| (f) any information that the applicant may have about any Commonwealth control order made for the person; and | 12
13 |
| (g) for any children who may reside with or be associated with the person— | 14
15 |
| (i) the inquiries that have been made to find out whether there are children who reside with or are associated with the person; and | 16
17
18 |
| (ii) if children reside with or are associated with the person—the information the applicant has about the children and the provisions that are proposed for the final order to protect the interests of the children; and | 19
20
21
22
23 |
| (h) if the person is in detention under an existing preventative detention order or an order for the person's detention under a corresponding law—the extent to which the person has been informed of the matters covered by section 47(2)(c) to (h). | 24
25
26
27
28 |
| (3) Also, if the person is a child or of impaired capacity, the application must state— | 29
30 |
| (a) whether the person may be contacted under section 61 within 24 hours of being taken into custody under the order; and | 31
32
33 |
| (b) if the person should not be contacted under section 61 within 24 hours of being taken into custody under the order because the contact would seriously prejudice national security— | 34
35
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| (i) | the grounds for preventing the contact; and | 1 |
| (ii) | the period as soon as possible after the end of the
24 hour period when the person must be contacted
under section 61. | 2
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4 |
| (4) | If section 11(3) applies to the application, the application
must identify the information mentioned in the subsection on
which the application is based. | 5
6
7 |
| (5) | The application must also fully disclose all matters of which
the applicant is aware, both favourable and adverse to the
making of the order. | 8
9
10 |
| | <i>Note—</i> | 11 |
| | See the Criminal Code, chapters 16 and 20, for relevant offences. | 12 |
| 23 | Notice to and representations by the person | 13 |
| (1) | The applicant must give the person— | 14 |
| (a) | a written summary of the grounds of the application;
and | 15
16 |
| (b) | notice of the place, date and time the application will be
heard. | 17
18 |
| | <i>Note—</i> | 19 |
| | Effectively the only application for a preventative detention order that
can be made without notice to the person to whom the application
relates is an application for an initial order or an extension of an initial
order. Detention under an initial order, including any extension, is
limited to a maximum of the prescribed 24 hour period. | 20
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24 |
| (2) | The person and the person’s lawyer are entitled to be present
when the application is heard, either in person or, if the
issuing authority directs, by video link. | 25
26
27 |
| (3) | The person and the person’s lawyer are entitled to ask
questions of any person giving information to the issuing
authority and to make any representations to the issuing
authority. | 28
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| (4) | Subsection (1) or (3) does not require any information to be
disclosed— | 32
33 |
| (a) | if the disclosure of the information is likely to prejudice
national security; or | 34
35 |

	(b) if the information would not have to be disclosed in a proceeding because of the <i>Police Powers and Responsibilities Act 2000</i> , section 454.	1 2 3
24	PIM must be notified	4
	The applicant must notify the PIM of the application under arrangements decided by the PIM.	5 6
25	Issuing authority may make final order	7
	(1) On application by a police officer, the issuing authority may make a final order under this section for the person.	8 9
	(2) The order may be made whether or not an application has been made for an initial order for the terrorist act.	10 11
	(3) Subsection (1) has effect subject to the following sections—	12
	• section 8 (Basis for applying for, and making, a preventative detention order)	13 14
	• section 9 (No preventative detention order for person under 16 years of age)	15 16
	• section 11 (Restrictions on subject matter of multiple preventative detention orders)	17 18
	• section 12 (Restrictions on period of detention under multiple preventative detention orders).	19 20
	<i>Note—</i>	21
	If a previous preventative detention order has been made, section 8 requires the issuing authority to consider afresh the merits of making the order and to be satisfied, after taking into account relevant information, including any information that has become available since the other order was made, of the matters mentioned in section 8(3) or (5) before making the order.	22 23 24 25 26 27
	(4) A final order is an order that the person may be taken into custody and detained, or detained, during a period that—	28 29
	(a) starts at the later of the following—	30
	(i) when the order is made;	31
	(ii) if another preventative detention order, or an order for the detention of the person under a	32 33

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| corresponding law, is in force for the person for the | 1 |
| same terrorist act—when the other order ceases to | 2 |
| have effect; and | 3 |
| (b) ends a stated period of time after the person is first taken | 4 |
| into custody. | 5 |
| (5) The order must be in writing. | 6 |
| (6) The period of time stated under subsection (4)(b) must not be | 7 |
| more than the prescribed 14 day period. | 8 |
| (7) A final order must state— | 9 |
| (a) the name of the person; and | 10 |
| (b) the period during which the person may be detained | 11 |
| under the order; and | 12 |
| (c) the date on which, and the time at which, the order is | 13 |
| made. | 14 |
| (8) If the person— | 15 |
| (a) is a child; or | 16 |
| (b) is of impaired capacity; | 17 |
| the order may provide that the period each day for which the | 18 |
| person is entitled to have contact with another person under | 19 |
| section 60(2) is the period of more than 2 hours that is stated | 20 |
| in the order. | 21 |
| (9) Also, if the person is a child or of impaired capacity, the final | 22 |
| order may state both of the following— | 23 |
| (a) that the person may not be contacted under section 61 | 24 |
| within 24 hours after being taken into custody under the | 25 |
| order; but | 26 |
| (b) that the person must be contacted under section 61 after | 27 |
| the end of the 24 hour period within a period stated in | 28 |
| the order. | 29 |
| (10) The only basis for making a decision under subsection (9) is | 30 |
| that preventing the contact is necessary because the contact | 31 |
| would seriously prejudice national security. | 32 |
| (11) The issuing authority may also include in the order provision | 33 |
| for the person to have contact with a child of the person in | 34 |
| addition to the provision for contact under section 56. | 35 |

26	Duration of final order	1
(1)	A final order for the person starts to have effect when it is made.	2 3
	<i>Note—</i>	4
	The order comes into force when it is made. The period for which the person may be detained under the order, however, only starts to run when the period during which the person may be detained under any other preventative detention order, or order for the detention of the person under a corresponding law, ceases to have effect (see section 25(4)(a)).	5 6 7 8 9 10
(2)	A final order for the person ceases to have effect when whichever of the following first occurs—	11 12
	(a) the end of—	13
	(i) the period stated in the order as the period during which the person may be detained under the order; or	14 15 16
	(ii) if that period is extended or further extended under section 31—that period as extended or further extended;	17 18
	(b) the revocation of the order under division 5.	19
	<i>Note—</i>	20
	The order does not cease to have effect merely because the person is released from detention under the order. See section 45.	21 22
27	Application for extension of final order	23
	If a final order is in force for the person, a police officer may apply to an issuing authority for an extension, or a further extension, of the period for which the final order is to be in force for the person.	24 25 26 27
28	Further provisions about application for extension of final order	28 29
(1)	The application must be in writing, be sworn and state—	30
	(a) the facts and other grounds on which the police officer considers that the extension, or further extension, is	31 32

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reasonably necessary for the purpose for which the order was made; and	1 2
<i>Note—</i>	3
See section 8(3) and (5) for the purpose for which a preventative detention order may be made.	4 5
(b) the outcomes and particulars of all previous applications for extensions, or further extensions, of the final order.	6 7
(2) Also, if the person is a child or of impaired capacity, the application must state—	8 9
(a) whether the person may be contacted under section 61 within 24 hours after being further detained under the order; and	10 11 12
(b) if the person should not be contacted under section 61 within 24 hours of being further detained under the order because the contact would seriously prejudice national security—	13 14 15 16
(i) the grounds for preventing the contact; and	17
(ii) the period as soon as possible after the end of the 24 hour period when the person must be contacted under section 61.	18 19 20
(3) The application must also fully disclose all matters of which the applicant is aware, both favourable and adverse to the making of the order.	21 22 23
29 Notice to and representations by the person	24
(1) The applicant must give the person—	25
(a) a written summary of the grounds of the application; and	26 27
(b) notice of the place, date and time the application will be heard.	28 29
(2) The person and the person's lawyer are entitled to be present when the application is heard either in person, or, if the issuing authority directs, by video link.	30 31 32
(3) The person and the person's lawyer are entitled to ask questions of any person giving information to the issuing	33 34

	authority and to make any representations to the issuing authority.	1 2
(4)	Subsection (1) or (3) does not require any information to be disclosed—	3 4
(a)	if the disclosure of the information is likely to prejudice national security; or	5 6
(b)	if the information would not have to be disclosed in a proceeding because of the <i>Police Powers and Responsibilities Act 2000</i> , section 454.	7 8 9
30	PIM must be notified	10
	The applicant must notify the PIM of the application under arrangements decided by the PIM.	11 12
31	Issuing authority may extend final order	13
(1)	The issuing authority may extend, or further extend, the period for which the final order is to be in force for the person if the issuing authority is satisfied that detaining the person under the order for the period as extended, or further extended, is reasonably necessary for the purpose for which the order was made.	14 15 16 17 18 19
(2)	The extension, or further extension, must be made in writing as an order.	20 21
(3)	The period as extended, or further extended, must end no later than the prescribed 14 day period.	22 23
(4)	Also, if the person is a child or of impaired capacity, the extension, or the further extension, may state both of the following—	24 25 26
(a)	that the person may not be contacted under section 61 within 24 hours after being further detained under the order; but	27 28 29
(b)	that the person must be contacted under section 61 after the end of the 24 hour period within a period stated in the order.	30 31 32

- (5) The only basis for making a decision under subsection (4) is that preventing the contact is necessary because the contact would seriously prejudice national security.

