



Terrorism (Preventative Detention) Act 2005

Current as at 20 November 2015

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Queensland

Terrorism (Preventative Detention) Act 2005

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Terrorism (Preventative Detention) Act 2005

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

Part 1 Preliminary

1 Short title

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

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Object

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

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

Note—

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.

4 Definitions

The dictionary in the schedule defines particular words used in this Act.

5 Act binds all persons

- (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.
- (2) Nothing in this Act makes a State or the Commonwealth liable to be prosecuted for an offence.

6 Extraterritorial application of Act

- (1) This Act applies—
 - (a) within Queensland; and
 - (b) in the adjacent area for Queensland.
- (2) The powers and functions conferred under 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.
- (3) In this section—

adjacent area, for Queensland, has the meaning given under the *Crimes at Sea Act 2001*, schedule, clause 14.

7 Issuing authority

- (1) The *issuing authority* for an initial order is a senior police officer.
- (2) The *issuing authority* for a final order is—
 - (a) a judge; or
 - (b) a retired judge;in either case appointed by the Minister under subsection (4).
- (3) For an application to the issuing authority to extend, or further extend, or to revoke, a preventative detention order, the *issuing authority* is—

- (a) for an initial order—the senior police officer who made the order or another senior police officer; or
 - (b) for a final order—the judge or retired judge who made the order or another judge or retired judge holding an appointment under subsection (4).
- (4) The Minister may appoint 1 or more judges or retired judges to be the issuing authority for final orders.
- (5) A judge or retired judge can not perform a function as the issuing authority unless—
- (a) the judge or retired judge has consented in writing to performing the function; and
 - (b) the consent is in force.
- (6) A senior police officer can not delegate a power to make orders under this Act other than to another senior police officer.

Part 2 Preventative detention orders

Division 1 General

8 Basis for applying for, and making, a preventative detention order

- (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).
- (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).
- (3) The police officer or issuing authority meets the requirements of this subsection if the police officer or issuing authority is satisfied—

- (a) there are reasonable grounds to suspect that the person—
 - (i) will engage in a terrorist act; or
 - (ii) possesses a thing that is connected with the preparation for, or the engagement of a person in, a terrorist act; or
 - (iii) has done an act in preparation for, or in planning, a terrorist act; and
 - (b) making the order would substantially assist in preventing a terrorist act occurring; and
 - (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.
- (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.
- (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—
- (a) a terrorist act has occurred within the last 28 days; and
 - (b) it is necessary to detain the person to preserve evidence in Queensland or elsewhere of, or relating to, the terrorist act; and
 - (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.
- (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.

9 No preventative detention order for person under 16 years of age

- (1) A preventative detention order can not be applied for, or made, for a person who is under 16 years of age.
- (2) If—
 - (a) a person is being detained under a preventative detention order or a purported preventative detention order; and
 - (b) the police officer who is detaining the person is satisfied on reasonable grounds that the person is under 16 years of age;

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

10 Multiple preventative detention orders

Subject to sections 11 and 12, any number of preventative detention orders of any type may be made for a person.

11 Restrictions on subject matter of multiple preventative detention orders

- (1) Nothing in subsections (2) to (4) prevents the making of—
 - (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 made for a person on the basis of preserving evidence of, or relating to, a terrorist act; 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 preserving evidence of, or relating to, the same terrorist act.

12 Restrictions on period of detention under multiple preventative detention orders

- (1) The *prescribed 24 hour period*, 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.

- (2) The *prescribed 14 day period*, 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.
- (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.

13 Presence or absence at application for order of detainee and other persons

- (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 *application* and the *detainee*).
- (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.
- (3) Subject to subsection (2), no person other than the following persons may be present at an application—
 - (a) the issuing authority and anyone assisting the issuing authority;
 - (b) the applicant and any person assisting the applicant in the application;
 - (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;
 - (d) the PIM, if section 14 applies.

- (4) Despite subsection (3), the issuing authority, in the public interest, may further limit or extend those who may be present at a particular application.

14 General provisions that apply if the PIM must be notified about an application to the issuing authority

- (1) This section applies to an application to the issuing authority about which the PIM is required to be notified.
- (2) The applicant must give the PIM—
 - (a) a copy of the application; and
 - (b) notice of the place, date and time the application will be heard.
- (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.
- (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.

Division 2 Initial orders

15 Application for initial order

- (1) A police officer may apply to the issuing authority for a preventative detention order under section 17 for a person in relation to a terrorist act (an *initial order*).
- (2) The application must be in writing and state—
 - (a) the facts and other grounds on which the applicant considers the order should be made; and
 - (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
- (c) any information that the applicant may have about the person's age; and
 - (d) the outcomes and particulars of all previous applications for preventative detention orders made for the person; and
 - (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
 - (f) any information that the applicant may have about any Commonwealth control order made for the person; and
 - (g) for any children who may reside with or be associated with the person—
 - (i) the inquiries that have been made to find out whether there are children who reside with or are associated with the person; and
 - (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.
- (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 detained under the order; and
 - (b) if the person should not be contacted under section 61 because the contact would seriously prejudice national security—the grounds for preventing the contact.
- (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) The application must also fully disclose all matters of which the applicant is aware, both favourable and adverse to the making of the order.

Note—

See the Criminal Code, chapters 16 and 20, for relevant offences.

16 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.

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.

17 Issuing authority may make initial order

- (1) On application by the police officer, the issuing authority may make an initial order under this section for the person.
- (2) Subsection (1) has effect subject to the following sections—
- section 8 (Basis for applying for, and making, a preventative detention order)
 - section 9 (No preventative detention order for person under 16 years of age)
 - section 11 (Restrictions on subject matter of multiple preventative detention orders)

-
- section 12 (Restrictions on period of detention under multiple preventative detention orders).
- (3) An initial order is an order that the person may be—
 - (a) taken into custody; and
 - (b) detained during the period that—
 - (i) starts at the later of the following—
 - (A) when the order is made;
 - (B) if another preventative detention order, or an order for the detention of the person under a corresponding law, is in force for the person for the same terrorist act—when the other order ceases to have effect; and
 - (ii) ends a stated period of time after the person is first taken into custody under the order.
 - (4) The order must be in writing.
 - (5) The period of time stated in the order under subsection (3)(b)(ii) must not be more than the prescribed 24 hour period.
 - (6) An initial order must state—
 - (a) the name of the person for whom the order is made; and
 - (b) the period during which the person may be detained under the order; and
 - (c) the date on which, and the time at which, the order is made; and
 - (d) the date and time after which the person may not be taken into custody under the order.
 - (7) If the person is—
 - (a) a child; or
 - (b) of impaired capacity;the order may provide that the period each day for which the person is entitled to have contact with another person under

[s 18]

section 60(2) is the period of more than 2 hours that is stated in the order.

- (8) Also, if the person is a child or of impaired capacity, the order may state that the person may not be contacted under section 61 while being detained under the order.
- (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.

18 Duration of initial order

- (1) An initial order for a person starts to have effect when it is made.

Note—

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)).

- (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.
- (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—
 - (a) the end of—
 - (i) the period stated in the order as the period during which the person may be detained under the order; or
 - (ii) if that period is extended or further extended under section 21—that period as extended or further extended;
 - (b) the revocation of the order under division 5.

Note—

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

19 Application for extension of initial order

- (1) If—
- (a) an initial order is made for a person; and
 - (b) the order is in force for the person;
- 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.

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.

21 Issuing authority may extend initial order

- (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.
- (2) The extension, or further extension, must be made in writing as an order.
- (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.
- (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.
- (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.

Division 3 Final orders

22 Application for final order

- (1) A police officer may apply to the issuing authority for a preventative detention order under section 25 for a person in relation to a terrorist act (a *final order*).
- (2) The application must be in writing, be sworn and state—
 - (a) the facts and other grounds on which the applicant considers that the order should be made; and
 - (b) the period for which the person is to be detained or continue to be detained under the order and the facts and other grounds on which the applicant considers that the person should be detained or continue to be detained for that period; and
 - (c) any information the applicant may have about the person's age; and
 - (d) the outcomes and particulars of all previous applications for preventative detention orders made for the person; and
 - (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
 - (f) any information that the applicant may have about any Commonwealth control order made for the person; and
 - (g) for any children who may reside with or be associated with the person—
 - (i) the inquiries that have been made to find out whether there are children who reside with or are associated with the person; and
 - (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

- (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).
- (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 within 24 hours of being taken into custody under the order; and
 - (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—
 - (i) the grounds for preventing the contact; and
 - (ii) the period as soon as possible after the end of the 24 hour period when the person must be contacted under section 61.
- (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) The application must also fully disclose all matters of which the applicant is aware, both favourable and adverse to the making of the order.

Note—

See the Criminal Code, chapters 16 and 20, for relevant offences.

23 Notice to and representations by the person

- (1) The applicant must give the person—
- (a) a written summary of the application; and
 - (b) notice of the place, date and time the application will be heard.

