

**A consolidation of the changes to the  
*Criminal Code Act 1995 (Cth)*, *Crimes Act 1914 (Cth)* &  
*Australian Security Intelligence Organisation Act 1979 (Cth)*  
proposed in the  
**Anti-Terrorism Bill 2005 (Cth)****

*Criminal Code Act 1995 & Crimes Act 1914* incorporates amendments up to 3 August 2005.  
*Australian Security Intelligence Organisation Act 1979 (Cth)* is current to 28 September 2005.  
Anti-Terrorism Bill 2005 is the version released on 14 October 2005.  
This consolidation was prepared on **16 October 2005**.

**Notes**

- The Anti-Terrorism Bill 2005 is expected to change over the coming weeks. Please ensure you have the latest version of this document by visiting: [www.nswccl.org.au/issues/terrorism.php](http://www.nswccl.org.au/issues/terrorism.php).
- Schedules 8 (Optical surveillance devices at airports and on board aircraft) and 9 (Financial transaction reporting) of the Anti-Terrorism Bill 2005 have not been consolidated in this document
- the *Criminal Code Act*, *Crimes Act* & *Australian Security Intelligence Organisation Act* are large Acts and only those parts of the Acts amended by the Anti-Terrorism Bill 2005 are reproduced in this document.

**Warning:** all care has been taken in the preparation of this consolidation, but errors might exist in this document. Use this document as a guide only. You should confirm that the consolidation of a provision is correct by examining the *Criminal Code Act*, *Crimes Act*, *Australian Security Intelligence Organisation Act* and Anti-Terrorism Bill yourself. Current legislation in force can be viewed at: [www.comlaw.gov.au](http://www.comlaw.gov.au) or [www.austlii.edu.au](http://www.austlii.edu.au).

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**Date:** 16 October 2005

This document can be downloaded from the NSW Council for Civil Liberties' website: [www.nswccl.org.au](http://www.nswccl.org.au)

**How to read this document**

This document was produced as an aid to analysis of the Anti-Terrorism Bill 2005 (Cth) released by ACT Chief Minister Jon Stanhope on 14 October 2005. Each A4 sheet consists of two pages:

- on the left-hand side are the existing provisions of the current Act
  - the words “not in existing Act” appear in italics on this page when there are no provisions in the current Act that correspond to new provisions in the Bill.
- on the right-hand side are the same provisions, as modified by the Anti-Terrorism Bill 2005 (Cth). The modified provisions are shown in a two-column table:
  - the left column shows the Schedule & Clause number of the amending Bill in square brackets, e.g. [3.2] stands for Schedule 3 Clause 2.
  - the right column shows modifications to the Act in a shaded region:
    - **deleted** text is shown with a line through it;
    - **inserted** text is shown as normal text (within the shaded area).
  - when there are no modifications to the current Act, the word “unchanged” appears in italics on this page. This means that the consolidated provisions are identical to the current Act and have not been reproduced (to save ink).

*Criminal Code Act 1995 (Cth)*

**Chapter 5—The security of the Commonwealth**

**Part 5.1—Treason**

**Division 80—Treason**

**CCL NOTE:** non-citizens convicted of treason (**section 80.1**) or sedition (new **section 80.2**) may be deported by the Attorney-General. See clause 14 of Schedule 7 of the Anti-Terrorism Bill 2005, amending section 203(1)(c)(ia) of the *Migration Act 1958* (Cth).

*Criminal Code Act 1995 (Cth)*

**Chapter 5—The security of the Commonwealth**

**~~Part 5.1—Treason~~**

[7.5]

**Part 5.1—Treason and sedition**

**~~Division 80—Treason~~**

[7.6]

**Division 80—Treason and sedition**

[7.7]

**80.1A Definition of *organisation***

In this Division:

*organisation* means:

- (a) a body corporate; or
- (b) an unincorporated body;

[7.7]

whether or not the body is based outside Australia, consists of persons who are not Australian citizens, or is part of a larger organisation.

80.1 Treason

- (1) A person commits an offence, called treason, if the person:
- (a) causes the death of the Sovereign, the heir apparent of the Sovereign, the consort of the Sovereign, the Governor-General or the Prime Minister; or
  - (b) causes harm to the Sovereign, the Governor-General or the Prime Minister resulting in the death of the Sovereign, the Governor-General or the Prime Minister; or
  - (c) causes harm to the Sovereign, the Governor-General or the Prime Minister, or imprisons or restrains the Sovereign, the Governor-General or the Prime Minister; or
  - (d) levies war, or does any act preparatory to levying war, against the Commonwealth; or
  - (e) engages in conduct that assists by any means whatever, with intent to assist, an enemy:
    - (i) at war with the Commonwealth, whether or not the existence of a state of war has been declared; and
    - (ii) specified by Proclamation made for the purpose of this paragraph to be an enemy at war with the Commonwealth; or
  - (f) engages in conduct that assists by any means whatever, with intent to assist:
    - (i) another country; or
    - (ii) an organisation;that is engaged in armed hostilities against the Australian Defence Force; or
  - (g) instigates a person who is not an Australian citizen to make an armed invasion of the Commonwealth or a Territory of the Commonwealth; or
  - (h) forms an intention to do any act referred to in a preceding paragraph and manifests that intention by an overt act.

Penalty: Imprisonment for life.

- (1A) Paragraphs (1)(e) and (f) do not apply to engagement in conduct by way of, or for the purposes of, the provision of aid of a humanitarian nature.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A). See subsection 13.3(3).

- (1B) Paragraph (1)(h) does not apply to formation of an intention to engage in conduct that:

- (a) is referred to in paragraph (1)(e) or (f); and
- (b) is by way of, or for the purposes of, the provision of aid of a humanitarian nature.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1B). See subsection 13.3(3).

80.1 Treason

- (1) A person commits an offence, called treason, if the person:
- (a) causes the death of the Sovereign, the heir apparent of the Sovereign, the consort of the Sovereign, the Governor-General or the Prime Minister; or
  - (b) causes harm to the Sovereign, the Governor-General or the Prime Minister resulting in the death of the Sovereign, the Governor-General or the Prime Minister; or
  - (c) causes harm to the Sovereign, the Governor-General or the Prime Minister, or imprisons or restrains the Sovereign, the Governor-General or the Prime Minister; or
  - (d) levies war, or does any act preparatory to levying war, against the Commonwealth; or
  - (e) engages in conduct that assists by any means whatever, with intent to assist, an enemy:
    - (i) at war with the Commonwealth, whether or not the existence of a state of war has been declared; and
    - (ii) specified by Proclamation made for the purpose of this paragraph to be an enemy at war with the Commonwealth; or
  - (f) engages in conduct that assists by any means whatever, with intent to assist:
    - (i) another country; or
    - (ii) an organisation;that is engaged in armed hostilities against the Australian Defence Force; or
  - (g) instigates a person who is not an Australian citizen to make an armed invasion of the Commonwealth or a Territory of the Commonwealth; or
  - (h) forms an intention to do any act referred to in a preceding paragraph and manifests that intention by an overt act.