Division 4 Prohibited contact orders

- 32 Prohibited contact order for person for whom preventative detention order is being sought**
- (1) A police officer who applies for a preventative detention order for a person may also apply for a prohibited contact order under this section in relation to the person's detention under the preventative detention order.
- (2) The application must be in writing and state—
- (a) the terms of the prohibited contact order sought; and
- (b) the facts and other grounds on which the police officer considers that the order should be made.
- (3) The application must be sworn if the preventative detention order is a final order.
- (4) The application must also fully disclose all matters of which the applicant is aware, both favourable and adverse to the making of the order.
- (5) If the issuing authority—
- (a) makes the preventative detention order; and
- (b) is satisfied 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 under this section that the person is not, while being detained under the preventative detention order, to contact a person stated in the prohibited contact order.
- Note for subsection (5)(b)—*
- See section 8(3) and (5) for the purpose for which a preventative detention order may be made.
- (6) The prohibited contact order must be in writing.

33	Prohibited contact order for person for whom preventative detention order is already in force	1 2
(1)	If a preventative detention order is in force for a person, a police officer may apply to the issuing authority for a prohibited contact order under this section in relation to the person's detention under the preventative detention order.	3 4 5 6
(2)	The application must be in writing and state—	7
(a)	the terms of the order sought; and	8
(b)	the facts and other grounds on which the police officer considers that the order should be made.	9 10
(3)	The application must be sworn if the preventative detention order is a final order.	11 12
(4)	The application must also fully disclose all matters of which the applicant is aware, both favourable and adverse to the making of the order.	13 14 15
(5)	If the issuing authority is satisfied 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 under this section that the person is not, while being detained under the preventative detention order, to contact another person stated in the prohibited contact order.	16 17 18 19 20 21 22
	<i>Note—</i>	23
	See section 8(3) and (5) for the purpose for which a preventative detention order may be made.	24 25
(6)	The prohibited contact order must be in writing.	26
34	Notice to PIM	27
	The following provisions apply to an application under this division as if reference in the provision to an application were to the application under this division—	28 29 30
(a)	if the preventative detention order is an initial order—section 20;	31 32
(b)	if the preventative detention order is a final order—section 24.	33 34

Division 5	Revocation of orders by issuing authority	1 2
35	Revocation of preventative detention order or prohibited contact order	3 4
(1)	If—	5
(a)	a preventative detention order is in force for a person; and	6 7
(b)	the police officer who is detaining the person under the order is satisfied that the grounds on which the order was made no longer exist;	8 9 10
	the police officer must apply to the issuing authority for the revocation of the order.	11 12
(2)	If—	13
(a)	a preventative detention order is in force for a person; and	14 15
(b)	on an application under subsection (1) by a police officer, the issuing authority is satisfied that the grounds on which the order was made no longer exist;	16 17 18
	the issuing authority must revoke the order.	19
(3)	If—	20
(a)	a prohibited contact order is in force in relation to a person's detention under a preventative detention order; and	21 22 23
(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 no longer exist;	24 25 26 27
	the police officer must apply to the issuing authority for the revocation of the prohibited contact order.	28 29
(4)	If—	30
(a)	a prohibited contact order is in force in relation to a person's detention under a preventative detention order; and	31 32 33

	(b) on an application by a police officer under subsection (3), the issuing authority is satisfied that the grounds on which the prohibited contact order was made no longer exist;	1 2 3 4
	the issuing authority must revoke the prohibited contact order.	5
36	PIM must be notified	6
	The applicant must notify the PIM of the application under arrangements decided by the PIM.	7 8
Part 3	Carrying out preventative detention orders	9 10
37	Power to detain person under preventative detention order	11 12
	(1) While a preventative detention order is in force for a person—	13
	(a) any police officer may take the person into custody; and	14
	(b) any police officer may detain the person.	15
	(2) A police officer has, for the purpose of taking a person into custody under a preventative detention order or preventing the person from escaping from that custody, the same functions and powers as the police officer would have if the police officer were taking the person into custody in connection with the commission of an offence or preventing the person escaping from that custody.	16 17 18 19 20 21 22
	(3) Subsection (2) does not apply to the extent to which particular functions or powers are provided for in this part.	23 24
38	Nominated police officer to oversee functions and powers	25 26
	(1) If a preventative detention order is made for a person, the commissioner or the deputy commissioner of police must nominate a senior police officer (the <i>nominated police</i>	27 28 29

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- officer*) to oversee the performance of functions and exercise of powers in relation to the preventative detention order. 1
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- (2) The nominated police officer must be someone who was not involved in the making of the application for the preventative detention order. 3
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- (3) The nominated police officer must— 6
- (a) oversee the performance of functions and exercise of powers in relation to the preventative detention order; and 7
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9
- (b) without limiting paragraph (a), ensure that part 2, division 5 is complied with in relation to the preventative detention order; and 10
11
12
- (c) receive and consider any representations that are made under subsection (4). 13
14
- Note—* 15
- Part 2, division 5 deals with the revocation of preventative detention orders and prohibited contact orders. 16
17
- (4) The following persons— 18
- (a) the person being detained under the preventative detention order; 19
20
- (b) a lawyer acting for that person in relation to the preventative detention order; 21
22
- (c) a person with whom that person has contact under section 60(2) or section 61; 23
24
- are entitled to make representations to the nominated police officer about— 25
26
- (d) the performance of functions and the exercise of powers in relation to the preventative detention order; and 27
28
- (e) without limiting paragraph (d), compliance with part 2, division 5 in relation to the preventative detention order; and 29
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31
- (f) the person's treatment in connection with the person's detention under the preventative detention order. 32
33
- (5) The commissioner or the deputy commissioner of police may exercise the power under subsection (1) to replace a 34
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	nominated police officer with another nominated police officer (the <i>new nominated police officer</i>).	1 2
(6)	The new nominated police officer must inform the person for whom the preventative detention order was made of his or her nomination as soon as practicable.	3 4 5
39	Endorsement of order with date and time person taken into custody	6 7
	As soon as practicable after a person is first taken into custody under a particular preventative detention order, the police officer who is detaining the person under the order must endorse on the order the date on which, and time at which, the person is first taken into custody under the order.	8 9 10 11 12
40	Requirement to provide name etc.	13
(1)	If a police officer believes on reasonable grounds that a person whose name or address is, or whose name and address are, unknown to the police officer may be able to assist the police officer in executing a preventative detention order, the police officer may request the person to provide the person's name, address or date of birth to the police officer.	14 15 16 17 18 19
(2)	If a police officer—	20
	(a) makes a request of a person under subsection (1); and	21
	(b) informs the person of the reason for the request; and	22
	(c) if the police officer is not in uniform—shows the person evidence that the police officer is a police officer; and	23 24
	(d) complies with subsection (4);	25
	the person must not—	26
	(e) refuse or fail to comply with the request; or	27
	(f) give a name, address or date of birth that is false in a material particular.	28 29
	Maximum penalty—20 penalty units.	30
(3)	Subsection (2) does not apply if the person has a reasonable excuse.	31 32

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- (4) A police officer who makes a request of a person under subsection (1) must provide the following to the person—
- (a) his or her name;
 - (b) his or her station;
 - (c) his or her identification number if he or she has an identification number;
 - (d) his or her rank if he or she does not have an identification number.
- (5) The police officer must not—
- (a) contravene subsection (4); or
 - (b) in purported compliance with subsection (4), give a name, station, number or rank that is false in a material particular.
- Maximum penalty—5 penalty units.