Note—

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.

- (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.
- (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.
 - (3A) For the hearing, the written summary given to the person must also be given to the issuing authority.
 - (3B) If the issuing authority is not reasonably satisfied that the written summary fairly and accurately informs the person of the nature and cause of the application, the issuing authority must direct the applicant to provide the person with more information about the application.
 - (3C) The applicant is not required to provide under subsection (3B) information that could, if disclosed, reasonably be expected—
 - (a) to prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or
 - (b) to prejudice national security.
- (4) Subsection (1) or (3) does not require any information to be disclosed—
 - (a) if the disclosure of the information is likely to prejudice national security; or
 - (b) if the information would not have to be disclosed in a proceeding because of the *Police Powers and Responsibilities Act 2000*, section 803.

24 PIM must be notified

The applicant must notify the PIM of the application under arrangements decided by the PIM.

25 Issuing authority may make final order

- (1) On application by the police officer, the issuing authority may make a final order under this section for the person.
- (2) The order may be made whether or not an application has been made for an initial order for the terrorist act.
- (3) Subsection (1) has effect subject to the following sections—
 - section 8 (Basis for applying for, and making, a preventative detention order)
 - section 9 (No preventative detention order for person under 16 years of age)
 - section 11 (Restrictions on subject matter of multiple preventative detention orders)
 - section 12 (Restrictions on period of detention under multiple preventative detention orders).

Note—

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.

- (4) A final order is an order that the person may be taken into custody and detained, or further detained, during a period that—
 - (a) starts at the later of the following—
 - (i) when the order is made;
 - (ii) if another preventative detention order, or an order for the detention of the person under a corresponding law, is in force for the person for the

same terrorist act—when the other order ceases to have effect; and

- (b) ends a stated period of time after the person is first taken into custody.
- (5) The order must be in writing.
- (6) The period of time stated under subsection (4)(b) must not be more than the prescribed 14 day period.
- (7) A final order must state—
- (a) the name of the person; and
 - (b) the period during which the person may be detained under the order; and
 - (c) the date on which, and the time at which, the order is made.
- (8) If the person—
- (a) is a child; or
 - (b) is of impaired capacity;
- the order may provide that the period each day for which the person is entitled to have contact with another person under section 60(2) is the period of more than 2 hours that is stated in the order.
- (9) Also, if the person is a child or of impaired capacity, the final order may state both of the following—
- (a) that the person may not be contacted under section 61 within 24 hours after being taken into custody under the order; but
 - (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.
- (10) The only basis for making a decision under subsection (9) is that preventing the contact is necessary because the contact would seriously prejudice national security.

- (11) The issuing authority may also include in the order provision for the person to have contact with a child of the person in addition to the provision for contact under section 56.

26 Duration of final order

- (1) A final order for the person starts to have effect when it is made.

Note—

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)).

- (2) A final order for the person ceases to have effect when whichever of the following first occurs—

- (a) the end of—
- (i) the period stated in the order as the period during which the person may be detained under the order; or
 - (ii) if that period is extended or further extended under section 31—that period as extended or further extended;
- (b) the revocation of the order under division 5.

Note—

The order does not cease to have effect merely because the person is released from detention under the order. See section 45.

27 Application for extension of final order

- (1) If a final order is in force for the person, 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) If practicable, the application must be made to the issuing authority who made the final order.

28 Further provisions about application for extension of final order

- (1) The application must be in writing, be sworn 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 final order.
- (2) 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 within 24 hours after being further detained under the order; and
- (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—
- (i) the grounds for preventing the contact; and
- (ii) the period as soon as possible after the end of the 24 hour period when the person must be contacted under section 61.
- (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.

29 Notice to and representations by the person

- (1) The applicant must give the person—
- (a) a written summary of the application; and

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- (b) notice of the place, date and time the application will be heard.
- (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.
- (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.
- (4) Subsection (1) or (3) does not require any information to be disclosed—
 - (a) if the disclosure of the information is likely to prejudice national security; or
 - (b) if the information would not have to be disclosed in a proceeding because of the *Police Powers and Responsibilities Act 2000*, section 803.

30 PIM must be notified

The applicant must notify the PIM of the application under arrangements decided by the PIM.

31 Issuing authority may extend final order

- (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.
- (2) The extension, or further extension, must be made in writing as an order.
- (3) The period as extended, or further extended, must end no later than the prescribed 14 day period.

- (4) Also, if the person is a child or of impaired capacity, the extension, or the further extension, may state both of the following—
 - (a) that the person may not be contacted under section 61 within 24 hours after being further detained under the order; but
 - (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.
- (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 3A Legal Aid

31A Order for free legal assistance

- (1) This section applies if—
 - (a) a person in detention under an initial order does not have legal representation; and
 - (b) an application is made to the issuing authority for a final order.
- (2) The issuing authority must require the person to advise the issuing authority within a stated period the issuing authority considers reasonable (the *period*) that the person has or has not arranged for legal representation or does not want legal representation.
- (3) The issuing authority must make the order in subsection (4) unless the person advises the issuing authority within the period that the person has arranged for legal representation or does not want legal representation.
- (4) The order is that the person be given free legal assistance for the period of the person's detention for any detention proceeding.

(5) In this section—

detention proceeding means—

- (a) the application for the final order or another application under this Act for a preventative detention order; or
- (b) an application to the Supreme Court under section 71 or 72 or under the *Judicial Review Act 1991* in relation to an application for, or the making of, a preventative detention order.

legal representation means representation by a lawyer.

31B Effect of order

- (1) Legal Aid must give the person free legal assistance as required by the order as if it had granted an application under the *Legal Aid Queensland Act 1997* for free legal assistance.
- (2) A lawyer provided by the free legal assistance is the person's legal representative only in relation to the person's detention and only while the person is in detention under this Act.

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.

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- (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) 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.
- (2) The application must be in writing and state—
 - (a) the terms of the order sought; and
 - (b) the facts and other grounds on which the police officer considers that the order should be made.
- (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.

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- (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.

Note—

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.

34 Notice to PIM

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—

- (a) if the preventative detention order is an initial order—section 20;
- (b) if the preventative detention order is a final order—section 24.

Division 5 Revocation of orders by issuing authority

35 Revocation of preventative detention order or prohibited contact order

- (1) If—
- (a) a preventative detention order is in force for a person; and
- (b) the police officer who is detaining the person under the order is satisfied that the grounds on which the order was made no longer exist;

the police officer must apply, as soon as practicable, to the issuing authority for the revocation of the order.

- (2) If—
- (a) a preventative detention order is in force for a person; and
 - (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;

the issuing authority must revoke the order.

- (3) If—
- (a) a prohibited contact order is in force in relation to a person's detention under a preventative detention order; and
 - (b) the police officer who is detaining the person under the preventative detention order is satisfied that the grounds on which the prohibited contact order was made no longer exist;

the police officer must apply, as soon as practicable, to the issuing authority for the revocation of the prohibited contact order.

- (4) If—
- (a) a prohibited contact order is in force in relation to a person's detention under a preventative detention order; and
 - (b) 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;

the issuing authority must revoke the prohibited contact order.

36 PIM must be notified

The applicant must notify the PIM of the application under arrangements decided by the PIM.

Part 3 Carrying out preventative detention orders

37 **Power to detain person under preventative detention order**

- (1) While a preventative detention order is in force for a person—
 - (a) any police officer may take the person into custody; and
 - (b) any police officer may detain the person.
- (2) A police officer 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.
- (3) Subsection (2) does not apply to the extent to which particular functions or powers are provided for in this part.

38 **Nominated police officer to oversee functions and powers**

- (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 *nominated police officer*) to oversee the performance of functions and exercise of powers in relation to the preventative detention order.
- (2) The nominated police officer must be someone who was not involved in the making of the application for the preventative detention order.
- (3) The nominated police officer must—
 - (a) oversee the performance of functions and exercise of powers in relation to the preventative detention order; and

- (b) without limiting paragraph (a), ensure that part 2, division 5 is complied with in relation to the preventative detention order; and
- (c) receive and consider any representations that are made under subsection (4).

Note—

Part 2, division 5 deals with the revocation of preventative detention orders and prohibited contact orders.

- (4) The following persons—
 - (a) the person being detained under the preventative detention order;
 - (b) a lawyer acting for that person in relation to the preventative detention order;
 - (c) a person with whom that person has contact under section 60(2) or section 61;are entitled to make representations to the nominated police officer about—
 - (d) the performance of functions and the exercise of powers in relation to the preventative detention order; and
 - (e) without limiting paragraph (d), compliance with part 2, division 5 in relation to the preventative detention order; and
 - (f) the person's treatment in connection with the person's detention under the preventative detention order; and
 - (g) having the preventative detention order revoked.
- (5) The commissioner or the deputy commissioner of police may exercise the power under subsection (1) to replace a nominated police officer with another nominated police officer (the *new nominated police officer*).
- (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.