Penalty: Imprisonment for life.

- (1A) Paragraphs (1)(e) and (f) do not apply to engagement in conduct by way of, or for the purposes of, the provision of aid of a humanitarian nature.

[7.8] Note 1: A defendant bears an evidential burden in relation to the matter in subsection (1A). See subsection 13.3(3).

[7.9] Note 2: There is a defence in section 80.3 for acts done in good faith.

- (1B) Paragraph (1)(h) does not apply to formation of an intention to engage in conduct that:

- (a) is referred to in paragraph (1)(e) or (f); and
- (b) is by way of, or for the purposes of, the provision of aid of a humanitarian nature.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1B). See subsection 13.3(3).

(2) A person commits an offence if the person:

- (a) receives or assists another person who, to his or her knowledge, has committed treason with the intention of allowing him or her to escape punishment or apprehension; or
- (b) knowing that another person intends to commit treason, does not inform a constable of it within a reasonable time or use other reasonable endeavours to prevent the commission of the offence.

Penalty: Imprisonment for life.

(3) Proceedings for an offence against this section must not be commenced without the Attorney-General's written consent.

(4) Despite subsection (3):

- (a) a person may be arrested for an offence against this section; or
- (b) a warrant for the arrest of a person for such an offence may be issued and executed; and the person may be charged, and may be remanded in custody or on bail, but:
- (c) no further proceedings may be taken until that consent has been obtained; and
- (d) the person must be discharged if proceedings are not continued within a reasonable time.

(5) On the trial of a person charged with treason on the ground that he or she formed an intention to do an act referred to in paragraph (1)(a), (b), (c), (d), (e), (f) or (g) and manifested that intention by an overt act, evidence of the overt act is not to be admitted unless the overt act is alleged in the indictment.

(6) Section 24F of the *Crimes Act 1914* applies to this section in the same way it would if this section were a provision of Part II of that Act.

(7) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.

(8) In this section:

**constable** means a member or special member of the Australian Federal Police or a member of the police force or police service of a State or Territory.

**organisation** means:

- (a) a body corporate; or
- (b) an unincorporated body;

whether or not the body is based outside Australia, consists of persons who are not Australian citizens, or is part of a larger organisation.

(2) A person commits an offence if the person:

- (a) receives or assists another person who, to his or her knowledge, has committed treason with the intention of allowing him or her to escape punishment or apprehension; or
- (b) knowing that another person intends to commit treason, does not inform a constable of it within a reasonable time or use other reasonable endeavours to prevent the commission of the offence.

Penalty: Imprisonment for life.

[7.10] ~~(3) Proceedings for an offence against this section must not be commenced without the Attorney-General's written consent.~~

~~(4) Despite subsection (3):~~  
~~(a) a person may be arrested for an offence against this section; or~~  
~~(b) a warrant for the arrest of a person for such an offence may be issued and executed; and the person may be charged, and may be remanded in custody or on bail, but:~~  
~~(c) no further proceedings may be taken until that consent has been obtained; and~~  
~~(d) the person must be discharged if proceedings are not continued within a reasonable time.~~

(5) On the trial of a person charged with treason on the ground that he or she formed an intention to do an act referred to in paragraph (1)(a), (b), (c), (d), (e), (f) or (g) and manifested that intention by an overt act, evidence of the overt act is not to be admitted unless the overt act is alleged in the indictment.

[7.10] ~~(6) Section 24F of the *Crimes Act 1914* applies to this section in the same way it would if this section were a provision of Part II of that Act.~~

~~(7) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.~~

(8) In this section:

**constable** means a member or special member of the Australian Federal Police or a member of the police force or police service of a State or Territory.

[7.11] ~~**organisation** means:~~  
~~(a) a body corporate; or~~  
~~(b) an unincorporated body;~~  
~~whether or not the body is based outside Australia, consists of persons who are not Australian citizens, or is part of a larger organisation.~~

not in existing Act

**CCL NOTE:** non-citizens convicted of a treason (**section 80.1**) or sedition (new **section 80.2**) may be deported by the Attorney-General. See clause 14 of Schedule 7 of the Anti-Terrorism Bill 2005, amending section 203(1)(c)(ia) of the *Migration Act 1958* (Cth).

[7.12] **80.2 Sedition**

*Urging the overthrow of the Constitution or Government*

- (1) A person commits an offence if the person urges another person to overthrow by force or violence:
- (a) the Constitution; or
  - (b) the Government of the Commonwealth, a State or a Territory; or
  - (c) the lawful authority of the Government of the Commonwealth.

Penalty: Imprisonment for 7 years.

- (2) Recklessness applies to paragraphs (1)(a), (b) and (c).

*Urging interference in Parliamentary elections*

- (3) A person commits an offence if the person urges another person to interfere by force or violence with lawful processes for an election of a member or members of a House of the Parliament.

Penalty: Imprisonment for 7 years.

- (4) Recklessness applies to the element of the offence that it is lawful processes for an election of a member or members of a House of the Parliament that the first-mentioned person urges the other person to interfere with.

*Urging violence within the community*

- (5) A person commits an offence if:
- (a) the person urges a group or groups (whether distinguished by race, religion, nationality or political opinion) to use force or violence against another group or other groups (as so distinguished); and
  - (b) the use of the force or violence would threaten the peace, order and good government of the Commonwealth.

Penalty: Imprisonment for 7 years.

- (6) Recklessness applies to the element of the offence that it is a group or groups that are distinguished by race, religion, nationality or political opinion that the first-mentioned person urges the other person to use force or violence against.

not in existing Act

**CCL NOTE:** non-citizens convicted of a treason (**section 80.1**) or sedition (new **section 80.2**) may be deported by the Attorney-General. See clause 14 of Schedule 7 of the Anti-Terrorism Bill 2005, amending section 203(1)(c)(ia) of the *Migration Act 1958* (Cth).

*Urging a person to assist the enemy*

- (7) A person commits an offence if:
- (a) the person urges another person to engage in conduct; and
  - (b) the first-mentioned person intends the conduct to assist, by any means whatever, an organisation or country; and
  - (c) the organisation or country is:
    - (i) at war with the Commonwealth, whether or not the existence of a state of war has been declared; and
    - (ii) specified by Proclamation made for the purpose of paragraph 80.1(1)(e) to be an enemy at war with the Commonwealth.