41 Power to enter premises

- (1) Subject to subsection (2), if—
- (a) a preventative detention order is in force for a person; and
 - (b) a police officer believes on reasonable grounds that the person is on any premises;
- the police officer may enter the premises, using the force that may be necessary and reasonable in the circumstances and with the assistance of other police officers that may be necessary, at any time of the day or night to search the premises for the person and to take the person into custody.
- (2) A police officer must not enter a dwelling house under subsection (1) at any time during the period commencing at 9p.m. on a day and ending at 6a.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 the dwelling house 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. 1
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- (3) In this section— 4
dwelling house includes a conveyance, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night. 5
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- 42 Power to conduct a frisk search** 8
- A police officer who takes a person into custody under a preventative detention order, or who is present when the person is taken into custody, may, if the police officer suspects on reasonable grounds that it is prudent to do so in order to find out whether the person is carrying any seizable items— 9
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13
- (a) conduct a frisk search of the person at, or soon after, the time when the person is taken into custody; and 14
15
- (b) seize any seizable items found as a result of the search. 16
- 43 Power to conduct an ordinary search** 17
- A police officer who takes a person into custody under a preventative detention order, or who is present when the person is taken into custody, may, if the police officer suspects on reasonable grounds that the person is carrying— 18
19
20
21
- (a) evidence of, or relating to, a terrorist act; or 22
- (b) a seizable item; 23
- conduct an ordinary search of the person at, or soon after, the time when the person is taken into custody, and seize anything mentioned in paragraph (a) or (b) found as a result of the search. 24
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- 44 ASIO warrant** 28
- (1) This section applies if— 29
- (a) a person is being detained under a preventative detention order; and 30
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- (b) an ASIO warrant 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 the steps that may be necessary to
ensure that the person may be dealt with under the warrant.
- (3) Without limiting subsection (2), the police officer may, under
section 45, release the person from detention under the
preventative detention order so that the person may be dealt
with under the warrant.
- (4) To remove any doubt, it is declared that the fact that the
person is released from detention under the preventative
detention order so that the person may be—
- (a) questioned before a prescribed authority under the
warrant; or
- (b) detained under the warrant in connection with that
questioning;
- does not extend the period for which the preventative
detention order remains in force for the person.
- Note—*
- See section 45(8)(a).
- (5) In this section—
- prescribed authority*** see the *Australian Security Intelligence
Organisation Act 1979* (Cwlth), part 3, division 3.

45 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 who is
charged with an offence may be arrested and otherwise dealt with on the
charge.

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- (2) However, the police officer may not release the person without the approval of a senior police officer if the person is being released so that the person may be dealt with under an ASIO warrant.
- (3) The police officer who releases the person from detention under the preventative detention order must give the person a written statement that the person is being released from that detention.
- (4) The statement must be signed by the police officer.
- (5) Subsection (3) does not apply if the police officer releases the person from detention so that the person may be dealt with—
- (a) under an ASIO warrant; or
 - (b) under the provisions of the *Crimes Act 1914* (Cwlth), part 1AA, division 4 and part 1C; or
 - (c) on a charge of an offence.
- (6) To remove any doubt, it is declared that 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.
- (7) To remove any doubt, it is declared that a person is taken not to be detained under a preventative detention order during a period during which the person is released from detention under the order.
- Note—*
- During this period, the provisions of this Act that apply to a person who is being detained under a preventative detention order (for example, section 55, which deals with the people the person may contact) do not apply to the person.
- (8) To remove any doubt, it is declared that—
- (a) the release of the person under subsection (1) from detention under the preventative detention order does

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not extend the period for which the preventative
detention order remains in force for the person; and

Note—

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

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

46 Arrangement for detainee to be held

- (1) A senior police officer may arrange for a person who is being
detained under a preventative detention order to be detained
under the order at—
- (a) a watch-house; or
- (b) a corrective services facility; or
- (c) a detention centre.
- (2) All persons, including a person who is under 17, may be
detained at either of the places mentioned in subsection (1)(a)
or (b).
- (3) A person who is under 18, and only a person who is under 18,
may be detained at a detention centre.
- (4) An arrangement under subsection (1) for a person to be held at
a watch-house must be only for a period that allows the person
to be delivered as soon as practicable to a corrective services
facility or a detention centre.
- (5) If an arrangement is made under subsection (1) for a person—
- (a) the preventative detention order is taken to authorise the
person in charge of the watch-house, corrective services
facility or detention centre to detain the person at that
place while the order is in force for the person; and
- (b) section 52 applies in relation to the person's detention
under the order at the watch-house, corrective services
facility or detention centre as if—

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| (i) the person in charge of that place; or | 1 |
| (ii) any other person involved in the person's detention at that place; | 2 |
| were a person exercising authority under the order or implementing or enforcing the order; and | 3 |
| (c) the senior police officer is taken, while the person is detained at the watch-house, corrective services facility or detention centre, to be the police officer detaining the person for this Act. | 4 |
| (6) If the person is detained at a corrective services facility, for the <i>Corrective Services Act 2000</i> — | 5 |
| (a) the preventative detention order is a warrant for the person's detention at the facility; and | 6 |
| (b) the person is in the custody of the chief executive within the meaning of that Act. | 7 |
| (7) If the person is detained at a detention centre, for the <i>Juvenile Justice Act 1992</i> — | 8 |
| (a) the preventative detention order is a warrant for the detention of the person at the detention centre; and | 9 |
| (b) the person is in the custody of the chief executive within the meaning of that Act; and | 10 |
| (c) only parts 8 to 10 of that Act, other than sections 269, 272 and 280, apply in relation to the detention of the person. | 11 |
| (8) To remove any doubt, it is declared that the detention of a person at a watch-house, corrective services facility or detention centre is subject to part 5, division 2. | 12 |
| (9) If a person is detained under a preventative detention order at a watch-house, corrective services facility or detention centre, the order does not prevent detention at that place from being counted as part of a sentence of imprisonment that the person is liable to serve. | 13 |
| (10) A person detained in a watch-house, corrective services facility or detention centre under this section must be kept segregated from all other persons being detained in that place. | 14 |

(11)	For subsection (10), the chief executive within the meaning of the <i>Corrective Services Act 2000</i> may make a maximum security order for the person under section 47(1) of that Act.	1 2 3
(12)	For subsection (11), the <i>Corrective Services Act 2000</i> , section 47(2) does not apply.	4 5
(13)	Also, the chief executive mentioned in subsection (11) may make a special treatment order for the person under the <i>Corrective Services Act 2000</i> , section 38(1).	6 7 8
(14)	For subsection (13), the <i>Corrective Services Act 2000</i> , section 38(2) does not apply.	9 10
(15)	The provisions of this section apply despite any provisions of the <i>Corrective Services Act 2000</i> or the <i>Juvenile Justice Act 1992</i> .	11 12 13
Part 4	Informing person detained about preventative detention order	14 15 16
47	Effect of initial order to be explained to person detained	17
(1)	As soon as practicable after a person is first taken into custody under an initial order, the police officer who is detaining the person under the order must inform the person of the matters covered by subsection (2).	18 19 20 21
	<i>Notes—</i>	22
1	A contravention of this subsection may be an offence under section 54.	23 24
2	A contravention of this subsection does not affect the lawfulness of the person's detention under the order (see section 50).	25 26
(2)	The matters covered by this subsection are—	27
(a)	the fact that an initial order has been made for the person; and	28 29
(b)	the period during which the person may be detained under the order; and	30 31

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| (c) | the permissions and restrictions that apply to the people
the person may contact while the person is being
detained under the order; and | 1
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3 |
| (d) | the fact that an application will be, or may be, made for
a final order detaining the person for a further period;
and | 4
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6 |
| (e) | any right the person has to complain to the ombudsman
or the crime and misconduct commission about— | 7
8 |
| | (i) the application for, or the making of, the order; or | 9 |
| | (ii) the treatment of the person by a police officer in
connection with the person's detention under the
order; and | 10
11
12 |
| (f) | the fact that the person may seek from a court a remedy
relating to— | 13
14 |
| | (i) the order; or | 15 |
| | (ii) the treatment of the person in connection with the
person's detention under the order; and | 16
17 |
| (g) | the person's entitlement under section 58 to contact a
lawyer; and | 18
19 |
| (h) | the name and work telephone number of the nominated
police officer and the functions of the officer. | 20
21 |
| (3) | Subsection (2)(c) does not require the police officer to inform
the person being detained of— | 22
23 |
| | (a) the fact that a prohibited contact order has been made in
relation to the person's detention; or | 24
25 |
| | (b) the name of a person stated in a prohibited contact order
that has been made in relation to the person's detention. | 26
27 |
| (4) | For subsection (2)(f), the police officer must assist the person
to make an application under part 6 if the person requests
assistance. | 28
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| | <i>Example of assistance for subsection (4)—</i> | 31 |
| | providing the person with a list of security-cleared lawyers who may be
available to represent the person and contacting the lawyer chosen by
the person for the purposes of section 58 | 32
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34 |

48	Effect of final order to be explained to person detained	1
(1)	As soon as practicable after a final order is made for a person, the police officer who is detaining the person under the order must inform the person of the matters covered by subsection (2).	2 3 4 5
	<i>Notes—</i>	6
	1 A contravention of this subsection may be an offence under section 54.	7 8
	2 A contravention of this subsection does not affect the lawfulness of the person's detention under the order (see section 50).	9 10
(2)	The matters covered by this subsection are—	11
	(a) the fact that a final order has been made in relation to the person; and	12 13
	(b) the period during which the person may be detained under the order; and	14 15
	(c) the permissions and restrictions that apply to the people the person may contact while the person is being detained under the order; and	16 17 18
	(d) any right the person has to complain to the ombudsman or the crime and misconduct commission about—	19 20
	(i) the application for, or the making of, the order; or	21
	(ii) the treatment of the person by a police officer in connection with the person's detention under the order; and	22 23 24
	(e) the right of the person to apply to the Supreme Court to revoke or vary the order, whether before or after the person is released from detention; and	25 26 27
	(f) the fact that the person may seek from the Supreme Court a remedy relating to—	28 29
	(i) the final order; or	30
	(ii) the treatment of the person in connection with the person's detention under the final order; and	31 32
	<i>Note—</i>	33
	See part 6.	34