39 Endorsement of order with date and time person taken into custody

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.

40 Requirement to provide name etc.

- (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.
- (2) If a police officer—
 - (a) makes a request of a person under subsection (1); and
 - (b) informs the person of the reason for the request; and
 - (c) if the police officer is not in uniform—shows the person evidence that the police officer is a police officer; and
 - (d) complies with subsection (4);the person must not—
 - (e) refuse or fail to comply with the request; or
 - (f) give a name, address or date of birth that is false in a material particular.

Maximum penalty—20 penalty units.

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

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- (c) his or her rank.
 - (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 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 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.

- (3) In this section—

boat see the *Police Powers and Responsibilities Act 2000*, schedule 6.

dwelling—

- (a) includes a vehicle, or a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night; but
- (b) for a dwelling that is a boat—does not include an external deck of the boat.

premises see the *Police Powers and Responsibilities Act 2000*, schedule 6.

42 Power to conduct a frisk search

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—

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

43 Power to conduct an ordinary search

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—

- (a) evidence of, or relating to, a terrorist act; or
- (b) a seizable item;

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.

43A Search involving removal of clothing

- (1) Subsection (2) applies if a police officer who takes a person into custody under a preventative detention order, or who is present when a person is taken into custody, reasonably suspects the person is carrying an item that may result in loss of life or serious physical harm.
- (2) The police officer may require the person to remove all items of clothing or all items of clothing from the upper or lower part of the body.

43B Safeguards apply

The following provisions of the *Police Powers and Responsibilities Act 2000* apply to a search under section 42, 43 or 43A—

- section 624 (General provision about searches of persons)
- section 625 (Taking a person to another place to search)
- section 626 (Limitation on period of detention for search)
- section 628 (Dealing with persons who obstruct search of person or vehicle)
- section 630 (Protecting the dignity of persons during search)
- section 631 (Special requirements for searching children and persons with impaired capacity)
- section 632 (If video cameras monitor place where person is searched).

44 ASIO warrant

- (1) This section applies if—
 - (a) a person is being detained under a preventative detention order; and

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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 on being arrested for an offence may be charged and otherwise dealt with for the offence.

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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—

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

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- (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—
- (i) the person in charge of that place; or
 - (ii) any other person involved in the person's detention at that place;
- were a person exercising authority under the order or implementing or enforcing the order; and
- (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.
- (6) If the person is detained at a corrective services facility, for the *Corrective Services Act 2006*—
- (a) the preventative detention order is a warrant for the person's detention at the facility; and
 - (b) the person is in the custody of the chief executive within the meaning of that Act.
- (7) If the person is detained at a detention centre, for the *Youth Justice Act 1992*—
- (a) the preventative detention order is a warrant for the detention of the person at the detention centre; and
 - (b) the person is in the custody of the chief executive within the meaning of that Act; and
 - (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.
- (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.
- (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.

- (10) A person detained at a watch-house, corrective services facility or detention centre under this section must be kept segregated from all other persons being detained at that place.
- (11) For subsection (10), the chief executive (corrective services) may make a maximum security order for the person under the *Corrective Services Act 2006*, section 60(1).
- (12) For subsection (11), the *Corrective Services Act 2006*, section 60(2) does not apply.
- (13) Also, the chief executive (corrective services) may make a safety order for the person under the *Corrective Services Act 2006*, section 53(1).
- (14) For subsection (13), the *Corrective Services Act 2006*, section 53(1)(b) does not apply.
- (15) The provisions of this section apply despite any provisions of the *Corrective Services Act 2006* or the *Youth Justice Act 1992*.
- (16) In this section—
preventative detention order, in subsections (6) and (7), includes a copy of a preventative detention order certified as a true copy by the issuing authority that issued the order.

Part 4 Informing person detained about preventative detention order

47 Effect of initial order to be explained to person detained

- (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).

Notes—

- 1 A contravention of this subsection may be an offence under section 54.
- 2 A contravention of this subsection does not affect the lawfulness of the person's detention under the order (see section 50).

- (2) The matters covered by this subsection are—
- (a) the fact that an initial order has been made for the person; and
 - (b) the period during which the person may be detained under the order; and
 - (c) the permissions and restrictions that apply to the people the person may contact while the person is being detained under the order; and
 - (d) the fact that an application will be, or may be, made for a final order detaining the person for a further period; and
 - (da) unless it is clear the person is not under 16 years of age, the fact that a preventative detention order can not be made for a person under 16 years of age; and
 - (e) the right the person has to complain to the ombudsman or the Crime and Corruption Commission about—
 - (i) the application for, or the making of, the order; or
 - (ii) the treatment of the person in connection with the person's detention under the order; and
 - (f) the fact that the person may seek from a court a remedy relating to—
 - (i) the order; or
 - (ii) the treatment of the person in connection with the person's detention under the order; and
 - (g) the person's entitlement under section 58 to contact a lawyer; and

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- (ga) the person's entitlement under section 56 to contact persons mentioned in the section; and
 - (h) the name, rank and station of the nominated police officer and the functions of the officer.
- (3) Subsection (2)(c) does not require the police officer to inform the person being detained of—
- (a) the fact that a prohibited contact order has been made in relation to the person's detention; or
 - (b) the name of a person stated in a prohibited contact order that has been made in relation to the person's detention.
- (4) For subsection (2)(f), the police officer must assist the person to make an application under part 6 if the person requests assistance.

Example of assistance for subsection (4)—

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

- (5) For subsection (2)(h), the police officer must assist the person to contact the nominated police officer if the person requests assistance.

48 Effect of final order to be explained to person detained

- (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).

Notes—

- 1 A contravention of this subsection may be an offence under section 54.
 - 2 A contravention of this subsection does not affect the lawfulness of the person's detention under the order (see section 50).
- (2) The matters covered by this subsection are—
- (a) the fact that a final order has been made in relation to the person; and

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- (b) the period during which the person may be detained under the order; and
 - (c) the permissions and restrictions that apply to the people the person may contact while the person is being detained under the order; and
 - (d) the right the person has to complain to the ombudsman or the Crime and Corruption Commission about—
 - (i) the application for, or the making of, the order; or
 - (ii) the treatment of the person in connection with the person's detention under the order; and
 - (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
 - (f) the fact that the person may seek from the Supreme Court a remedy relating to—
 - (i) the final order; or
 - (ii) the treatment of the person in connection with the person's detention under the final order; and

Note—

See part 6.

- (g) the person's entitlement under section 58 to contact a lawyer; and
 - (ga) the person's entitlement under section 56 to contact persons mentioned in the section; and
 - (h) the name, rank and station of the nominated police officer and the functions of the officer; and
 - (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.
- (3) Subsection (2)(c) does not require the police officer to inform the person being detained of—

[s 49]

- (a) the fact that a prohibited contact order has been made in relation to the person's detention; or
 - (b) the name of a person stated in a prohibited contact order that has been made in relation to the person's detention.
- (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.

Example of assistance for subsection (4)—

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

- (5) For subsection (2)(h), the police officer must assist the person to contact the nominated police officer if the person requests assistance.

49 Person being detained to be informed of extension of preventative detention order

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.

Notes—

- 1 A contravention of this section may be an offence under section 54.
- 2 A contravention of this section does not affect the lawfulness of the person's detention under the order (see section 50).

50 Compliance with obligations to inform

- (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) 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.

- (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.
- (4) Without limiting subsection (3), the assistance of the interpreter may be provided by telephone.
- (5) The lawfulness of a person's detention under a preventative detention order is not affected by a failure to comply with section 47(1), 48(1), 49 or subsection (3) of this section.

51 Copy of preventative detention order and summary of grounds

- (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—
 - (a) a copy of the order; and
 - (b) a summary of the grounds of the application on which the order was made (the *summary*); and
 - (c) a copy of the reasons for the decision of the issuing authority in making the order that were given to the applicant.
- (1A) If the initial order is extended or further extended, the police officer detaining the person under the order must, as soon as practicable, give the person—
 - (a) a copy of the order for the extension or further extension; and
 - (b) a summary of the grounds of the application on which the extension or further extension was made (the *summary*).

[s 51]

- (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.
- (4) If—
- (a) a person is being detained under an initial order; and
 - (b) a final order is made for the person;
- the police officer who is detaining the person under the initial order, must, as soon as practicable, give the person—
- (c) a copy of the final order; and
 - (d) a summary of the grounds of the application on which the order was made (also the *summary*); and
 - (e) a copy of the reasons for the decision of the issuing authority in making the order that were given to the applicant.
- (4A) If the final order is extended or further extended, the police officer who is detaining the person under the order must, as soon as practicable, give the person—
- (a) a copy of the order for the extension or further extension; and
 - (b) a summary of the grounds of the application on which the extension or further extension was made (the *summary*); and
 - (c) a copy of the reasons for the decision of the issuing authority in making the extension or further extension that were given to the applicant.
- (4B) Subsections (1), (1A), (4) and (4A) do not require any information to be disclosed—
- (a) if the disclosure of the information is likely to prejudice national security; or
 - (b) if the information would not have to be disclosed in a proceeding because of the *Police Powers and Responsibilities Act 2000*, section 803.