Penalty: Imprisonment for 7 years.

*Urging a person to assist those engaged in armed hostilities*

- (8) A person commits an offence if:
- (a) the person urges another person to engage in conduct; and
  - (b) the first-mentioned person intends the conduct to assist, by any means whatever, an organisation or country; and
  - (c) the organisation or country is engaged in armed hostilities against the Australian Defence Force.

Penalty: Imprisonment for 7 years.

*Defence*

- (9) Subsections (7) and (8) do not apply to engagement in conduct by way of, or for the purposes of, the provision of aid of a humanitarian nature.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (9). See subsection 13.3(3).

Note 2: There is a defence in section 80.3 for acts done in good faith.

not in existing Act

[7.12]

80.3 Defence for acts done in good faith

(1) Sections 80.1 and 80.2 do not apply to a person who:

(a) tries in good faith to show that any of the following persons are mistaken in any of his or her counsels, policies or actions:

(i) the Sovereign;

(ii) the Governor-General;

(iii) the Governor of a State;

(iv) the Administrator of a Territory;

(v) an adviser of any of the above;

(vi) a person responsible for the government of another country; or

(b) points out in good faith errors or defects in the following, with a view to reforming those errors or defects:

(i) the Government of the Commonwealth, a State or a Territory;

(ii) the Constitution;

(iii) legislation of the Commonwealth, a State or a Territory or another country;

(iv) the administration of justice of or in the Commonwealth, a State, a Territory or another country; or

(c) urges in good faith another person to attempt to lawfully procure a change to any matter established by law in the Commonwealth, a State, a Territory or another country; or

(d) points out in good faith any matters that are producing, or have a tendency to produce, feelings of ill-will or hostility between different groups, in order to bring about the removal of those matters; or

(e) does anything in good faith in connection with an industrial dispute or an industrial matter.

Note:

A defendant bears an evidential burden in relation to the matter in subsection (1). See subsection 13.3(3).

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not in existing Act

[7.12]

- (2) In considering a defence under subsection (1), the Court may have regard to any relevant matter, including whether the acts were done:
- (a) for a purpose intended to be prejudicial to the safety or defence of the Commonwealth; or
  - (b) with the intention of assisting an enemy:
    - (i) at war with the Commonwealth; and
    - (ii) specified by Proclamation made for the purpose of paragraph 80.1(1)(e) to be an enemy at war with the Commonwealth; or
  - (c) with the intention of assisting another country, or an organisation, that is engaged in armed hostilities against the Australian Defence Force; or
  - (d) with the intention of assisting a proclaimed enemy of a proclaimed country (within the meaning of subsection 24AA(4) of the *Crimes Act 1914*); or
  - (e) with the intention of assisting persons specified in paragraphs 24AA(2)(a) and (b) of the *Crimes Act 1914*; or
  - (f) with the intention of causing violence or creating public disorder or a public disturbance.

[7.12]

**80.4 Extended geographical jurisdiction for offences**

[7.12]

Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this Division.

[7.12]

**80.5 Attorney-General’s consent required**

[7.12]

- (1) Proceedings for an offence against this Division must not be commenced without the Attorney-General’s written consent.
- (2) Despite subsection (1):
  - (a) a person may be arrested for an offence against this Division; or
  - (b) a warrant for the arrest of a person for such an offence may be issued and executed; and the person may be charged, and may be remanded in custody or on bail, but:
    - (c) no further proceedings may be taken until that consent has been obtained; and
    - (d) the person must be discharged if proceedings are not continued within a reasonable time.

[7.12]

**80.6 Division not intended to exclude State or Territory law**

[7.12]

It is the intention of the Parliament that this Division is not to apply to the exclusion of a law of a State or a Territory to the extent that the law is capable of operating concurrently with this Division.



**Part 5.2—Offences relating to espionage and similar activities**

*CCL note: not reproduced*

**Part 5.2—Offences relating to espionage and similar activities**

*CCL note: not reproduced*

Part 5.3—Terrorism

Division 100—Preliminary

100.1 Definitions

(1) In this Part:

*Commonwealth place* has the same meaning as in the *Commonwealth Places (Application of Laws) Act 1970*.

*constitutional corporation* means a corporation to which paragraph 51(xx) of the Constitution applies.

*express amendment* of the provisions of this Part or Chapter 2 means the direct amendment of the provisions (whether by the insertion, omission, repeal, substitution or relocation of words or matter).

*funds* means:

- (a) property and assets of every kind, whether tangible or intangible, movable or immovable, however acquired; and
- (b) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such property or assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, debt instruments, drafts and letters of credit.

Part 5.3—Terrorism

Division 100—Preliminary

100.1 Definitions

(1) In this Part:

[4.1]

*AFP Member* means:

- (a) a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or
- (b) a special member of the Australian Federal Police (within the meaning of that Act).

*Commonwealth place* has the same meaning as in the *Commonwealth Places (Application of Laws) Act 1970*.

*constitutional corporation* means a corporation to which paragraph 51(xx) of the Constitution applies.

[4.2]

*continued preventative detention order* means an order made under section 105.12.

[4.3]

*control order* means an order made under section 104.3 or 104.6.

*express amendment* of the provisions of this Part or Chapter 2 means the direct amendment of the provisions (whether by the insertion, omission, repeal, substitution or relocation of words or matter).

[4.4]

*frisk search* means:

- (a) a search of a person conducted by quickly running the hands over the person's outer garments; and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

*funds* means:

- (a) property and assets of every kind, whether tangible or intangible, movable or immovable, however acquired; and
- (b) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such property or assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, debt instruments, drafts and letters of credit.

**organisation** means a body corporate or an unincorporated body, whether or not the body:

- (a) is based outside Australia; or
- (b) consists of persons who are not Australian citizens; or
- (c) is part of a larger organisation.

**referring State** has the meaning given by section 100.2.

- [4.5]

**identification material**, in relation to a person, means prints of the person's hands, fingers, feet or toes, recordings of the person's voice, samples of the person's handwriting or photographs (including video recordings) of the person, but does not include tape recordings made for the purposes of section 23U or 23V of the *Crimes Act 1914*.
- [4.6]

**initial preventative detention order** means an order made under section 105.8.

**issuing authority:**

  - (a) for initial preventative detention orders means:
    - (i) the Commissioner of the Australian Federal Police; or
    - (ii) a Deputy Commissioner of the Australian Federal Police; or
    - (iii) an AFP member of, or above, the rank of Superintendent; and
  - (b) for continued preventative detention orders means a person appointed under section 105.2.
- [4.7]
- [4.8]

**issuing Court** means:

  - (a) the Federal Court of Australia; or
  - (b) the Family Court of Australia; or
  - (c) the Federal Magistrates Court.
- [4.9]

**Judge** means a Judge of a court created by the Parliament.
- [4.10]

**lawyer** means a person enrolled as a legal practitioner of a federal court or the Supreme Court of a State or Territory.
- [4.11]

**listed terrorist organisation** means an organisation that is specified by the regulations for the purposes of paragraph (b) of the definition of **terrorist organisation** in section 102.1.