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(g)	the person's entitlement under section 58 to contact a lawyer; and	1 2
(h)	the name and work telephone number of the nominated police officer and the functions of the officer; and	3 4
(i)	the right of the person and other persons mentioned in section 38(4) to make representations to the nominated police officer and the matters mentioned in the subsection about which the representations may be made.	5 6 7 8 9
(3)	Subsection (2)(c) does not require the police officer to inform the person being detained of—	10 11
(a)	the fact that a prohibited contact order has been made in relation to the person's detention; or	12 13
(b)	the name of a person stated in a prohibited contact order that has been made in relation to the person's detention.	14 15
(4)	For subsection (2)(e) and (f), the police officer must assist the person to make an application under part 6 if the person requests assistance.	16 17 18
	<i>Example of assistance for subsection (4)—</i>	19
	providing the person with a list of security-cleared lawyers who may be available to represent the person and contacting the lawyer chosen by the person for the purposes of section 58	20 21 22
49	Person being detained to be informed of extension of preventative detention order	23 24
	If a preventative detention order is extended, or further extended, under section 21 or 31, the police officer detaining the person under the order must inform the person of the extension, or further extension, as soon as practicable after the extension, or further extension, is made.	25 26 27 28 29
	<i>Notes—</i>	30
1	A contravention of this section may be an offence under section 54.	31
2	A contravention of this section does not affect the lawfulness of the person's detention under the order (see section 50).	32 33

50	Compliance with obligations to inform	1
(1)	Section 47(1), 48(1) or 49 does not apply if the actions of the person being detained under the preventative detention order make it impracticable for the police officer to comply with that subsection.	2 3 4 5
(2)	The police officer detaining the person under the preventative detention order complies with section 47(1) or 48(1) if the police officer informs the person in substance of the matters covered by section 47(2) or 48(2) even if this is not done in language of a precise or technical nature.	6 7 8 9 10
(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 47(1), 48(1) or 49 if the police officer has reasonable grounds to believe that the person is unable, because of inadequate knowledge of the English language or a physical disability, to communicate with reasonable fluency in that language.	11 12 13 14 15 16 17
(4)	Without limiting subsection (3), the assistance of the interpreter may be provided by telephone.	18 19
(5)	The lawfulness of a person's detention under a preventative detention order is not affected by a failure to comply with section 47(1), 48(1), 49 or subsection (3) of this section.	20 21 22
51	Copy of preventative detention order and summary of grounds	23 24
(1)	As soon as practicable after a person is first taken into custody under a preventative detention order, the police officer who is detaining the person under the order must give the person—	25 26 27
(a)	a copy of the order; and	28
(b)	a summary of the grounds on which the order is made.	29
(2)	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.	30 31 32
(3)	Despite section 37(2), 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.	33 34 35 36

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- (4) If— 1
- (a) person is being detained under an initial order; and 2
- (b) a final order is made for the person; 3
- the police officer who is detaining the person under the initial 4
order, must, as soon as practicable, give the person— 5
- (c) a copy of the final order; and 6
- (d) a summary of the grounds on which the order is made. 7
- (5) A person who is being detained under a preventative detention 8
order may request a police officer who is detaining the person 9
to arrange for a copy of— 10
- (a) the order; or 11
- (b) the summary given to the person under subsection (1)(b) 12
or (4)(d); or 13
- to be given to a lawyer acting for the person in relation to the 14
order. 15
- Notes—* 16
- 1 Section 58 deals with the person's right to contact a lawyer and the 17
obligation of the police officer detaining the person to give the 18
person assistance to choose a lawyer. 19
- 2 Section 63 prevents the person from contacting a lawyer who is 20
stated in a prohibited contact order. 21
- (6) The police officer must make arrangements for a copy of the 22
order or the summary to be given to the lawyer as soon as 23
practicable after the request is made. 24
- (7) Without limiting subsection (6), the copy of the order or the 25
summary may be faxed or emailed to the lawyer. 26
- (8) To remove any doubt, it is declared that subsection (6) does 27
not entitle the lawyer to be given a copy of, or see, a document 28
other than the order or the summary. 29
- (9) Nothing in this section requires a copy of a prohibited contact 30
order to be given to a person. 31
- (10) The police officer who gives— 32
- (a) the person being detained under a preventative detention 33
order; or 34

	(b) a lawyer acting for the person;	1
	a copy of the preventative detention order under this section	2
	must endorse on the copy the date on which, and time at	3
	which, the person was first taken into custody under the order.	4
(11)	The lawfulness of a person's detention under a preventative	5
	detention order is not affected by a failure to comply with	6
	subsection (1), (4), (5), (6) or (10).	7
Part 5	Treatment of person detained	8
Division 1	General	9
52	Humane treatment of person being detained	10
	A person being taken into custody, or being detained, under a	11
	preventative detention order—	12
	(a) must be treated with humanity and with respect for	13
	human dignity; and	14
	(b) must not be subjected to cruel, inhuman or degrading	15
	treatment;	16
	by anyone exercising authority under the order or	17
	implementing or enforcing the order.	18
	<i>Note—</i>	19
	A contravention of this section may be an offence under section 54.	20
53	Questioning of person prohibited while person is	21
	detained	22
(1)	A police officer must not question a person while the person is	23
	being detained under a preventative detention order other than	24
	for the purposes of—	25
	(a) finding out whether the person is the person stated in the	26
	order; or	27

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(b) ensuring the safety and wellbeing of the person being detained; or	1 2
(c) allowing the police officer to comply with a requirement in relation to the person's detention under the order.	3 4
(2) A police officer must not question a person while the person is being detained under an order made under a corresponding law.	5 6 7
<i>Notes—</i>	8
1 This section will not apply to the person if the person is released from detention under the order, even though the order may still be in force in relation to the person.	9 10 11
2 A contravention of this section may be an offence under section 54.	12
54 Offences of contravening safeguards	13
A person commits an offence if the person contravenes—	14
(a) section 47(1) (Effect of initial order to be explained to person detained); or	15 16
(b) section 48(1) (Effect of final order to be explained to person detained); or	17 18
(c) section 49 (Person being detained to be informed of extension of preventative detention order); or	19 20
(d) section 52 (Humane treatment of person being detained); or	21 22
(e) section 53(1) or (2) (Questioning of person prohibited while person is detained); or	23 24
(f) section 69(1), (4) or (6) (Taking identifying particulars); or	25 26
(g) section 70(2) (Use of identifying particulars).	27
Maximum penalty—Imprisonment for 2 years.	28

Division 2	Contact provisions	1
55	Restriction on contact with other people	2
	Other than as provided by this division, while a person is being detained under a preventative detention order, the person—	3 4 5
	(a) is not entitled to contact another person; and	6
	(b) may be prevented from contacting another person.	7
	<i>Notes—</i>	8
	1 This section will not apply to the person if the person is released from detention under the order, even though the order may still be in force in relation to the person.	9 10 11
	2 A person's entitlement to contact other people under sections 56, 58 and 60 may be subject to a prohibited contact order made under section 32 or 33 (see section 63).	12 13 14
56	Contacting family members etc.	15
	(1) The person being detained is entitled to contact by telephone or fax—	16 17
	(a) a parent or guardian of the person or 1 of his or her other family members; and	18 19
	(b) if he or she—	20
	(i) lives with another person and that other person is not a family member of the person being detained; or	21 22 23
	(ii) lives with other people and those other people are not family members of the person being detained;	24 25
	that other person or one of those other people; and	26
	(c) if he or she is employed—his or her employer; and	27
	(d) if he or she employs people in a business—one of the people he or she employs in that business; and	28 29
	(e) if he or she engages in a business together with another person or other people—that other person or one of those other people; and	30 31 32

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- (f) if the police officer detaining the person being detained agrees to the person contacting another person—that person;
but solely for the purposes of letting the person contacted know that the person being detained is safe but is not able to be contacted for the time being while the person is being detained under a preventative detention order detention for up to 14 days.
- (2) To remove any doubt, it is declared that, if the person being detained (the *detainee*) has 2 parents or 2 or more guardians, the detainee is entitled, subject to section 63, to contact under subsection (1) each of those parents or guardians.
- (3) In this section—
family member of a person means—
- (a) the person’s spouse or same-sex partner; or
- (b) a parent, step-parent or grandparent of the person; or
- (c) a child, step-child or grandchild of the person; or
- (d) a brother, sister, step-brother or step-sister of the person; or
- (e) a guardian or carer of the person.
- 57 Contacting ombudsman and crime and misconduct commission**
- (1) The person being detained is entitled to contact the ombudsman and the crime and misconduct commission.
- (2) The contact authorised under subsection (1) includes all contact necessary for the ombudsman or the crime and misconduct commission to perform their functions under an Act.
- (3) The provisions of the *Ombudsman Act 2001* relating to the functions and powers of the ombudsman extend to the ombudsman’s functions and powers under this Act, despite any reference in that Act to a function or power that is expressed as a function or power under that Act.