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

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

Notes—

- 1 Section 58 deals with the person's right to contact a lawyer and the obligation of the police officer detaining the person to give the person assistance to choose a lawyer.
 - 2 Section 63 prevents the person from contacting a lawyer who is stated in a prohibited contact order.
- (6) The police officer must make arrangements for a copy of the order or the summary to be given to the lawyer as soon as practicable after the request is made.
- (7) Without limiting subsection (6), the copy of the order or the summary may be faxed or emailed to the lawyer.
- (8) To remove any doubt, it is declared that subsection (6) does not entitle the lawyer to be given a copy of, or see, a document other than the order or the summary.
- (9) Nothing in this section requires a copy of a prohibited contact order to be given to a person.
- (10) The police officer who gives—
- (a) the person being detained under a preventative detention order; or
 - (b) a lawyer acting for the person;
- a copy of the preventative detention order under this section must endorse on the copy the date on which, and time at which, the person was first taken into custody under the order.
- (11) The lawfulness of a person's detention under a preventative detention order is not affected by a failure to comply with subsection (1), (4), (5), (6) or (10).

Part 5 Treatment of person detained

Division 1 General

52 Humane treatment of person being detained

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

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

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

Note—

A contravention of this section may be an offence under section 54.

53 Restrictions on questioning detained person

- (1) A police officer must not question a person while the person is being detained under a preventative detention order other than for the purposes of—
 - (a) finding out whether the person is the person stated in the order; or
 - (b) ensuring the safety and wellbeing of the person being detained; or
 - (c) allowing the police officer to comply with a requirement in relation to the person's detention under the order.
- (2) A police officer must not question a person while the person is being detained under an order made under a corresponding law.

Notes—

- 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.
- 2 A contravention of this section may be an offence under section 54.
- (3) If a police officer questions a person while the person is being detained under a preventative detention order, the police officer who is detaining the person must ensure that the questioning is electronically recorded.
- (4) Subsection (3) does not apply if—
 - (a) the questioning is for the purposes of—
 - (i) finding out whether the person is the person stated in the preventative detention order; or
 - (ii) ensuring the safety and well being of the person being detained; and
 - (b) complying with subsection (3) is not practicable because of the seriousness and urgency of the circumstances in which the person is questioned.
- (5) A recording under subsection (3) must be kept until the end of the following, whichever is the later—
 - (a) a period of 12 months after the recording is made;
 - (b) if court proceedings relating to the order are conducted at any time during the 12 month period—the court proceedings;
 - (c) if a police investigation relating to the order is conducted at any time during the 12 month period—the investigation and any court proceedings relating to the investigation.

54 Offences of contravening safeguards

A person commits an offence if the person contravenes—

- (a) section 47(1) (Effect of initial order to be explained to person detained); or

[s 55]

- (b) section 48(1) (Effect of final order to be explained to person detained); or
- (c) section 49 (Person being detained to be informed of extension of preventative detention order); or
- (d) section 52 (Humane treatment of person being detained); or
- (e) section 53(1) or (2) (Restrictions on questioning detained person); or
- (f) section 69(1), (4) or (6) (Taking identifying particulars); or
- (g) section 70(2) (Use of identifying particulars).

Maximum penalty—2 years imprisonment.

Division 2 Contact provisions

55 Restriction on contact with other people

Other than as provided by this division, while a person is being detained under a preventative detention order, the person—

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

Notes—

- 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.
- 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).

56 Contacting family members etc.

- (1) The person being detained is entitled to contact by telephone or fax—

-
- (a) a parent or guardian of the person or 1 of his or her other family members; and
 - (b) if he or she—
 - (i) lives with another person and that other person is not a family member of the person being detained; or
 - (ii) lives with other people and those other people are not family members of the person being detained; that other person or one of those other people; and
 - (c) if he or she is employed—his or her employer; and
 - (d) if he or she employs people in a business—one of the people he or she employs in that business; and
 - (e) if he or she engages in a business together with another person or other people—that other person or one of those other people; and
 - (f) if the police officer detaining the person 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 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 Corruption Commission

- (1) The person being detained is entitled to contact the ombudsman and the Crime and Corruption Commission.
- (2) The contact authorised under subsection (1) includes all contact necessary for the ombudsman or the Crime and Corruption 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) The person being detained is entitled to contact a lawyer on any matter.
- (1A) If a police officer detaining a person under a preventative detention order has reasonable grounds to believe that the person—
 - (a) is unable, because of inadequate knowledge of the English language, or a disability, to communicate with reasonable fluency in the language; and
 - (b) therefore may have difficulties in choosing or contacting a lawyer;the police officer must give reasonable assistance to the person to choose and contact a lawyer under subsection (1), including by arranging for the assistance of an interpreter.
- (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 s 56, 58 or 61

- (1) The contact the person being detained has with another person under section 56, 58 (subject to section 59A) 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.

[s 59A]

- (3) Without limiting subsection (2), the interpreter mentioned in that subsection may be a police officer.
- (4) If the person being detained indicates that he or she wishes the contact to take place in a language other than English, the police officer who is detaining the person must—
 - (a) arrange for the services of an appropriate interpreter to be provided if it is reasonably practicable to do so during the period during which the person is being detained; and
 - (b) if it is reasonably practicable to do so—arrange for those services to be provided as soon as practicable.
- (5) A communication between—
 - (a) a person who is being detained under a preventative detention order; and
 - (b) a lawyer;mentioned in section 58(1) is not admissible in evidence against the person in any proceedings in a court.
- (6) In this section—

listening device see the *Police Powers and Responsibilities Act 2000*, schedule 6.

monitored means monitored directly by a person who is present and not by way of a listening device.

59A Restrictions on monitoring contact with lawyer

- (1) Section 59(1) to (3) does not apply to the contact that the person being detained has under section 58 with a security-cleared lawyer.
- (2) However, if a person is detained under a final order, the issuing authority may make an order on application by a police officer that section 59(1) to (3) applies to contact with the person.
- (3) An application under subsection (2) may be made when the final order is made or at any time after the final order is made.

-
- (4) If practicable, the application must be made to the issuing authority that makes the final order.
 - (5) The application may only be made on notice to the lawyer.
 - (6) At the hearing of the application, the lawyer is entitled to question a person giving information to the issuing authority and to make representations.
 - (7) Subsection (6) does not require any information to be disclosed—
 - (a) if the disclosure of the information is likely to prejudice national security; or
 - (b) if the information would not have to be disclosed in a proceeding because of the *Police Powers and Responsibilities Act 2000*, section 803 (Protection of methodologies).
 - (8) The issuing authority may make the order only if it is satisfied on reasonable grounds that making the monitoring order will assist in achieving the purpose for which the preventative detention order was made.

60 Special contact rules for child or person of impaired capacity

- (1) This section applies if the person being detained under a preventative detention order—
 - (a) is a child; or
 - (b) is of impaired capacity.
- (2) The person is entitled, while being detained under the order, to have contact with—
 - (a) a parent or guardian of the person; or
 - (b) another person who—
 - (i) is able to represent the person's interests; and
 - (ii) is, as far as practicable in the circumstances, acceptable to the person and to the police officer who is detaining the person; and

- (iii) is not a member of the police service; and
 - (iv) is not an AFP member or AFP employee; and
 - (v) is not a member, however described, of a police force of another State; and
 - (vi) is not an officer or employee of ASIO.
- (3) To remove any doubt, it is declared that—
- (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
 - (b) the detainee is entitled to disclose the following to a person with whom the detainee has contact under subsection (2)—
 - (i) the fact that a preventative detention order has been made in relation to the detainee;
 - (ii) the fact that the detainee is being detained;
 - (iii) the period for which the detainee is being detained.
- (4) The form of contact that the person being detained is entitled to have with another person under subsection (2) includes—
- (a) being visited by that other person; and
 - (b) communicating with that other person by telephone or fax.
- (5) The period for which the person being detained is entitled to have contact with another person each day under subsection (2) is—
- (a) 2 hours; or
 - (b) a longer period stated in the preventative detention order.

Note—

See sections 17(7) and 25(8).

- (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.

- (7) Despite subsection (5), the police officer who is detaining the person may permit the person to have contact with a person under subsection (2) for a period that is longer than the period provided for in subsection (5).
- (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.
- (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.
- (10) Without limiting subsection (9), the interpreter mentioned in that subsection may be a police officer.
- (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—
 - (a) arrange for the services of an appropriate interpreter to be provided if it is reasonably practicable to do so during the period during which the person is being detained; and
 - (b) if services are to be provided under paragraph (a)—arrange for those services to be provided as soon as practicable.