**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.
- [4.12]
- organisation** means a body corporate or an unincorporated body, whether or not the body:

  - (a) is based outside Australia; or
  - (b) consists of persons who are not Australian citizens; or
  - (c) is part of a larger organisation.
- [4.13]

**prescribed authority** has the same meaning as in Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*.
- [4.14]

**preventative detention order** means an order under section 105.8 or 105.12.
- [4.15]

**prohibited contact order** means an order made under section 105.15 or 105.16.

**referring State** has the meaning given by section 100.2.
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**terrorist act** means an action or threat of action where:

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

(2) Action falls within this subsection if it:

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

[4.16]

**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.

[4.17]

**senior AFP member** means:

- (a) the Commissioner of the Australian Federal Police; or
- (b) a Deputy Commissioner of the Australian Federal Police; or
- (c) an AFP member of, or above, the rank of Superintendent

**terrorist act** means an action or threat of action where:

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

[4.18]

**tracking device** means any electronic device capable of being used to determine or monitor the location of a person or an object or the status of an object.

(2) Action falls within this subsection if it:

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

- (3) Action falls within this subsection if it:
- (a) is advocacy, protest, dissent or industrial action; and
  - (b) is not intended:
    - (i) to cause serious harm that is physical harm to a person; or
    - (ii) to cause a person's death; or
    - (iii) to endanger the life of a person, other than the person taking the action; or
    - (iv) to create a serious risk to the health or safety of the public or a section of the public.
- (4) In this Division:
- (a) a reference to any person or property is a reference to any person or property wherever situated, within or outside Australia; and
  - (b) a reference to the public includes a reference to the public of a country other than Australia.

- (3) Action falls within this subsection if it:
- (a) is advocacy, protest, dissent or industrial action; and
  - (b) is not intended:
    - (i) to cause serious harm that is physical harm to a person; or
    - (ii) to cause a person's death; or
    - (iii) to endanger the life of a person, other than the person taking the action; or
    - (iv) to create a serious risk to the health or safety of the public or a section of the public.
- (4) In this Division:
- (a) a reference to any person or property is a reference to any person or property wherever situated, within or outside Australia; and
  - (b) a reference to the public includes a reference to the public of a country other than Australia.

	<b>100.2 Referring States</b>
	<p>(1) A State is a <b>referring State</b> if the Parliament of the State has referred the matters covered by subsections (2) and (3) to the Parliament of the Commonwealth for the purposes of paragraph 51(xxxvii) of the Constitution:</p> <p>(a) if and to the extent that the matters are not otherwise included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference under paragraph 51(xxxvii) of the Constitution); and</p> <p>(b) if and to the extent that the matters are included in the legislative powers of the Parliament of the State.</p> <p>This subsection has effect subject to subsection (5).</p>
	<p>(2) This subsection covers the matters to which the referred provisions relate to the extent of making laws with respect to those matters by including the referred provisions in this Code.</p>
	<p>(3) This subsection covers the matter of terrorist acts, and of actions relating to terrorist acts, to the extent of making laws with respect to that matter by making express amendment of this Part or Chapter 2.</p>
	<p>(4) A State is a <b>referring State</b> even if a law of the State provides that the reference to the Commonwealth Parliament of either or both of the matters covered by subsections (2) and (3) is to terminate in particular circumstances.</p>
	<p>(5) A State ceases to be a referring State if a reference by the State of either or both of the matters covered by subsections (2) and (3) terminate.</p>
	<p>(6) In this section:</p> <p><b>referred provisions</b> means the provisions of Part 5.3 of this Code as inserted by the <i>Criminal Code Amendment (Terrorism) Act 2002</i>, to the extent to which they deal with matters that are included in the legislative powers of the Parliaments of the States.</p>

	<b>100.2 Referring States</b>
	<p>(1) A State is a <b>referring State</b> if the Parliament of the State has referred the matters covered by subsections (2) and (3) to the Parliament of the Commonwealth for the purposes of paragraph 51(xxxvii) of the Constitution:</p> <p>(a) if and to the extent that the matters are not otherwise included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference under paragraph 51(xxxvii) of the Constitution); and</p> <p>(b) if and to the extent that the matters are included in the legislative powers of the Parliament of the State.</p> <p>This subsection has effect subject to subsection (5).</p>
	<p>(2) This subsection covers the matters to which the referred provisions relate to the extent of making laws with respect to those matters by including the referred provisions in this Code.</p>
	<p>(3) This subsection covers the matter of terrorist acts, and of actions relating to terrorist acts, to the extent of making laws with respect to that matter by making express amendment of this Part or Chapter 2.</p>
	<p>(4) A State is a <b>referring State</b> even if a law of the State provides that the reference to the Commonwealth Parliament of either or both of the matters covered by subsections (2) and (3) is to terminate in particular circumstances.</p>
	<p>(5) A State ceases to be a referring State if a reference by the State of either or both of the matters covered by subsections (2) and (3) terminate.</p>
	<p>(6) In this section:</p> <p><b>referred provisions</b> means the provisions of Part 5.3 of this Code as inserted by the <i>Criminal Code Amendment (Terrorism) Act 2002</i>, to the extent to which they deal with matters that are included in the legislative powers of the Parliaments of the States.</p>

	<b>100.3 Constitutional basis for the operation of this Part</b>
	<p><i>Operation in a referring State</i></p> <p>(1) The operation of this Part in a referring State is based on:</p> <ul style="list-style-type: none"> <li>(a) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)); and</li> <li>(b) the legislative powers that the Commonwealth Parliament has in respect of matters to which this Part relates because those matters are referred to it by the Parliament of the referring State under paragraph 51(xxxvii) of the Constitution.</li> </ul> <p>Note: The State reference fully supplements the Commonwealth Parliament's other powers by referring the matters to the Commonwealth Parliament to the extent to which they are not otherwise included in the legislative powers of the Commonwealth Parliament.</p>
	<p><i>Operation in a non-referring State</i></p> <p>(2) The operation of this Part in a State that is not a referring State is based on the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).</p> <p>Note: Subsection 100.4(5) identifies particular powers that are being relied on.</p>
	<p><i>Operation in a Territory</i></p> <p>(3) The operation of this Part in the Northern Territory, the Australian Capital Territory or an external Territory is based on:</p> <ul style="list-style-type: none"> <li>(a) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of that Territory; and</li> <li>(b) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).</li> </ul> <p>Despite subsection 22(3) of the <i>Acts Interpretation Act 1901</i>, this Part as applying in those Territories is a law of the Commonwealth.</p>
	<p><i>Operation outside Australia</i></p> <p>(4) The operation of this Part outside Australia and the external Territories is based on:</p> <ul style="list-style-type: none"> <li>(a) the legislative powers that the Commonwealth Parliament has under paragraph 51(xxix) of the Constitution; and</li> <li>(b) the other legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).</li> </ul>