58	Contacting lawyer	1
(1)	The person being detained is entitled to contact a lawyer but solely for the purpose of—	2 3
(a)	obtaining advice from the lawyer about the person's legal rights in relation to—	4 5
(i)	the preventative detention order; or	6
(ii)	the treatment of the person in connection with the person's detention under the order; or	7 8
(b)	arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, applications to the issuing authority about—	9 10 11
(i)	the making of a preventative detention order against the person; or	12 13
(ii)	the revocation of a preventative detention order made against the person; or	14 15
(c)	arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, any other proceedings in a court for a remedy in relation to—	16 17 18
(i)	the preventative detention order; or	19
(ii)	the treatment of the person in connection with the person's detention under the order; or	20 21
(d)	arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, a complaint to the ombudsman or the crime and misconduct commission about—	22 23 24 25
(i)	the application for, or the making of, the preventative detention order; or	26 27
(ii)	the treatment of the person by a police officer in connection with the person's detention under the order; or	28 29 30
(e)	arranging for the lawyer to act for the person in relation to an appearance, or hearing, before a court that is to take place while the person is being detained under the order.	31 32 33 34

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- (2) The form of contact that the person being detained is entitled to have with a lawyer under subsection (1) includes—
- (a) being visited by the lawyer; and
 - (b) communicating with the lawyer by telephone or fax.
- (3) If—
- (a) the person being detained asks to be allowed to contact a particular lawyer under subsection (1); and
 - (b) either—
 - (i) the person is not entitled to contact that lawyer because of section 63; or
 - (ii) the person is not able to contact that lawyer;
- the police officer who is detaining the person must give the person reasonable assistance to choose another lawyer for the person to contact under subsection (1).
- (4) In recommending lawyers to the person being detained as part of giving the person assistance under subsection (3), the police officer who is detaining the person may give priority to security-cleared lawyers.
- (5) Despite subsection (4) but subject to section 63, the person being detained is entitled under this section to contact a lawyer who is not a security-cleared lawyer.
- 59 Monitoring contact under section 56, 58 or 61**
- (1) The contact the person being detained has with another person under section 56, 58 or 61 may take place only if it is conducted in a way that ensures that the contact, and the content and meaning of the communication that takes place during the contact, can be effectively monitored by a police officer exercising authority under the preventative detention order.
- (2) The contact may take place in a language other than English only if the content and meaning of the communication that takes place during the contact can be effectively monitored with the assistance of an interpreter.

(3)	Without limiting subsection (2), the interpreter mentioned in that subsection may be a police officer.	1 2
(4)	If the person being detained indicates that he or she wishes the contact to take place in a language other than English, the police officer who is detaining the person must—	3 4 5
(a)	arrange for the services of an appropriate interpreter to be provided if it is reasonably practicable to do so during the period during which the person is being detained; and	6 7 8 9
(b)	if it is reasonably practicable to do so—arrange for those services to be provided as soon as practicable.	10 11
(5)	A communication between—	12
(a)	a person who is being detained under a preventative detention order; and	13 14
(b)	a lawyer;	15
	for a purpose mentioned in section 58(1) is not admissible in evidence against the person in any proceedings in a court.	16 17
60	Special contact rules for child or person of impaired capacity	18 19
(1)	This section applies if the person being detained under a preventative detention order—	20 21
(a)	is a child; or	22
(b)	is of impaired capacity.	23
(2)	The person is entitled, while being detained under the order, to have contact with—	24 25
(a)	a parent or guardian of the person; or	26
(b)	another person who—	27
(i)	is able to represent the person's interests; and	28
(ii)	is, as far as practicable in the circumstances, acceptable to the person and to the police officer who is detaining the person; and	29 30 31
(iii)	is not a member of the police service; and	32
(iv)	is not an AFP member or AFP employee; and	33

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- (v) is not a member, however described, of a police force of another State; and 1
2
- (vi) is not an officer or employee of ASIO. 3
- (3) To remove any doubt, it is declared that— 4
- (a) if the person being detained (the *detainee*) has 2 parents or 2 or more guardians, the detainee is entitled, subject to section 63, to have contact under subsection (2) with each of those parents or guardians; and 5
6
7
8
- (b) the detainee is entitled to disclose the following to a person with whom the detainee has contact under subsection (2)— 9
10
11
- (i) the fact that a preventative detention order has been made in relation to the detainee; 12
13
- (ii) the fact that the detainee is being detained; 14
- (iii) the period for which the detainee is being detained. 15
- (4) The form of contact that the person being detained is entitled to have with another person under subsection (2) includes— 16
17
- (a) being visited by that other person; and 18
- (b) communicating with that other person by telephone or fax. 19
20
- (5) The period for which the person being detained is entitled to have contact with another person each day under subsection (2) is— 21
22
23
- (a) 2 hours; or 24
- (b) a longer period stated in the preventative detention order. 25
26
- Note—* 27
- See sections 17(7) and 25(8). 28
- (6) To remove any doubt, it is declared that the first contact a person is entitled to have with another person under subsection (5) is one that takes place within 24 hours after the person is detained. 29
30
31
32
- (7) Despite subsection (5), the police officer who is detaining the person may permit the person to have contact with a person 33
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	under subsection (2) for a period that is longer than the period provided for in subsection (5).	1 2
(8)	The contact that the person being detained has with another person under subsection (2) must be conducted in a way that ensures that the content and meaning of any communication that takes place during the contact can be effectively monitored by a police officer exercising authority under the preventative detention order.	3 4 5 6 7 8
(9)	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 10 11 12 13
(10)	Without limiting subsection (9), the interpreter mentioned in that subsection may be a police officer.	14 15
(11)	If the person being detained indicates that he or she wishes the communication that takes place during the contact to take place in a language other than English, the police officer who is detaining the person must—	16 17 18 19
	(a) arrange for the services of an appropriate interpreter to be provided if it is reasonably practicable to do so during the period during which the person is being detained; and	20 21 22 23
	(b) if it is reasonably practicable to do so—arrange for those services to be provided as soon as practicable.	24 25
61	Child or person of impaired capacity to be contacted by relevant chief executive	26 27
(1)	This section also applies if the person being detained under a preventative detention order—	28 29
	(a) is a child; or	30
	(b) is of impaired capacity.	31
(2)	As soon as possible after the person is detained under the order, the police officer detaining the person must notify the relevant chief executive.	32 33 34

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| (3) | The relevant chief executive may have the contact with the person— | 1 |
| | | 2 |
| (a) | that is necessary to ensure the person understands the effect of the order; and | 3 |
| | | 4 |
| (b) | that is necessary to find out anything about the welfare of the person. | 5 |
| | | 6 |
| (4) | The first contact under subsection (3) must be within 24 hours after each of the following— | 7 |
| | | 8 |
| (a) | the person being taken into custody under an initial order; | 9 |
| | | 10 |
| (b) | the person being further detained under the extension or further extension of an initial order; | 11 |
| | | 12 |
| (c) | the person being taken into custody or further detained under a final order; | 13 |
| | | 14 |
| (d) | the person being further detained under an extension or further extension of a final order. | 15 |
| | | 16 |
| (5) | Despite subsection (4), the first contact mentioned in the subsection— | 17 |
| | | 18 |
| (a) | if the preventative detention order is an initial order—must not take place if the issuing authority makes an order to that effect under section 17(8) or section 21(4); or | 19 |
| | | 20 |
| | | 21 |
| | | 22 |
| (b) | if the preventative detention order is a final order—must take place within a period after the 24 hour period mentioned in the subsection, if the issuing authority makes an order to that effect under section 25(9) or section 31(4). | 23 |
| | | 24 |
| | | 25 |
| | | 26 |
| | | 27 |
| (6) | A single contact may satisfy more than 1 requirement for contact under subsection (4). | 28 |
| | | 29 |
| (7) | The relevant chief executive must give reasonable notice before making contact with a person for this section under arrangements decided between the chief executive and the police officer detaining the person. | 30 |
| | | 31 |
| | | 32 |
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62	The relevant chief executive and the chief executive's delegate	1 2
	(1) For section 61, the <i>relevant chief executive</i> is—	3
	(a) if the person being detained under a preventative detention order is a child—the chief executive within the meaning of the <i>Juvenile Justice Act 1992</i> ; or	4 5 6
	(b) if the person being detained under a preventative detention order is a person of impaired capacity—the chief executive within the meaning of the <i>Disability Services Act 1992</i> .	7 8 9 10
	(2) The relevant chief executive's power to delegate a function under the <i>Disability Services Act 1992</i> , section 35, and the <i>Juvenile Justice Act 1992</i> , section 312, includes the power to delegate the functions of the chief executive under section 61.	11 12 13 14
	(3) However, the relevant chief executive may only delegate functions under section 61 to a person with the approval of—	15 16
	(a) the police commissioner; and	17
	(b) the chief executive of the department responsible for administering the Act under which is established or controlled the place where the person detained under the order is detained.	18 19 20 21
	(4) In this section— <i>function</i> includes power.	22 23
63	Entitlement to contact subject to prohibited contact order	24
	Sections 56, 58 and 60 have effect subject to any prohibited contact order made in relation to the person's detention.	25 26
Division 3	Disclosure offences	27
64	Lawyer	28
	A person (the <i>lawyer</i>) commits an offence if—	29