61 Particular persons to be contacted by relevant chief executive

- (1) This section also applies if the police officer detaining a person under a preventative detention order believes or suspects the person—
 - (a) is a child; or
 - (b) is of impaired capacity; or
 - (c) has a mental illness.
- (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.
- (3) The relevant chief executive may have the contact with the person—
 - (a) that is necessary to ensure the person understands the effect of the order; and
 - (b) that is necessary to find out anything about the welfare of the person.
- (4) The first contact under subsection (3) must be within 24 hours after each of the following—
 - (a) the person being taken into custody under an initial order;
 - (b) the person being further detained under the extension or further extension of an initial order;
 - (c) the person being taken into custody or further detained under a final order;
 - (d) the person being further detained under an extension or further extension of a final order.
- (5) Despite subsection (4), the first contact mentioned in the subsection—
 - (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

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

62 The relevant chief executive and the chief executive's delegate

- (1) For section 61, for a person being detained under a preventative detention order, the *relevant chief executive* is the following chief executive—
- (a) for a person who is or is suspected to be a child—the chief executive within the meaning of the *Youth Justice Act 1992*;
 - (b) for a person who is or is suspected to be a person of impaired capacity—the chief executive within the meaning of the *Disability Services Act 2006*;
 - (c) for a person who has or is suspected to have, a mental illness—the chief executive of the department within which the *Mental Health Act 2000* is administered.
- (2) The relevant chief executive's power to delegate a function under the following provisions includes the power to delegate the functions of the chief executive under section 61—
- the *Disability Services Act 2006*, section 235
 - the *Youth Justice Act 1992*, section 312
 - the *Public Service Act 2008*, section 103.
- (3) However, the relevant chief executive may only delegate functions under section 61 to a person with the approval of—

[s 63]

- (a) the police commissioner; and
 - (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.
- (4) In this section—
function includes power.

63 Entitlement to contact subject to prohibited contact order

Sections 56, 58 and 60 have effect subject to any prohibited contact order made in relation to the person's detention.

Division 3 Disclosure offences

64 Lawyer

A person (the *lawyer*) commits an offence if—

- (a) a person being detained under a preventative detention order (the *detainee*) contacts the lawyer under section 58; and
- (b) the lawyer discloses to another person—
 - (i) the fact that a preventative detention order has been made in relation to the detainee; or
 - (ii) the fact that the detainee is being detained; or
 - (iii) the period for which the detainee is being detained; or
 - (iv) any information that the detainee gives the lawyer in the course of the contact; and
- (c) the disclosure occurs while the detainee is being detained under the order; and
- (d) the disclosure is not made for the purpose of—
 - (i) an application for—

-
- (A) the making of a preventative detention order for the detainee; or
 - (B) the revocation or variation of a preventative detention order made for the detainee; or
 - (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
 - (iii) a complaint to the ombudsman or Crime and Corruption Commission in relation to the application for, or making of, the preventative detention order or the treatment of the detainee in connection with the detainee's detention under the order; or
 - (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; or
- Example of a disclosure made for a purpose mentioned in subparagraphs (i) to (iv)—*
- A lawyer briefs another lawyer in relation to work to be done for the detainee by the other lawyer in relation to an application, proceeding, complaint or representation mentioned in the subparagraphs.
- (v) an application for legal assistance; and
 - (e) the lawyer knows or should have known the disclosure is unlawful.

Maximum penalty—2 years imprisonment.

65 Parent/guardian

- (1) A person (the *parent/guardian*) commits an offence if—

- (a) a person being detained under a preventative detention order (the *detainee*) has contact with the parent/guardian under section 60; and
- (b) the parent/guardian discloses to another person—
 - (i) the fact that a preventative detention order has been made in relation to the detainee; or
 - (ii) the fact that the detainee is being detained; or
 - (iii) the period for which the detainee is being detained; or
 - (iv) any information that the detainee gives the parent/guardian in the course of the contact; and
- (c) the other person is not a person with whom the detainee has also had contact under section 58 or 60 while being detained under the order; and
- (d) the disclosure occurs while the detainee is being detained under the order; and
- (e) the disclosure is not made for the purpose of—
 - (i) a complaint to the ombudsman or the Crime and Corruption Commission in relation to the application for, or the making of, the preventative detention order or the treatment of the detainee in connection with the detainee's detention under the order; or
 - (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 connection with the detainee's detention under the order; and
- (f) the parent/guardian knows or should have known the disclosure is unlawful.

Maximum penalty—2 years imprisonment.

- (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.

66 Interpreter

A person (the *interpreter*) commits an offence if—

- (a) the interpreter is an interpreter who assists in monitoring the contact that a person being detained under a preventative detention order (the *detainee*) has with someone while the detainee is being detained under the order; and
- (b) the interpreter discloses to another person—
- (i) the fact that a preventative detention order has been made in relation to the detainee; or
 - (ii) the fact that the detainee is being detained; or
 - (iii) the period for which the detainee is being detained; or
 - (iv) any information that the interpreter obtains in the course of assisting in the monitoring of that contact; and
- (c) the disclosure occurs while the detainee is being detained under the order; and
- (d) the interpreter knows or should have known the disclosure is unlawful.

Maximum penalty—2 years imprisonment.

67 Disclosure recipient

A person (the *disclosure recipient*) commits an offence if—

- (a) a person (the *earlier discloser*) discloses to the disclosure recipient—

- (i) the fact that a preventative detention order has been made in relation to a person; or
 - (ii) the fact that a person is being detained under a preventative detention order; or
 - (iii) 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 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—2 years imprisonment.

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

- (b) information is communicated in the course of that contact; and
- (c) the information is communicated for one of the purposes mentioned in section 58(1); and
- (d) the person discloses that information to another person; and
- (e) the person knows or should have known the disclosure is unlawful.

Maximum penalty—2 years imprisonment.

Note—

See also section 59(5).

Division 4 Identifying particulars

69 Taking identifying particulars

- (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.

Note—

A contravention of this subsection may be an offence under section 54.

- (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—
 - (a) the person consents in writing; or
 - (b) the police officer believes on reasonable grounds that it is necessary to do so for the purpose of confirming the person's identity as the person stated in the order.
- (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.

[s 69]

(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—

- (a) is a child; or
- (b) is of impaired capacity;

unless a magistrate orders that the particulars be taken.

Note—

A contravention of this subsection may be an offence under section 54.

(5) In deciding whether to make an order, the magistrate must have regard to—

- (a) the age, or any impaired capacity, of the person; and
- (b) any other matters the magistrate considers appropriate.

(6) The taking of identifying particulars from a person who—

- (a) is a child; or
- (b) is of impaired capacity;

must be done in the presence of—

- (c) a parent or guardian of the person; or
- (d) if a parent or guardian of the person is not acceptable to the person—another appropriate person.

Notes—

1 For *appropriate person*, see subsection (12).

2 A contravention of this subsection may be an offence under section 54.

(7) Despite this section, identifying particulars may be taken from a person who is a child and is capable of managing his or her affairs if—

- (a) subsections (9) and (10) are satisfied; or
- (b) subsection (9) or (10) is satisfied, but not both, and a magistrate orders that the particulars be taken.

(8) In deciding whether to make an order, the magistrate must have regard to the matters stated in subsection (5).

-
- (9) This subsection applies if the person agrees in writing to the taking of the particulars.
- (10) This subsection applies if either—
- (a) a parent or guardian of the person; or
 - (b) if a parent or guardian is not acceptable to the person—another appropriate person;
- agrees in writing to the taking of the particulars.
- (11) Despite this section, identifying particulars may be taken from a person who—
- (a) is an adult; and
 - (b) is capable of managing his or her affairs;
- if the person consents in writing.
- (12) A reference in this section to an *appropriate person* in relation to a person (the *subject*) who is a child, or of impaired capacity, is a reference to a person who—
- (a) is capable of representing the subject's interests; and
 - (b) as far as is practicable in the circumstances, is acceptable to the subject and the police officer who is detaining the subject; and
 - (c) is none of the following—
 - (i) a member of the police service;
 - (ii) an AFP member or AFP employee;
 - (iii) a member, however described, of a police force of another State;
 - (iv) an officer or employee of ASIO.

70 Use of identifying particulars

- (1) This section applies if identifying particulars are taken under section 69 from a person being detained under a preventative detention order.

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- (2) The particulars may be used only to find out whether the person is the person stated in the order.

Note—

A contravention of this subsection may be an offence under section 54.

- (3) If—
 - (a) a period of 12 months elapses after the identifying particulars are taken; and
 - (b) proceedings for—
 - (i) the preventative detention order; or
 - (ii) the treatment of the person in connection with the person's detention under the order;

have not been brought, or have been brought and have ended within the period;

the particulars must be destroyed as soon as practicable after the end of that period by the person who possesses the particulars.