	<b>100.3 Constitutional basis for the operation of this Part</b>
	<p><i>Operation in a referring State</i></p> <p>(1) The operation of this Part in a referring State is based on:</p> <ul style="list-style-type: none"> <li>(a) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)); and</li> <li>(b) the legislative powers that the Commonwealth Parliament has in respect of matters to which this Part relates because those matters are referred to it by the Parliament of the referring State under paragraph 51(xxxvii) of the Constitution.</li> </ul> <p>Note: The State reference fully supplements the Commonwealth Parliament's other powers by referring the matters to the Commonwealth Parliament to the extent to which they are not otherwise included in the legislative powers of the Commonwealth Parliament.</p>
	<p><i>Operation in a non-referring State</i></p> <p>(2) The operation of this Part in a State that is not a referring State is based on the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).</p> <p>Note: Subsection 100.4(5) identifies particular powers that are being relied on.</p>
	<p><i>Operation in a Territory</i></p> <p>(3) The operation of this Part in the Northern Territory, the Australian Capital Territory or an external Territory is based on:</p> <ul style="list-style-type: none"> <li>(a) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of that Territory; and</li> <li>(b) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).</li> </ul> <p>Despite subsection 22(3) of the <i>Acts Interpretation Act 1901</i>, this Part as applying in those Territories is a law of the Commonwealth.</p>
	<p><i>Operation outside Australia</i></p> <p>(4) The operation of this Part outside Australia and the external Territories is based on:</p> <ul style="list-style-type: none"> <li>(a) the legislative powers that the Commonwealth Parliament has under paragraph 51(xxix) of the Constitution; and</li> <li>(b) the other legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).</li> </ul>

	<b>100.4 Application of provisions</b>
	<p><i>Part generally applies to all terrorist acts and preliminary acts</i></p> <p>(1) Subject to subsection (4), this Part applies to the following conduct:</p> <ul style="list-style-type: none"> <li>(a) all actions or threats of action that constitute terrorist acts (no matter where the action occurs, the threat is made or the action, if carried out, would occur);</li> <li>(b) all actions (<i>preliminary acts</i>) that relate to terrorist acts but do not themselves constitute terrorist acts (no matter where the preliminary acts occur and no matter where the terrorist acts to which they relate occur or would occur).</li> </ul> <p>Note: See the following provisions:</p> <ul style="list-style-type: none"> <li>(a) subsection 101.1(2);</li> <li>(b) subsection 101.2(4);</li> <li>(c) subsection 101.4(4);</li> <li>(d) subsection 101.5(4);</li> <li>(e) subsection 101.6(3);</li> <li>(f) section 102.9.</li> </ul>
	<p><i>Operation in relation to terrorist acts and preliminary acts occurring in a State that is not a referring State</i></p> <p>(2) Subsections (4) and (5) apply to conduct if the conduct is itself a terrorist act and:</p> <ul style="list-style-type: none"> <li>(a) the terrorist act consists of an action and the action occurs in a State that is not a referring State; or</li> <li>(b) the terrorist act consists of a threat of action and the threat is made in a State that is not a referring State.</li> </ul>
	<p>(3) Subsections (4) and (5) also apply to conduct if the conduct is a preliminary act that occurs in a State that is not a referring State and:</p> <ul style="list-style-type: none"> <li>(a) the terrorist act to which the preliminary act relates consists of an action and the action occurs, or would occur, in a State that is not a referring State; or</li> <li>(b) the terrorist act to which the preliminary act relates consists of a threat of action and the threat is made, or would be made, in a State that is not a referring State.</li> </ul>
	<p>(4) Notwithstanding any other provision in this Part, this Part applies to the conduct only to the extent to which the Parliament has power to legislate in relation to:</p> <ul style="list-style-type: none"> <li>(a) if the conduct is itself a terrorist act—the action or threat of action that constitutes the terrorist act; or</li> <li>(b) if the conduct is a preliminary act—the action or threat of action that constitutes the terrorist act to which the preliminary act relates.</li> </ul>

	<b>100.4 Application of provisions</b>
	<p><i>Part generally applies to all terrorist acts and preliminary acts</i></p> <p>(1) Subject to subsection (4), this Part applies to the following conduct:</p> <ul style="list-style-type: none"> <li>(a) all actions or threats of action that constitute terrorist acts (no matter where the action occurs, the threat is made or the action, if carried out, would occur);</li> <li>(b) all actions (<i>preliminary acts</i>) that relate to terrorist acts but do not themselves constitute terrorist acts (no matter where the preliminary acts occur and no matter where the terrorist acts to which they relate occur or would occur).</li> </ul> <p>Note: See the following provisions:</p> <ul style="list-style-type: none"> <li>(a) subsection 101.1(2);</li> <li>(b) subsection 101.2(4);</li> <li>(c) subsection 101.4(4);</li> <li>(d) subsection 101.5(4);</li> <li>(e) subsection 101.6(3);</li> <li>(f) section 102.9.</li> </ul>
	<p><i>Operation in relation to terrorist acts and preliminary acts occurring in a State that is not a referring State</i></p> <p>(2) Subsections (4) and (5) apply to conduct if the conduct is itself a terrorist act and:</p> <ul style="list-style-type: none"> <li>(a) the terrorist act consists of an action and the action occurs in a State that is not a referring State; or</li> <li>(b) the terrorist act consists of a threat of action and the threat is made in a State that is not a referring State.</li> </ul>
	<p>(3) Subsections (4) and (5) also apply to conduct if the conduct is a preliminary act that occurs in a State that is not a referring State and:</p> <ul style="list-style-type: none"> <li>(a) the terrorist act to which the preliminary act relates consists of an action and the action occurs, or would occur, in a State that is not a referring State; or</li> <li>(b) the terrorist act to which the preliminary act relates consists of a threat of action and the threat is made, or would be made, in a State that is not a referring State.</li> </ul>
	<p>(4) Notwithstanding any other provision in this Part, this Part applies to the conduct only to the extent to which the Parliament has power to legislate in relation to:</p> <ul style="list-style-type: none"> <li>(a) if the conduct is itself a terrorist act—the action or threat of action that constitutes the terrorist act; or</li> <li>(b) if the conduct is a preliminary act—the action or threat of action that constitutes the terrorist act to which the preliminary act relates.</li> </ul>