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|-----|---|--|
| (a) | a person being detained under a preventative detention order (the <i>detainee</i>) contacts the lawyer under section 58; and | 1
2
3 |
| (b) | the lawyer discloses to another person— | 4 |
| | (i) the fact that a preventative detention order has been made in relation to the detainee; or | 5
6 |
| | (ii) the fact that the detainee is being detained; or | 7 |
| | (iii) the period for which the detainee is being detained; or | 8
9 |
| | (iv) any information that the detainee gives the lawyer in the course of the contact; and | 10
11 |
| (c) | the disclosure occurs while the detainee is being detained under the order; and | 12
13 |
| (d) | the disclosure is not made for the purpose of— | 14 |
| | (i) an application for— | 15 |
| | (A) the making of a preventative detention order for the detainee; or | 16
17 |
| | (B) the revocation or variation of a preventative detention order made for the detainee; or | 18
19 |
| | (ii) any proceedings in a court for a remedy relating to the preventative detention order or the treatment of the detainee in connection with the detainee's detention under the order; or | 20
21
22
23 |
| | (iii) a complaint to the ombudsman or crime and misconduct commission in relation to the application for, or making of, the preventative detention order or the treatment of the detainee by a police officer in connection with the detainee's detention under the order; or | 24
25
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29 |
| | (iv) making representations to the nominated police officer, or another police officer involved in the detainee's detention, about the performance of functions and the exercise of powers in relation to the order or the treatment of the detainee in connection with the detainee's detention under the order; and | 30
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(e)	the lawyer knows or should have known the disclosure is unlawful.	1 2
	Maximum penalty—Imprisonment for 2 years.	3
65	Parent/guardian	4
(1)	A person (the <i>parent/guardian</i>) commits an offence if—	5
(a)	a person being detained under a preventative detention order (the <i>detainee</i>) has contact with the parent/guardian under section 60; and	6 7 8
(b)	the parent/guardian discloses to another person—	9
(i)	the fact that a preventative detention order has been made in relation to the detainee; or	10 11
(ii)	the fact that the detainee is being detained; or	12
(iii)	the period for which the detainee is being detained; or	13 14
(iv)	any information that the detainee gives the parent/guardian in the course of the contact; and	15 16
(c)	the other person is not a person with whom the detainee has also had contact under section 60 while being detained under the order; and	17 18 19
(d)	the disclosure occurs while the detainee is being detained under the order; and	20 21
(e)	the disclosure is not made for the purpose of—	22
(i)	a complaint to the ombudsman or the crime and misconduct commission in relation to the application for, or the making of, the preventative detention order or the treatment of the detainee by a police officer in connection with the detainee's detention under the order; or	23 24 25 26 27 28
(ii)	making representations to the nominated police officer, or another police officer involved in the detainee's detention, about the performance of functions and the exercise of powers in relation to the order or the treatment of the detainee in	29 30 31 32 33

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	connection with the detainee's detention under the order; and	1 2
	(f) the parent/guardian knows or should have known the disclosure is unlawful.	3 4
	Maximum penalty—Imprisonment for 2 years.	5
(2)	To remove any doubt, it is declared that a person does not contravene subsection (1) merely by letting another person know that the detainee is safe but is not able to be contacted for the time being.	6 7 8 9
66	Interpreter	10
	A person (the <i>interpreter</i>) commits an offence if—	11
	(a) the interpreter is an interpreter who assists in monitoring the contact that a person being detained under a preventative detention order (the <i>detainee</i>) has with someone while the detainee is being detained under the order; and	12 13 14 15 16
	(b) the interpreter discloses to another person—	17
	(i) the fact that a preventative detention order has been made in relation to the detainee; or	18 19
	(ii) the fact that the detainee is being detained; or	20
	(iii) the period for which the detainee is being detained; or	21 22
	(iv) any information that the interpreter obtains in the course of assisting in the monitoring of that contact; and	23 24 25
	(c) the disclosure occurs while the detainee is being detained under the order; and	26 27
	(d) the interpreter knows or should have known the disclosure is unlawful.	28 29
	Maximum penalty—Imprisonment for 2 years.	30
67	Disclosure recipient	31
	A person (the <i>disclosure recipient</i>) commits an offence if—	32

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- (a) a person (the *earlier discloser*) discloses to the disclosure recipient—
- (i) the fact that a preventative detention order has been made in relation to a person; or
 - (ii) the fact that a person is being detained under a preventative detention order; or
 - (iii) the period for which a person is being detained under a preventative detention order; or
 - (iv) any information that a person who is being detained under a preventative detention order communicates to a person while the person is being detained under the order; and
- (b) the disclosure by the earlier discloser to the disclosure recipient contravenes—
- (i) section 63, 64, 65 or 66; or
 - (ii) this section; and
- (c) the disclosure recipient discloses that information to another person; and
- (d) the disclosure by the disclosure recipient occurs while the person mentioned in paragraph (a)(i), (ii), (iii) or (iv) is being detained under the order; and
- (e) the disclosure recipient knows or should have known the disclosure is unlawful.
- Maximum penalty—Imprisonment for 2 years.

68 Persons who monitor

- A person commits an offence if—
- (a) the person is—
 - (i) a police officer who monitors; or
 - (ii) an interpreter who assists in monitoring;
 contact that a person being detained under a preventative detention order (the *detainee*) has with a lawyer under section 58 while the detainee is being detained under the order; and

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- (b) information is communicated in the course of that contact; and 1
2
- (c) the information is communicated for one of the purposes mentioned in section 58(1); and 3
4
- (d) the person discloses that information to another person; and 5
6
- (e) the person knows or should have known the disclosure is unlawful. 7
8
- Maximum penalty—Imprisonment for 2 years. 9
- Note—* 10
- See also section 59(5). 11

Division 4 Identifying particulars 12

69 Taking identifying particulars 13

- (1) A police officer must not take identifying particulars from a person who is being detained under a preventative detention order other than under this section. 14
15
16
- Note—* 17
- A contravention of this subsection may be an offence under section 54. 18
- (2) A police officer who is of the rank of sergeant or higher may take identifying particulars from the person, or cause identifying particulars to be taken from the person, if— 19
20
21
- (a) the person consents in writing; or 22
- (b) the police officer believes on reasonable grounds that it is necessary to do so for the purpose of confirming the person's identity as the person stated in the order. 23
24
25
- (3) A police officer may use the force that is necessary and reasonable in the circumstances to take identifying particulars from a person under this section. 26
27
28
- (4) Subject to this section, a police officer must not take identifying particulars, other than palm prints, fingerprints, or footprints, from the person if the person— 29
30
31
- (a) is a child; or 32

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- (b) is of impaired capacity; 1
 unless a magistrate orders that the particulars be taken. 2
- Note—* 3
 A contravention of this subsection may be an offence under section 54. 4
- (5) In deciding whether to make an order, the magistrate must 5
 have regard to— 6
- (a) the age, or any impaired capacity, of the person; and 7
 (b) any other matters the magistrate considers appropriate. 8
- (6) The taking of identifying particulars from a person who— 9
- (a) is a child; or 10
 (b) is of impaired capacity; 11
 must be done in the presence of— 12
- (c) a parent or guardian of the person; or 13
 (d) if a parent or guardian of the person is not acceptable to 14
 the person—another appropriate person. 15
- Notes—* 16
- 1 For *appropriate person*, see subsection (12). 17
 2 A contravention of this subsection may be an offence under 54. 18
- (7) Despite this section, identifying particulars may be taken from 19
 a person who is a child and is capable of managing his or her 20
 affairs if— 21
- (a) subsections (9) and (10) are satisfied; or 22
 (b) subsection (9) or (10) is satisfied, but not both, and a 23
 magistrate orders that the particulars be taken. 24
- (8) In deciding whether to make an order, the magistrate must 25
 have regard to the matters stated in subsection (5). 26
- (9) This subsection applies if the person agrees in writing to the 27
 taking of the particulars. 28
- (10) This subsection applies if either— 29
- (a) a parent or guardian of the person; or 30
 (b) if a parent or guardian is not acceptable to the 31
 person—another appropriate person; 32