Part 6 Reviews and other remedies

71 Review by Supreme Court on application of detained person

- (1) A person for whom a final order is made may apply to the Supreme Court for an order revoking or varying the order.
- (2) The application may be made at any time after the order is served on the person, and—
 - (a) whether before or after the person is released from detention under the order; and
 - (b) whether or not representations have been made to the nominated police officer about a matter that is the subject of the application.

- (3) The person must give written notice of the application and the grounds on which it is made to the commissioner.
- (4) The commissioner must give the PIM written notice of the application and a copy of the notice and grounds mentioned in subsection (3).
- (5) The commissioner is the respondent to the application.

72 Review by Supreme Court initiated by police officer detaining a person

- (1) This section applies if, at the end of the period mentioned in subsection (4) after a person is detained under a preventative detention order—
 - (a) the order is still in force; and
 - (b) the person has not made an application to the Supreme Court under section 71.
- (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.
- (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.
- (4) For subsection (1), the period is the later of the following—
 - (a) 7 days after the person is detained under the preventative detention order;
 - (b) if the preventative detention order under which the person is detained has been extended or further extended—7 days after the order is extended or further extended.

73 Supreme Court hearing and decision

- (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.
- (2) The record for the application is to include all material given to the issuing authority.
- (3) The PIM is entitled to appear, to examine any witness and to make any submissions.
- (4) If the PIM does appear—
 - (a) the PIM is a party to the proceedings; but
 - (b) a costs order can not be made against the PIM.
- (5) The parties may bring additional evidence and make additional submissions to the court.
- (6) In deciding the application, the court's power includes the power to affirm, revoke or vary the order.
- (7) The application is a proceeding within the meaning of the *Supreme Court of Queensland Act 1991*, section 79 for the purposes of part 9 of that Act.

Note—

The *Supreme Court of Queensland Act 1991*, part 9 makes provision for the use of video link for a proceeding in the Supreme Court.

74 Stay of revocation pending outcome of appeal

- (1) This section applies if—
 - (a) the Supreme Court revokes or varies a preventative detention order on application under section 71 or 72; and
 - (b) the respondent informs the court that the respondent intends to appeal the revocation or variation to the Court of Appeal under the *Supreme Court of Queensland Act 1991*, section 62.
- (2) The revocation or variation is stayed, unless the court otherwise orders, until—

- (a) if the appeal is lodged within 12 hours after the revocation or variation—the end of the appeal; or
- (b) if an appeal is not lodged within 12 hours after the revocation or variation—the end of the 12 hours.

75 Proceedings in relation to preventative detention orders generally saved and right of compensation conferred

- (1) This Act does not limit proceedings that may be brought in a court for a remedy in relation to—
 - (a) a preventative detention order; or
 - (b) the treatment of a person in connection with the person's detention under a preventative detention order.

Example—

A right to start a proceeding under the *Judicial Review Act 1991* is not limited by this Act.

- (2) Without limiting subsection (1), the person for whom a preventative detention order is made may apply to the Supreme Court for compensation—
 - (a) if, under this part, the Supreme Court revokes the order, whether before or after the order has otherwise ceased to have effect; or
 - (b) when the order ceases to have effect.
- (3) The application must be made within a period decided by the court at any time.
- (4) The record for the application is to include all material given to the issuing authority.
- (5) The parties may bring additional evidence and make additional submissions to the court.
- (6) The Supreme Court may order compensation to be paid to the applicant if it is satisfied—
 - (a) that the preventative detention order should not have been made; or

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- (b) that the treatment of the applicant while being detained under the preventative detention order contravened this Act.
- (7) The applicant is not entitled to compensation merely because a preventative detention order or prohibited contact order is made.
- (8) If the Supreme Court makes a decision under subsection (6), the State is liable to pay the compensation decided by the court.

Note—

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.

- (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.

76 Supreme Court to establish procedures for ensuring secrecy of proceedings under this Act while terrorist threat exists

- (1) This section only applies to proceedings under this Act about a preventative detention order that is in force.
- (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.
- (3) The Supreme Court must establish appropriate procedures to ensure that information about—
 - (a) the court's proceedings on review of a preventative detention order; and
 - (b) any other proceedings brought before the court in relation to a preventative detention order;is confined within the narrowest possible limits.

- (4) The Supreme Court is not, however, required to suppress the publication of information under this section if—
 - (a) the Minister authorises its publication; or
 - (b) the court decides that the publication of the information should be authorised in the public interest.

Part 6A Reporting requirements

76A Application of part

This part applies if an application is made to the issuing authority for a preventative detention order for a person.

76B Commissioner to report to Minister

- (1) Within 3 months after the application is made, the commissioner must—
 - (a) prepare a report under this section; and
 - (b) give the Minister a copy of the report.
- (2) The report must state—
 - (a) whether a preventative detention order was made for the person on the application; and
 - (b) if a preventative detention order was made for the person—
 - (i) whether the preventative detention order was an initial order or a final order; and
 - (ii) whether the person was taken into custody under the preventative detention order and, if so, how long the person was detained for under the order; and
 - (iii) if the commissioner is aware a complaint was made to the Crime and Corruption Commission or

the ombudsman about the person's detention under the preventative detention order—particulars of the complaint; and

- (iv) if the person brought a legal proceeding challenging the validity of the preventative detention order—whether the court decided the order was invalid; and
 - (v) any criminal offence with which the person has been charged since the preventative detention order was made; and
 - (vi) whether an application was made for a prohibited contact order in relation to the person's detention under the preventative detention order.
- (3) Also, the report may include any other information the commissioner considers appropriate.
- (4) If the application was made in connection with a terrorist emergency declared under the *Public Safety Preservation Act 1986*, the report may form part of the commissioner's report about the terrorist emergency.
- (5) In this section—

commissioner's report, about a terrorist emergency, means the report about the terrorist emergency the commissioner must give the Minister under the *Public Safety Preservation Act 1986*, section 8R.

Note—

See also the *Police Powers and Responsibilities Act 2000*, section 743 for the PIM's obligation to report to the Minister on the use of preventative detention orders and prohibited contact orders.

76C Minister to report to Parliament

- (1) Within 6 months after the application is made, the Minister must—
- (a) prepare a report under this section; and
 - (b) table a copy of the report in the Legislative Assembly.

- (2) The report—
 - (a) must include all the information in the report given to the Minister under section 76B; and
 - (b) may include any other information the Minister considers appropriate.
- (3) However, the report must not include information that could reasonably be expected to—
 - (a) prejudice the investigation of a contravention or possible contravention of the law in a particular case; or
 - (b) prejudice a prosecution or another matter before a court; or
 - (c) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; or
 - (d) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
 - (e) identify, or lead to the identification of, a person who has been, is being, or is to be, investigated for a contravention or possible contravention of the law; or
 - (f) endanger a person's life or physical safety.
- (4) If the application was made in connection with a terrorist emergency declared under the *Public Safety Preservation Act 1986*, the report may form part of the Minister's report about the terrorist emergency.
- (5) In this section—

Minister's report, about a terrorist emergency, means the report about the terrorist emergency the Minister must table in the Legislative Assembly under the *Public Safety Preservation Act 1986*, section 8S.

Part 7 Miscellaneous

77 Nature of functions of judge

- (1) A function of making an order conferred by this Act on a judge acting as the issuing authority is conferred on the judge in a personal capacity and not as a court or a member of a court.
- (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.
- (3) The *Supreme Court of Queensland Act 1991*, section 27 applies to the judge in performing the function.

Note—

The applied section provides for the protection and immunity of a Supreme Court judge.

- (4) Subsection (3) does not limit the protection or immunity the judge would have apart from the subsection.
- (5) A retired judge performing a function under this Act has the same protection and immunity as a judge has under this section.

78 Nature of functions of magistrate

- (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) 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.
- (3) The *Magistrates Act 1991*, section 51 applies to a magistrate performing the function mentioned in subsection (1).

Note—

The applied section provides for the protection and immunity of a magistrate.

- (4) Subsection (3) does not limit the protection or immunity the magistrate would have apart from the subsection.

79 Obtaining orders by telephone or similar facility

- (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—
- (a) urgent circumstances; or
 - (b) other special circumstances, for example, the police officer's remote location.
- (2) Before making the application the police officer must prepare the written application as required under this Act.

80 Offences

Proceedings for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.

80A No cost orders against person detained

- (1) This section applies to a person who is or has been detained under a preventative detention order and who makes an application under this Act.
- (2) A cost order can not be made against the person for the application.

81 Other functions not affected

This Act does not affect any existing function of the ombudsman, the Crime and Corruption Commission or the PIM under another Act.

82 Law relating to legal professional privilege not affected

To remove any doubt, it is declared that this Act does not affect the law relating to legal professional privilege.