	<p>(5) Without limiting the generality of subsection (4), this Part applies to the action or threat of action if:</p> <ul style="list-style-type: none"> <li>(a) the action affects, or if carried out would affect, the interests of: <ul style="list-style-type: none"> <li>(i) the Commonwealth; or</li> <li>(ii) an authority of the Commonwealth; or</li> <li>(iii) a constitutional corporation; or</li> </ul> </li> <li>(b) the threat is made to: <ul style="list-style-type: none"> <li>(i) the Commonwealth; or</li> <li>(ii) an authority of the Commonwealth; or</li> <li>(iii) a constitutional corporation; or</li> </ul> </li> <li>(c) the action is carried out by, or the threat is made by, a constitutional corporation; or</li> <li>(d) the action takes place, or if carried out would take place, in a Commonwealth place; or</li> <li>(e) the threat is made in a Commonwealth place; or</li> <li>(f) the action involves, or if carried out would involve, the use of a postal service or other like service; or</li> <li>(g) the threat is made using a postal or other like service; or</li> <li>(h) the action involves, or if carried out would involve, the use of an electronic communication; or</li> <li>(i) the threat is made using an electronic communication; or</li> <li>(j) the action disrupts, or if carried out would disrupt, trade or commerce: <ul style="list-style-type: none"> <li>(i) between Australia and places outside Australia; or</li> <li>(ii) among the States; or</li> <li>(iii) within a Territory, between a State and a Territory or between 2 Territories; or</li> </ul> </li> <li>(k) the action disrupts, or if carried out would disrupt: <ul style="list-style-type: none"> <li>(i) banking (other than State banking not extending beyond the limits of the State concerned); or</li> <li>(ii) insurance (other than State insurance not extending beyond the limits of the State concerned); or</li> </ul> </li> <li>(l) the action is, or if carried out would be, an action in relation to which the Commonwealth is obliged to create an offence under international law; or</li> <li>(m) the threat is one in relation to which the Commonwealth is obliged to create an offence under international law.</li> </ul>
	<p>(6) To avoid doubt, subsections (2) and (3) apply to a State that is not a referring State at a particular time even if no State is a referring State at that time.</p>

	<p>(5) Without limiting the generality of subsection (4), this Part applies to the action or threat of action if:</p> <ul style="list-style-type: none"> <li>(a) the action affects, or if carried out would affect, the interests of: <ul style="list-style-type: none"> <li>(i) the Commonwealth; or</li> <li>(ii) an authority of the Commonwealth; or</li> <li>(iii) a constitutional corporation; or</li> </ul> </li> <li>(b) the threat is made to: <ul style="list-style-type: none"> <li>(i) the Commonwealth; or</li> <li>(ii) an authority of the Commonwealth; or</li> <li>(iii) a constitutional corporation; or</li> </ul> </li> <li>(c) the action is carried out by, or the threat is made by, a constitutional corporation; or</li> <li>(d) the action takes place, or if carried out would take place, in a Commonwealth place; or</li> <li>(e) the threat is made in a Commonwealth place; or</li> <li>(f) the action involves, or if carried out would involve, the use of a postal service or other like service; or</li> <li>(g) the threat is made using a postal or other like service; or</li> <li>(h) the action involves, or if carried out would involve, the use of an electronic communication; or</li> <li>(i) the threat is made using an electronic communication; or</li> <li>(j) the action disrupts, or if carried out would disrupt, trade or commerce: <ul style="list-style-type: none"> <li>(i) between Australia and places outside Australia; or</li> <li>(ii) among the States; or</li> <li>(iii) within a Territory, between a State and a Territory or between 2 Territories; or</li> </ul> </li> <li>(k) the action disrupts, or if carried out would disrupt: <ul style="list-style-type: none"> <li>(i) banking (other than State banking not extending beyond the limits of the State concerned); or</li> <li>(ii) insurance (other than State insurance not extending beyond the limits of the State concerned); or</li> </ul> </li> <li>(l) the action is, or if carried out would be, an action in relation to which the Commonwealth is obliged to create an offence under international law; or</li> <li>(m) the threat is one in relation to which the Commonwealth is obliged to create an offence under international law.</li> </ul>
	<p>(6) To avoid doubt, subsections (2) and (3) apply to a State that is not a referring State at a particular time even if no State is a referring State at that time.</p>

	<b>100.5 Application of Acts Interpretation Act 1901</b>
	(1) The <i>Acts Interpretation Act 1901</i> , as in force on the day on which Schedule 1 to the <i>Criminal Code Amendment (Terrorism) Act 2003</i> commences, applies to this Part.
	(2) Amendments of the <i>Acts Interpretation Act 1901</i> made after that day do not apply to this Part.
	<b>100.6 Concurrent operation intended</b>
	(1) This Part is not intended to exclude or limit the concurrent operation of any law of a State or Territory.
	(2) Without limiting subsection (1), this Part is not intended to exclude or limit the concurrent operation of a law of a State or Territory that makes: <ul style="list-style-type: none"> <li>(a) an act or omission that is an offence against a provision of this Part; or</li> <li>(b) a similar act or omission;</li> </ul> an offence against the law of the State or Territory.
	(3) Subsection (2) applies even if the law of the State or Territory does any one or more of the following: <ul style="list-style-type: none"> <li>(a) provides for a penalty for the offence that differs from the penalty provided for in this Part;</li> <li>(b) provides for a fault element in relation to the offence that differs from the fault elements applicable to the offence under this Part;</li> <li>(c) provides for a defence in relation to the offence that differs from the defences applicable to the offence under this Part.</li> </ul>
	(4) If: <ul style="list-style-type: none"> <li>(a) an act or omission of a person is an offence under this Part and is also an offence under the law of a State or Territory; and</li> <li>(b) the person has been punished for the offence under the law of the State or Territory;</li> </ul> the person is not liable to be punished for the offence under this Part.