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	agrees in writing to the taking of the particulars.	1
(11)	Despite this section, identifying particulars may be taken from a person who—	2 3
	(a) is an adult; and	4
	(b) is capable of managing his or her affairs;	5
	if the person consents in writing.	6
(12)	A reference in this section to an <i>appropriate person</i> in relation to a person (the <i>subject</i>) who is a child, or of impaired capacity, is a reference to a person who—	7 8 9
	(a) is capable of representing the subject's interests; and	10
	(b) as far as is practicable in the circumstances, is acceptable to the subject and the police officer who is detaining the subject; and	11 12 13
	(c) is none of the following—	14
	(i) a member of the police service;	15
	(ii) an AFP member or AFP employee;	16
	(iii) a member, however described, of a police force of another State;	17 18
	(iv) an officer or employee of ASIO.	19
70	Use of identifying particulars	20
(1)	This section applies if identifying particulars are taken under section 69 from a person being detained under a preventative detention order.	21 22 23
(2)	The particulars may be used only to find out whether the person is the person stated in the order.	24 25
	<i>Note—</i>	26
	A contravention of this subsection may be an offence under section 54.	27
(3)	If—	28
	(a) a period of 12 months elapses after the identifying particulars are taken; and	29 30
	(b) proceedings for—	31

- | | |
|--|---|
| (i) the preventative detention order; or | 1 |
| (ii) the treatment of the person in connection with the
person's detention under the order; | 2 |
| have not been brought, or have been brought and have
ended within the period; | 3 |
| the particulars must be destroyed as soon as practicable after
the end of that period by the person who possesses the
particulars. | 4 |
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Part 6 Reviews and other remedies 9

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|---------------|--|----------------|
| 71 | Review by Supreme Court on application of detained person | 10
11 |
| (1) | A person for whom a final order is made may apply to the Supreme Court for an order revoking or varying the order. | 12
13 |
| (2) | The application may be made at any time after the order is served on the person, and— | 14
15 |
| (a) | whether before or after the person is released from detention under the order; and | 16
17 |
| (b) | whether or not representations have been made to the nominated police officer about a matter that is the subject of the application. | 18
19
20 |
| (3) | The person must give written notice of the application and the grounds on which it is made to the commissioner. | 21
22 |
| (4) | The commissioner must give the PIM written notice of the application and a copy of the notice and grounds mentioned in subsection (3). | 23
24
25 |
| (5) | The commissioner is the respondent to the application. | 26 |
|
72 |
Review by Supreme Court initiated by police officer detaining a person |
27
28 |
| (1) | This section applies if within 7 days after a person is detained under a preventative detention order— | 29
30 |

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	(a) the order is still in force; and	1
	(b) the person has not made an application to the Supreme Court under section 71.	2 3
	(2) The commissioner must bring an application before the Supreme Court for a decision on whether the order, or any prohibited contact order made in relation to detention under the order, should be revoked or varied.	4 5 6 7
	(3) The person is taken to be an applicant for the revocation or varying of the order and the commissioner is taken to be the respondent.	8 9 10
73	Supreme Court hearing and decision	11
	(1) The court is to decide an application under section 71 or 72 by way of reconsideration on the merits of the case without being affected by the original decision to make the order.	12 13 14
	(2) The record for the application is to include all material given to the issuing authority.	15 16
	(3) The PIM is entitled to appear, to examine any witness and to make any submissions.	17 18
	(4) If the PIM does appear—	19
	(a) the PIM is a party to the proceedings; but	20
	(b) a costs order can not be made against the PIM.	21
	(5) The parties may bring additional evidence and make additional submissions to the court.	22 23
	(6) In deciding the application, the court's power includes the power to affirm, revoke or vary the order.	24 25
	(7) The application is a proceeding within the meaning of the <i>Supreme Court of Queensland Act 1991</i> , section 116B for the purposes of part 8A of that Act.	26 27 28
	<i>Note—</i>	29
	The <i>Supreme Court of Queensland Act 1991</i> , part 8A makes provision for the use of video link for a proceeding in the Supreme Court.	30 31

74	Stay of revocation pending outcome of appeal	1
	(1) This section applies if—	2
	(a) the Supreme Court revokes or varies a preventative detention order on application under section 71 or 72; and	3 4 5
	(b) the respondent informs the court that the respondent intends to appeal the revocation or variation to the Court of Appeal under the <i>Supreme Court of Queensland Act 1991</i> , section 69.	6 7 8 9
	(2) The revocation or variation is stayed, unless the court otherwise orders, until—	10 11
	(a) if the appeal is lodged within 12 hours after the revocation or variation—the end of the appeal; or	12 13
	(b) if an appeal is not lodged within 12 hours after the revocation or variation—the end of the 12 hours.	14 15
75	Proceedings in relation to preventative detention orders generally saved and right of compensation conferred	16 17
	(1) This Act does not limit proceedings that may be brought in a court for a remedy in relation to—	18 19
	(a) a preventative detention order; or	20
	(b) the treatment of a person in connection with the person's detention under a preventative detention order.	21 22
	<i>Example—</i>	23
	A right to start a proceeding under the <i>Judicial Review Act 1991</i> is not limited by this Act.	24 25
	(2) Without limiting subsection (1), the person for whom a preventative detention order is made may apply to the Supreme Court for compensation—	26 27 28
	(a) if, under this part, the Supreme Court revokes the order, whether before or after the order has otherwise ceased to have effect; or	29 30 31
	(b) when the order ceases to have effect.	32
	(3) The application must be made within a period decided by the court at any time.	33 34

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-
- (4) The record for the application is to include all material given to the issuing authority. 1
2
- (5) The parties may bring additional evidence and make additional submissions to the court. 3
4
- (6) The Supreme Court may order compensation to be paid to the applicant if it is satisfied— 5
6
- (a) that the preventative detention order should not have been made; or 7
8
- (b) that the treatment of the applicant while being detained under the preventative detention order contravened this Act. 9
10
11
- (7) The applicant is not entitled to compensation merely because a preventative detention order or prohibited contact order is made. 12
13
14
- (8) If the Supreme Court makes a decision under subsection (6), the State is liable to pay the compensation decided by the court. 15
16
17
- Note—* 18
- See the Criminal Code of the Commonwealth, section 105.52, for the court's power to provide remedies for a preventative detention order under the Code. 19
20
21
- (9) Without limiting subsection (2), an application under this section may be made in the course of an application to the Supreme Court for an order under the *Judicial Review Act 1991*, section 30, in relation to an application for, or the making of, a preventative detention order. 22
23
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26
- 76 Supreme Court to establish procedures for ensuring secrecy of proceedings under this Act while terrorist threat exists** 27
28
29
- (1) This section only applies to proceedings under this Act about a preventative detention order that is in force. 30
31
- (2) 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. 32
33
34
- (3) The Supreme Court must establish appropriate procedures to ensure that information about— 35
36

- (a) the court's proceedings on review of a preventative detention order; and 1
2
- (b) any other proceedings brought before the court in relation to a preventative detention order; 3
4
- is confined within the narrowest possible limits. 5
- (4) The Supreme Court is not, however, required to suppress the publication of information under this section if— 6
7
- (a) the Minister authorises its publication; or 8
- (b) the court decides that the publication of the information should be authorised in the public interest. 9
10

Part 7 Miscellaneous 11

- 77 Nature of functions of judge** 12
- (1) A function of making an order conferred by this Act on a judge acting as an issuing authority is conferred on the judge in a personal capacity and not as a court or a member of a court. 13
14
15
16
- (2) Without limiting subsection (1), an order made by the judge acting as an issuing authority has effect only because of this Act and is not to be taken by implication to be made by a court. 17
18
19
20
- (3) The *Supreme Court of Queensland Act 1991*, section 27AA applies to the judge in performing the function. 21
22
- Note—* 23
- The applied section provides for the protection and immunity of a Supreme Court judge. 24
25
- (4) Subsection (3) does not limit the protection or immunity the judge would have apart from the subsection. 26
27
- (5) A retired judge performing a function under this Act has the same protection and immunity as a judge has under this section. 28
29
30