83 Sunset provision

- (1) This Act expires at the end of 20 years after the day on which this section commences.
- (2) A preventative detention order, or a prohibited contact order, that is in force when the Act expires ceases to have effect.
- (3) Despite the Act's expiry, the Act continues to apply in relation to—
 - (a) matters arising before its expiry; and
 - (b) matters arising under preventative detention orders and prohibited contact orders while they were in force.
- (4) This section does not limit the *Acts Interpretation Act 1954*, section 20.

83A Review of Act

The Minister must—

- (a) within 2 years after the commencement, start a review of the need for, and effectiveness of, this Act; and
- (b) within 3 years after the commencement—
 - (i) cause a report to be prepared on the outcome of the review; and
 - (ii) table the report in the Legislative Assembly.

84 Regulation-making power

The Governor in Council may make regulations under this Act.

Part 8 **Transitional provision**

85 **Application of s 7A**

Section 7A applies to any activity or record even if the activity happened or the record was brought into existence before the commencement of the section.

Schedule Dictionary

section 4

AFP member or ***AFP employee*** means an AFP member or AFP employee within the meaning of the *Australian Federal Police Act 1979* (Cwlth).

ASIO means the Australian Security Intelligence Organisation under the *Australian Security Intelligence Organisation 1979* (Cwlth).

ASIO warrant means a warrant under the *Australian Security Intelligence Organisation Act 1979* (Cwlth), section 34E.

assistant commissioner means an assistant commissioner under the *Police Service Administration Act 1990*.

commissioner means the commissioner of the police service under the *Police Service Administration Act 1990*.

Commonwealth control order means a control order, including any interim control order, made for a person under division 104 of the Criminal Code of the Commonwealth.

corrective services facility see the *Corrective Services Act 2006*, schedule 4.

corresponding law means—

- (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
- (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.

deputy commissioner means the deputy commissioner under the *Police Service Administration Act 1990*.

detention centre means a detention centre under the *Youth Justice Act 1992*.

final order see section 22.

frisk search see the *Police Powers and Responsibilities Act 2000*, schedule 6.

identifying particulars see the *Police Powers and Responsibilities Act 2000*, schedule 6.

impaired capacity see the *Guardianship and Administration Act 2000*.

initial order see section 15.

issuing authority see section 7.

Note—

The phrase ‘the issuing authority’ is uniformly used for all purposes, as opposed to varying references to ‘the issuing authority’ or ‘an issuing authority’.

judge means a Supreme Court judge.

lawyer means an Australian lawyer.

Legal Aid see the *Legal Aid Queensland Act 1997*, schedule.

legal assistance see the *Legal Aid Queensland Act 1997*, schedule.

member of the police service means a member of the police service under the *Police Service Administration Act 1990*.

national security means national security within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

nominated police officer see section 38.

ombudsman means—

- (a) the ombudsman under the *Ombudsman Act 2001*; or
- (b) the Commonwealth Ombudsman in relation to his or her functions under the *Complaints (Australian Federal Police) Act 1981* (Cwlth).

ordinary search means a search of a person or of articles in the possession of a person that may include—

(a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes or hat; and

(b) an examination of those items.

PIM means the public interest monitor.

prescribed 14 day period see section 12.

prescribed 24 hour period see section 12.

preventative detention order means an initial order or a final order.

prohibited contact order means an order made under section 32 or 33.

public interest monitor see the *Police Powers and Responsibilities Act 2000*, schedule 6, definition *monitor*.

retired judge means a retired Supreme Court judge.

security-cleared lawyers means lawyers who have been given a security clearance at an appropriate level by the Attorney-General's Department of the Commonwealth.

seizable item means anything that—

(a) would present a danger to a person; or

(b) could be used to assist a person to escape from lawful custody; or

(c) could be used to contact another person or to operate a device remotely.

senior police officer means—

(a) for section 38, 45 or 46—a superintendent, chief superintendent, an assistant commissioner, the deputy commissioner or the commissioner; or

(b) otherwise—an assistant commissioner, the deputy commissioner or the commissioner.

superintendent or **chief superintendent** means a police officer holding the rank of superintendent or chief superintendent in the Queensland Police Service.

terrorist act see the *Police Powers and Responsibilities Act 2000*, section 211.

1 Index to endnotes

- 2 Key
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- 4 List of legislation
- 5 List of annotations

2 Key

Key to abbreviations in list of legislation and annotations

| Key | Explanation | Key | Explanation |
|-------------|---------------------------------------|---------------|----------------------------|
| AIA | = Acts Interpretation Act 1954 | (prev) | = previously |
| amd | = amended | proc | = proclamation |
| amd | = amendment | prov | = provision |
| t | | | |
| ch | = chapter | pt | = part |
| def | = definition | pubd | = published |
| div | = division | R[X] | = Reprint No. [X] |
| exp | = expires/expired | RA | = Reprints Act 1992 |
| gaz | = gazette | reloc | = relocated |
| hdg | = heading | renu | = renumbered |
| | | m | |
| ins | = inserted | rep | = repealed |
| lap | = lapsed | (retro | = retrospectively |
| | |) | |
| notf | = notified | rv | = revised version |
| d | | | |
| num | = numbered | s | = section |

| Key | Explanation | Key | Explanation |
|---------------|---------------------------|--------------|--|
| o in c | = order in council | sch | = schedule |
| om | = omitted | sdiv | = subdivision |
| orig | = original | SIA | = Statutory Instruments Act 1992 |
| p | = page | SIR | = Statutory Instruments Regulation 2012 |
| para | = paragraph | SL | = subordinate legislation |
| prec | = preceding | sub | = substituted |
| pres | = present | unnum | = unnumbered |
| | | m | |
| prev | = previous | | |

3 Table of reprints

A new reprint of the legislation is prepared by the Office of the Queensland Parliamentary Counsel each time a change to the legislation takes effect.

The notes column for this reprint gives details of any discretionary editorial powers under the **Reprints Act 1992** used by the Office of the Queensland Parliamentary Counsel in preparing it. Section 5(c) and (d) of the Act are not mentioned as they contain mandatory requirements that all amendments be included and all necessary consequential amendments be incorporated, whether of punctuation, numbering or another kind. Further details of the use of any discretionary editorial power noted in the table can be obtained by contacting the Office of the Queensland Parliamentary Counsel by telephone on 3003 9601 or email legislation.queries@oqpc.qld.gov.au.

From 29 January 2013, all Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints is not continued with the relevant details for historical reprints included in this table.

| Reprint No. | Amendments included | Effective | Notes |
|--------------------|----------------------------|------------------|-------------------------------|
| 1 rv | none | 16 December 2005 | Revision notice issued for R1 |

| Reprint No. | Amendments included | Effective | Notes |
|--------------------|---------------------------------------|------------------|-----------------------|
| 1A rv | 2006 Act No. 12 | 1 July 2006 | |
| 1B | 2000 Act No. 5 (amd 2006 Act No. 26) | 21 July 2006 | |
| 1C | 2006 Act No. 29 | 28 August 2006 | |
| 1D | 2007 Act No. 34 | 1 March 2008 | R1D withdrawn, see R2 |
| 2 | — | 1 March 2008 | |
| 2A | 2009 Act No. 13 | 1 July 2009 | |
| 2B | 2009 Act No. 25 | 2 November 2009 | |
| 2C | 2009 Act No. 34 | 29 March 2010 | |
| 2D | 1991 Act No. 68 (amd 2011 Act No. 45) | 1 September 2012 | |

| Current as at | Amendments included | Notes |
|----------------------|---|--------------|
| 1 July 2014 | 2006 Act No. 12 (amd 2014 Act No. 12) 2014 Act No. 21 | |
| 20 November 2015 | 2015 Act No. 27 | |

4 List of legislation

Terrorism (Preventative Detention) Act 2005 No. 73

date of assent 8 December 2005

ss 1–2 commenced on date of assent

remaining provisions commenced 16 December 2005 (2005 SL No. 306)

exp 16 December 2025 (see s 83(1))

amending legislation—

Disability Services Act 2006 No. 12 ss 1–2, 241 sch 1, 333 sch 2 (this Act is amended, see amending legislation below)

date of assent 4 April 2006
ss 1–2 commenced on date of assent
s 333 sch 2 commenced 1 July 2014 (2014 SL No. 95)
remaining provisions commenced 1 July 2006 (2006 SL No. 160)
amending legislation—

Communities Legislation (Funding Red Tape Reduction) Amendment Act 2014 No. 12 ss 1–2, 73–74 (amends 2006 No. 12 above)

date of assent 9 April 2014
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2014 (2014 SL No. 95)

Police Powers and Responsibilities Act 2000 No. 5 s 810 sch 4 (prev s 459A sch 3A) (this Act is amended, see amending legislation below)

date of assent 23 March 2000
ss 1–2, 373–377, sch 2 commenced on date of assent (see s 2(2))
s 211 commenced 24 March 2001 (automatic commencement under AIA s 15DA(2))
remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)
amending legislation—