	<b>100.5 Application of Acts Interpretation Act 1901</b>
	(1) The <i>Acts Interpretation Act 1901</i> , as in force on the day on which Schedule 1 to the <i>Criminal Code Amendment (Terrorism) Act 2003</i> commences, applies to this Part.
	(2) Amendments of the <i>Acts Interpretation Act 1901</i> made after that day do not apply to this Part.
	<b>100.6 Concurrent operation intended</b>
	(1) This Part is not intended to exclude or limit the concurrent operation of any law of a State or Territory.
	(2) Without limiting subsection (1), this Part is not intended to exclude or limit the concurrent operation of a law of a State or Territory that makes: <ul style="list-style-type: none"> <li>(a) an act or omission that is an offence against a provision of this Part; or</li> <li>(b) a similar act or omission;</li> </ul> an offence against the law of the State or Territory.
	(3) Subsection (2) applies even if the law of the State or Territory does any one or more of the following: <ul style="list-style-type: none"> <li>(a) provides for a penalty for the offence that differs from the penalty provided for in this Part;</li> <li>(b) provides for a fault element in relation to the offence that differs from the fault elements applicable to the offence under this Part;</li> <li>(c) provides for a defence in relation to the offence that differs from the defences applicable to the offence under this Part.</li> </ul>
	(4) If: <ul style="list-style-type: none"> <li>(a) an act or omission of a person is an offence under this Part and is also an offence under the law of a State or Territory; and</li> <li>(b) the person has been punished for the offence under the law of the State or Territory;</li> </ul> the person is not liable to be punished for the offence under this Part.

	<b>100.7 Regulations may modify operation of this Part to deal with interaction between this Part and State and Territory laws</b>
	<p>(1) The regulations may modify the operation of this Part so that:</p> <ul style="list-style-type: none"> <li>(a) provisions of this Part do not apply to a matter that is dealt with by a law of a State or Territory specified in the regulations; or</li> <li>(b) no inconsistency arises between the operation of a provision of this Part and the operation of a State or Territory law specified in the regulations.</li> </ul>
	<p>(2) Without limiting subsection (1), regulations made for the purposes of that subsection may provide that the provision of this Part does not apply to:</p> <ul style="list-style-type: none"> <li>(a) a person specified in the regulations; or</li> <li>(b) a body specified in the regulations; or</li> <li>(c) circumstances specified in the regulations; or</li> <li>(d) a person or body specified in the regulations in the circumstances specified in the regulations.</li> </ul>
	<p>(3) In this section:</p> <p><i>matter</i> includes act, omission, body, person or thing.</p>
	<b>100.8 Approval for changes to or affecting this Part</b>
	<p>(1) This section applies to:</p> <ul style="list-style-type: none"> <li>(a) an express amendment of this Part (including this section); and</li> <li>(b) an express amendment of Chapter 2 that applies only to this Part (whether or not it is expressed to apply only to this Part).</li> </ul>
	<p>(2) An express amendment to which this section applies is not to be made unless the amendment is approved by:</p> <ul style="list-style-type: none"> <li>(a) a majority of the group consisting of the States, the Australian Capital Territory and the Northern Territory; and</li> <li>(b) at least 4 States.</li> </ul>

	<b>100.7 Regulations may modify operation of this Part to deal with interaction between this Part and State and Territory laws</b>
	<p>(1) The regulations may modify the operation of this Part so that:</p> <ul style="list-style-type: none"> <li>(a) provisions of this Part do not apply to a matter that is dealt with by a law of a State or Territory specified in the regulations; or</li> <li>(b) no inconsistency arises between the operation of a provision of this Part and the operation of a State or Territory law specified in the regulations.</li> </ul>
	<p>(2) Without limiting subsection (1), regulations made for the purposes of that subsection may provide that the provision of this Part does not apply to:</p> <ul style="list-style-type: none"> <li>(a) a person specified in the regulations; or</li> <li>(b) a body specified in the regulations; or</li> <li>(c) circumstances specified in the regulations; or</li> <li>(d) a person or body specified in the regulations in the circumstances specified in the regulations.</li> </ul>
	<p>(3) In this section:</p> <p><i>matter</i> includes act, omission, body, person or thing.</p>
	<b>100.8 Approval for changes to or affecting this Part</b>
	<p>(1) This section applies to:</p> <ul style="list-style-type: none"> <li>(a) an express amendment of this Part (including this section); and</li> <li>(b) an express amendment of Chapter 2 that applies only to this Part (whether or not it is expressed to apply only to this Part).</li> </ul>
	<p>(2) An express amendment to which this section applies is not to be made unless the amendment is approved by:</p> <ul style="list-style-type: none"> <li>(a) a majority of the group consisting of the States, the Australian Capital Territory and the Northern Territory; and</li> <li>(b) at least 4 States.</li> </ul>

	<b>Division 101—Terrorism</b>
	<b>101.1 Terrorist acts</b>
	(1) A person commits an offence if the person engages in a terrorist act.  Penalty: Imprisonment for life.
	(2) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

**CCL NOTE:** an AFP officer may seek an emergency surveillance authorisation (without a warrant) if s/he reasonably suspects that the surveillance device is immediately necessary to prevent the loss of evidence relevant to an investigation of a terrorist offence (**Division 101**), terrorist organisation offence (**Division 102**) or financing terrorism offence (**Division 103**). See clause 18 of Schedule 7 of the Anti-Terrorism Bill 2005, amending section 30(1)(a)(viii) of the *Surveillance Devices Act 2004* (Cth).

	<b>Division 101—Terrorism</b>
	<b>101.1 Terrorist acts</b>
	(1) A person commits an offence if the person engages in a terrorist act.  Penalty: Imprisonment for life.
	(2) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

	<b>101.2 Providing or receiving training connected with terrorist acts</b>
	<p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> <li>(a) the person provides or receives training; and</li> <li>(b) the training is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and</li> <li>(c) the person mentioned in paragraph (a) knows of the connection described in paragraph (b).</li> </ul> <p>Penalty: Imprisonment for 25 years.</p>
	<p>(2) A person commits an offence if:</p> <ul style="list-style-type: none"> <li>(a) the person provides or receives training; and</li> <li>(b) the training is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and</li> <li>(c) the person mentioned in paragraph (a) is reckless as to the existence of the connection described in paragraph (b).</li> </ul> <p>Penalty: Imprisonment for 15 years.</p>
	<p>(3) A person commits an offence under this section even if the terrorist act does not occur.</p>
	<p>(4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.</p>
	<p>(5) If, in a prosecution for an offence (the <i>prosecuted offence</i>) against a subsection of this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the <i>alternative offence</i>) against another subsection of this section, the trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.</p>