78	Nature of functions of magistrate	1
	(1) A function of making an order conferred on a magistrate by section 69 is conferred on the magistrate in a personal capacity and not as a court or a member of a court.	2 3 4
	(2) Without limiting subsection (1), an order made by a magistrate under section 69 has effect only because of this Act and is not to be taken by implication to be made by a court.	5 6 7
	(3) The <i>Magistrates Act 1991</i> , section 51 applies to a magistrate performing the function mentioned in subsection (1).	8 9
	<i>Note—</i>	10
	The applied section provides for the protection and immunity of a magistrate.	11 12
	(4) Subsection (3) does not limit the protection or immunity the magistrate would have apart from the subsection.	13 14
79	Obtaining orders by telephone or similar facility	15
	(1) A police officer may apply to the issuing authority for a preventative detention order by phone, fax, video link, email, radio or similar facility if it is reasonably necessary to apply in that way because of—	16 17 18 19
	(a) urgent circumstances; or	20
	(b) other special circumstances, for example, the police officer's remote location.	21 22
	(2) Before making the application the police officer must prepare the written application as required under this Act.	23 24
80	Offences	25
	Proceedings for an offence against this Act must be taken in a summary way under the <i>Justices Act 1886</i> .	26 27
81	Other functions not affected	28
	This Act does not affect any existing function of the ombudsman, the crime and misconduct commission or the PIM under another Act.	29 30 31

82	Law relating to legal professional privilege not affected	1
	To remove any doubt, it is declared that this Act does not affect the law relating to legal professional privilege.	2 3
83	Sunset provision	4
	(1) This Act expires at the end of 10 years after the day on which this section commences.	5 6
	(2) A preventative detention order, or a prohibited contact order, that is in force when the Act expires ceases to have effect.	7 8
	(3) Despite the Act's expiry, the Act continues to apply in relation to—	9 10
	(a) matters arising before its expiry; and	11
	(b) matters arising under preventative detention orders and prohibited contact orders while they were in force.	12 13
	(4) This section does not limit the <i>Acts Interpretation Act 1954</i> , section 20.	14 15
84	Regulation-making power	16
	The Governor in Council may make regulations under this Act.	17 18
Part 8	Amendment of Police Powers and Responsibilities Act 2000	19 20
85	Act amended in pt 8 and references	21
	(1) This part amends the <i>Police Powers and Responsibilities Act 2000</i> .	22 23
	(2) A reference in this part to a provision of the Act amended is a reference to the provision as numbered before relocation and renumbering under the <i>Cross-Border Law Enforcement Legislation Amendment Act 2005</i> .	24 25 26 27

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(3)	If the provision is relocated and renumbered as mentioned in subsection (2), the reference in this part to the provision is taken to be a reference to the provision as relocated and renumbered.	1 2 3 4
86	Amendment of s 159 (Monitor's functions)	5
	Section 159—	6
	<i>insert—</i>	7
'(4)	Also, the public interest monitor has the following functions—	8 9
(a)	under the Criminal Code of the Commonwealth, to exercise the power conferred on the monitor under the following sections—	10 11 12
	• section 104.12 (Service, explanation and notification of an interim control order)	13 14
	• section 104.14 (Confirming an interim control order)	15 16
	• section 104.18 (Application by the person for a revocation or variation of a control order)	17 18
	• section 104.19 (Application by the AFP Commissioner for a revocation or variation of a control order)	19 20 21
	• section 104.23 (Application by the AFP Commissioner for addition of obligations, prohibitions or restrictions);	22 23 24
(b)	under the <i>Terrorism (Preventative Detention) Act 2005</i> , to exercise the power conferred on the monitor under the following sections—	25 26 27
	• section 14 (General provisions that apply if the PIM must be notified about an application to an issuing authority)	28 29 30
	• section 73 (Supreme Court hearing and decision);	31
(c)	to gather statistical information about the use and effectiveness of control orders and preventative	32 33

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	detention orders under the Acts mentioned in paragraphs (a) and (b);	1 2
	(d) whenever the public interest monitor considers it appropriate—to give to the commissioner a report on noncompliance by police officers with the <i>Terrorism (Preventative Detention) Act 2005</i> .	3 4 5 6
	‘(5) Also, subject to the direction of the public interest monitor, a deputy public interest monitor has the functions mentioned in subsection (4).’.	7 8 9
87	Amendment of s 160 (Monitor’s annual report)	10
	Section 160—	11
	insert—	12
	‘(1A) Also, a report relating to a year must include the following matters under the <i>Terrorism (Preventative Detention) Act 2005</i> —	13 14 15
	(a) the number of initial orders made during the year;	16
	(b) the number of final orders made during the year;	17
	(c) whether a person was taken into custody under each of those orders and, if so, how long the person was detained for;	18 19 20
	(d) particulars of any complaints about the detention of a person under a preventative detention order made or referred during the year to the ombudsman or the crime and misconduct commission;	21 22 23 24
	(e) the number of prohibited contact orders made during the year;	25 26
	(f) the use of preventative detention orders and prohibited contact orders generally.	27 28
	‘(1B) Also, a report relating to a year must include the following matters under the Criminal Code of the Commonwealth, division 104, in relation to matters involving the public interest monitor—	29 30 31 32

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- | | | |
|-----|---|--------|
| (a) | the number of control orders confirmed, declared void, revoked or varied during the year; | 1
2 |
| (b) | the use of control orders generally?. | 3 |

Schedule	Dictionary	1
	section 4	2
	<i>AFP member</i> or <i>AFP employee</i> means an AFP member or AFP employee within the meaning of the <i>Australian Federal Police Act 1979</i> (Cwlth).	3 4 5
	<i>ASIO</i> means the Australian Security Intelligence Organisation under the <i>Australian Security Intelligence Organisation 1979</i> (Cwlth).	6 7 8
	<i>ASIO warrant</i> means a warrant under the <i>Australian Security Intelligence Organisation Act 1979</i> (Cwlth), section 34D.	9 10
	<i>assistant commissioner</i> means an assistant commissioner under the <i>Police Service Administration Act 1990</i> .	11 12
	<i>commissioner</i> means the commissioner of the police service under the <i>Police Service Administration Act 1990</i> .	13 14
	<i>Commonwealth control order</i> means a control order, including any interim control order, made for a person under division 104 of the Criminal Code of the Commonwealth.	15 16 17
	<i>corresponding law</i> means—	18
	(a) division 105 of the Criminal Code of the Commonwealth and the regulations and other instruments made under the division, as in force from time to time; or	19 20 21 22
	(b) a law of another State that provides for preventative detention of persons in relation to terrorist acts, including any law of another State that is declared by the regulations to be a corresponding law.	23 24 25 26
	<i>deputy commissioner</i> means the deputy commissioner under the <i>Police Service Administration Act 1990</i> .	27 28
	<i>detention centre</i> means a detention centre under the <i>Juvenile Justice Act 1992</i> .	29 30
	<i>final order</i> see section 22.	31
	<i>frisk search</i> see the <i>Police Powers and Responsibilities Act 2000</i> , schedule 4.	32 33

Schedule (continued)

<i>identifying particulars</i> see the <i>Police Powers and Responsibilities Act 2000</i> , schedule 4.	1 2
<i>impaired capacity</i> see the <i>Guardianship and Administration Act 2000</i> .	3 4
<i>initial order</i> see section 15.	5
<i>issuing authority</i> see section 7.	6
<i>judge</i> means a Supreme Court judge.	7
<i>lawyer</i> means an Australian lawyer.	8
<i>member of the police service</i> means a member of the police service under the <i>Police Service Administration Act 1990</i> .	9 10
<i>national security</i> means national security within the meaning of the <i>National Security Information (Criminal and Civil Proceedings) Act 2004</i> .	11 12 13
<i>nominated police officer</i> see section 38.	14
<i>ombudsman</i> means—	15
(a) the ombudsman under the <i>Ombudsman Act 2001</i> ; or	16
(b) the Commonwealth Ombudsman in relation to his or her functions under the <i>Complaints (Australian Federal Police) Act 1981</i> (Cwlth).	17 18 19
<i>ordinary search</i> means a search of a person or of articles in the possession of a person that may include—	20 21
(a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes or hat; and	22 23
(b) an examination of those items.	24
<i>PIM</i> means the public interest monitor.	25
<i>prescribed 14 day period</i> see section 12.	26
<i>prescribed 24 hour period</i> see section 12.	27
<i>preventative detention order</i> means an initial order or a final order.	28 29
<i>prohibited contact order</i> means an order made under section 32 or 33.	30 31

Schedule (continued)

<i>public interest monitor</i> see the <i>Police Powers and Responsibilities Act 2000</i> , schedule 4, definition <i>monitor</i> .	1 2
<i>retired judge</i> means a retired Supreme Court judge.	3
<i>security-cleared lawyers</i> means lawyers who have been given a security clearance at an appropriate level by the Attorney-General's Department of the Commonwealth.	4 5 6
<i>seizable item</i> means anything that—	7
(a) would present a danger to a person; or	8
(b) could be used to assist a person to escape from lawful custody; or	9 10
(c) could be used to contact another person or to operate a device remotely.	11 12
<i>senior police officer</i> means the commissioner, the deputy commissioner or an assistant commissioner.	13 14
<i>terrorist act</i> see the <i>Police Powers and Responsibilities Act 2000</i> , section 147A.	15 16