Police Powers and Responsibilities and Other Acts Amendment Act 2006 No. 26 ss 1–2, 84, 86 (amends 2000 No. 5 above)

date of assent 1 June 2006
ss 1–2 commenced on date of assent
remaining provisions commenced 21 July 2006 (2006 SL No. 185)

Corrective Services Act 2006 No. 29 ss 1, 2(2), 518 sch 3

date of assent 1 June 2006
ss 1–2 commenced on date of assent
remaining provisions commenced 28 August 2006 (2006 SL No. 213)

Terrorism Legislation Amendment Act 2007 No. 34 pts 1, 5, s 18 sch

date of assent 29 August 2007
ss 1–2 commenced on date of assent
remaining provisions commenced 1 March 2008 (2008 SL No. 34)

Right to Information Act 2009 No. 13 ss 1–2, 213 sch 5

date of assent 12 June 2009
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2009 (2009 SL No. 132)

Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Act 2009 No. 25 pt 1, s 83 sch

date of assent 11 August 2009
ss 1–2 commenced on date of assent
remaining provisions commenced 2 November 2009 (2009 SL No. 241)

Juvenile Justice and Other Acts Amendment Act 2009 No. 34 ss 1, 2(2), 45(1) sch pt 1 amdt 32

date of assent 17 September 2009
ss 1–2 commenced on date of assent

remaining provisions commenced 29 March 2010 (2010 SL No. 37)

Supreme Court of Queensland Act 1991 No. 68 s 122 sch 1C (this Act is amended, see amending legislation below)

date of assent 24 October 1991

ss 1–2 commenced on date of assent

remaining provisions commenced 14 December 1991 (1991 SL No. 173)

amending legislation—

Civil Proceedings Act 2011 No. 45 ss 1–2, 207, 209 (amends 1991 No. 68 above)

date of assent 6 December 2011

ss 1–2 commenced on date of assent

remaining provisions commenced 1 September 2012 (2012 SL No. 146)

Crime and Misconduct and Other Legislation Amendment Act 2014 No. 21 ss 1, 2(2), 94(2) sch 2

date of assent 21 May 2014

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2014 (2014 SL No. 107)

Counter-Terrorism and Other Legislation Amendment Act 2015 No. 27 s 1, pt 5

date of assent 20 November 2015

commenced on date of assent

5 List of annotations

Extraterritorial application of Act

s 6 sub 2015 No. 27 s 11

Freedom of Information Act 1992

s 7A ins 2007 No. 34 s 19

om 2009 No. 13 s 213 sch 5

PART 2—PREVENTATIVE DETENTION ORDERS

Presence or absence at application for order of detainee and other persons

s 13 amd 2007 No. 34 s 20

General provisions that apply if the PIM must be notified about an application to the issuing authority

s 14 amd 2007 No. 34 s 18 sch

Application for initial order

s 15 amd 2007 No. 34 s 18 sch

Application for final order

s 22 amd 2007 No. 34 s 18 sch

Notice to and representations by the person

s 23 amd 2000 No. 5 s 810 sch 4 (amd 2006 No. 26 ss 84, 86); 2007 No. 34 s 21

Issuing authority may make final order

s 25 amd 2007 No. 34 s 18 sch

Application for extension of final order

s 27 amd 2007 No. 34 ss 22, 18 sch

Notice to and representations by the person

s 29 amd 2000 No. 5 s 810 sch 4 (amd 2006 No. 26 ss, 84, 86); 2007 No. 34 s 23

Division 3A—Legal Aid

div 3A (ss 31A–31B) ins 2007 No. 34 s 24

Revocation of preventative detention order or prohibited contact order

s 35 amd 2007 No. 34 s 25

Nominated police officer to oversee functions and powers

s 38 amd 2007 No. 34 s 26

Requirement to provide name etc.

s 40 amd 2007 No. 34 s 27

Power to enter premises

s 41 amd 2015 No. 27 s 12

Search involving removal of clothing

s 43A ins 2007 No. 34 s 28

Safeguards apply

s 43B ins 2007 No. 34 s 28

Release of person from preventative detention

s 45 amd 2007 No. 34 s 29

Arrangement for detainee to be held

s 46 amd 2006 No. 29 s 518 sch 3; 2007 No. 34 ss 30, 18 sch; 2009 No. 34 s 45(1) sch pt 1 amdt 32

Effect of initial order to be explained to person detained

s 47 amd 2007 No. 34 ss 31, 18 sch; 2014 No. 21 s 94(2) sch 2

Effect of final order to be explained to person detained

s 48 amd 2007 No. 34 ss 32, 18 sch; 2014 No. 21 s 94(2) sch 2

Copy of preventative detention order and summary of grounds

s 51 amd 2007 No. 34 ss 33, 18 sch

Restrictions on questioning detained person

s 53 amd 2007 No. 34 s 34

Offences of contravening safeguards

s 54 amd 2007 No. 34 ss 35, 18 sch

Contacting ombudsman and Crime and Corruption Commission

s 57 amd 2014 No. 21 s 94(2) sch 2

Contacting lawyer

s 58 amd 2007 No. 34 s 36

Monitoring contact under s 56, 58 or 61

s 59 amd 2007 No. 34 s 37

Restrictions on monitoring contact with lawyer

s 59A ins 2007 No. 34 s 38

Special contact rules for child or person of impaired capacity

s 60 amd 2007 No. 34 s 18 sch

Particular persons to be contacted by relevant chief executive

s 61 amd 2007 No. 34 s 39

The relevant chief executive and the chief executive's delegate

s 62 amd 2006 No. 12 s 241 sch 1, s 333 sch 2 (amd 2014 No. 12 ss 73–74); 2007 No. 34 s 40; 2009 No. 25 s 83 sch; 2009 No. 34 s 45(1) sch pt 1 amdt 32

Lawyer

s 64 amd 2007 No. 34 ss 41, 18 sch; 2014 No. 21 s 94(2) sch 2

Parent/guardian

s 65 amd 2007 No. 34 ss 42, 18 sch; 2014 No. 21 s 94(2) sch 2

Interpreter

s 66 amd 2007 No. 34 s 18 sch

Disclosure recipient

s 67 amd 2007 No. 34 s 18 sch

Persons who monitor

s 68 amd 2007 No. 34 s 18 sch

Taking identifying particulars

s 69 amd 2007 No. 34 s 18 sch

Review by Supreme Court initiated by police officer detaining a person

s 72 amd 2007 No. 34 s 43

Supreme Court hearing and decision

s 73 amd 1991 No. 68 s 122 sch 1C renum as 1991 No. 68 s 96 sch 4 (amd 2011 No. 45 ss 207, 209)

Stay of revocation pending outcome of appeal

s 74 amd 1991 No. 68 s 122 sch 1C renum as 1991 No. 68 s 96 sch 4 (amd 2011 No. 45 ss 207, 209)

PART 6A—REPORTING REQUIREMENTS

pt hdg ins 2015 No. 27 s 12A

Application of part

s 76A ins 2015 No. 27 s 12A

Commissioner to report to Minister

s 76B ins 2015 No. 27 s 12A

Minister to report to Parliament

s 76C ins 2015 No. 27 s 12A

Nature of functions of judge

s 77 amd 2007 No. 34 s 18 sch; 1991 No. 68 s 122 sch 1C renum as 1991 No. 68 s 96 sch 4 (amd 2011 No. 45 ss 207, 209)

No cost orders against person detained

s 80A ins 2007 No. 34 s 44

Other functions not affected

s 81 amd 2014 No. 21 s 94(2) sch 2

Sunset provision

s 83 amd 2015 No. 27 s 13

Review of Act

s 83A ins 2015 No. 27 s 14

PART 8—TRANSITIONAL PROVISION

pt hdg ins 2007 No. 34 s 45

Application of s 7A

s 85 ins 2007 No. 34 s 45

SCHEDULE—DICTIONARY

def *ASIO warrant* amd 2007 No. 34 s 46(2)

def *corrective services facility* sub 2006 No. 29 s 518 sch 3

def *detention centre* amd 2009 No. 34 s 45(1) sch pt 1 amdt 32

def *frisk search* amd 2000 No. 5 s 810 sch 4 (amd 2006 No. 26 ss 84, 86)

def *identifying particulars* amd 2000 No. 5 s 810 sch 4 (amd 2006 No. 26 ss 84, 86)

def *issuing authority* amd 2007 No. 34 s 46(3)

def *Legal Aid* ins 2007 No. 34 s 46(1)

def *legal assistance* ins 2007 No. 34 s 46(1)

def *public interest monitor* amd 2000 No. 5 s 810 sch 4 (amd 2006 No. 26 ss 84, 86)

def *senior police officer* amd 2007 No. 34 s 46(4)

def *terrorist act* amd 2000 No. 5 s 810 sch 4 (amd 2006 No. 26 ss 84, 86)