	<b>101.2 Providing or receiving training connected with terrorist acts</b>
	<p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> <li>(a) the person provides or receives training; and</li> <li>(b) the training is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and</li> <li>(c) the person mentioned in paragraph (a) knows of the connection described in paragraph (b).</li> </ul> <p>Penalty: Imprisonment for 25 years.</p>
	<p>(2) A person commits an offence if:</p> <ul style="list-style-type: none"> <li>(a) the person provides or receives training; and</li> <li>(b) the training is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and</li> <li>(c) the person mentioned in paragraph (a) is reckless as to the existence of the connection described in paragraph (b).</li> </ul> <p>Penalty: Imprisonment for 15 years.</p>
[1.2]	<del>(3) A person commits an offence under this section even if the terrorist act does not occur.</del>
	(3) A person commits an offence under this section even if:
	(a) a terrorist act does not occur; or
	(b) the training is not connected with preparation for, the engagement of a person in, or assistance in a specific terrorist act; or
	(c) the training is connected with preparation for, the engagement of a person in, or assistance in more than one terrorist act.
	<p>(4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.</p>
	<p>(5) If, in a prosecution for an offence (the <i>prosecuted offence</i>) against a subsection of this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the <i>alternative offence</i>) against another subsection of this section, the trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.</p>

	<b>101.4 Possessing things connected with terrorist acts</b>
	<p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> <li>(a) the person possesses a thing; and</li> <li>(b) the thing is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and</li> <li>(c) the person mentioned in paragraph (a) knows of the connection described in paragraph (b).</li> </ul> <p>Penalty: Imprisonment for 15 years.</p>
	<p>(2) A person commits an offence if:</p> <ul style="list-style-type: none"> <li>(a) the person possesses a thing; and</li> <li>(b) the thing is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and</li> <li>(c) the person mentioned in paragraph (a) is reckless as to the existence of the connection described in paragraph (b).</li> </ul> <p>Penalty: Imprisonment for 10 years.</p>
	<p>(3) A person commits an offence under subsection (1) or (2) even if the terrorist act does not occur.</p>
	<p>(4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.</p>
	<p>(5) Subsections (1) and (2) do not apply if the possession of the thing was not intended to facilitate preparation for, the engagement of a person in, or assistance in a terrorist act.</p> <p>Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3)).</p>
	<p>(6) If, in a prosecution for an offence (the <i>prosecuted offence</i>) against a subsection of this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the <i>alternative offence</i>) against another subsection of this section, the trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.</p>

	<b>101.4 Possessing things connected with terrorist acts</b>
	<p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> <li>(a) the person possesses a thing; and</li> <li>(b) the thing is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and</li> <li>(c) the person mentioned in paragraph (a) knows of the connection described in paragraph (b).</li> </ul> <p>Penalty: Imprisonment for 15 years.</p>
	<p>(2) A person commits an offence if:</p> <ul style="list-style-type: none"> <li>(a) the person possesses a thing; and</li> <li>(b) the thing is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and</li> <li>(c) the person mentioned in paragraph (a) is reckless as to the existence of the connection described in paragraph (b).</li> </ul> <p>Penalty: Imprisonment for 10 years.</p>
[1.3]	<del>(3) A person commits an offence under subsection (1) or (2) even if the terrorist act does not occur.</del>
	(3) A person commits an offence under subsection (1) or (2) even if:
	(a) a terrorist act does not occur; or
	(b) the thing is not connected with preparation for, the engagement of a person in, or assistance in a specific terrorist act; or
	(c) the thing is connected with preparation for, the engagement of a person in, or assistance in more than one terrorist act.
	<p>(4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.</p>
	<p>(5) Subsections (1) and (2) do not apply if the possession of the thing was not intended to facilitate preparation for, the engagement of a person in, or assistance in a terrorist act.</p> <p>Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3)).</p>
	<p>(6) If, in a prosecution for an offence (the <i>prosecuted offence</i>) against a subsection of this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the <i>alternative offence</i>) against another subsection of this section, the trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.</p>

	<b>101.5 Collecting or making documents likely to facilitate terrorist acts</b>
	<p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> <li>(a) the person collects or makes a document; and</li> <li>(b) the document is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and</li> <li>(c) the person mentioned in paragraph (a) knows of the connection described in paragraph (b).</li> </ul> <p>Penalty: Imprisonment for 15 years.</p>
	<p>(2) A person commits an offence if:</p> <ul style="list-style-type: none"> <li>(a) the person collects or makes a document; and</li> <li>(b) the document is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and</li> <li>(c) the person mentioned in paragraph (a) is reckless as to the existence of the connection described in paragraph (b).</li> </ul> <p>Penalty: Imprisonment for 10 years.</p>
	<p>(3) A person commits an offence under subsection (1) or (2) even if the terrorist act does not occur.</p>
	<p>(4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.</p>
	<p>(5) Subsections (1) and (2) do not apply if the collection or making of the document was not intended to facilitate preparation for, the engagement of a person in, or assistance in a terrorist act.</p> <p>Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3)).</p>
	<p>(6) If, in a prosecution for an offence (the <i>prosecuted offence</i>) against a subsection of this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the <i>alternative offence</i>) against another subsection of this section, the trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.</p>

	<b>101.5 Collecting or making documents likely to facilitate terrorist acts</b>
	<p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> <li>(a) the person collects or makes a document; and</li> <li>(b) the document is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and</li> <li>(c) the person mentioned in paragraph (a) knows of the connection described in paragraph (b).</li> </ul> <p>Penalty: Imprisonment for 15 years.</p>
	<p>(2) A person commits an offence if:</p> <ul style="list-style-type: none"> <li>(a) the person collects or makes a document; and</li> <li>(b) the document is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and</li> <li>(c) the person mentioned in paragraph (a) is reckless as to the existence of the connection described in paragraph (b).</li> </ul> <p>Penalty: Imprisonment for 10 years.</p>
[1.4]	<p><del>(3) A person commits an offence under subsection (1) or (2) even if the terrorist act does not occur.</del></p> <p>(3) A person commits an offence under subsection (1) or (2) even if:</p> <ul style="list-style-type: none"> <li>(a) a terrorist act does not occur; or</li> <li>(b) the document is not connected with 1 preparation for, the engagement of a person in, or assistance in a specific terrorist act; or</li> <li>(c) the document is connected with preparation for, the engagement of a person in, or assistance in more than one terrorist act.</li> </ul>
	<p>(4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.</p>
	<p>(5) Subsections (1) and (2) do not apply if the collection or making of the document was not intended to facilitate preparation for, the engagement of a person in, or assistance in a terrorist act.</p> <p>Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3)).</p>
	<p>(6) If, in a prosecution for an offence (the <i>prosecuted offence</i>) against a subsection of this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the <i>alternative offence</i>) against another subsection of this section, the trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.</p>

	<b>101.6 Other acts done in preparation for, or planning, terrorist acts</b>
	<p>(1) A person commits an offence if the person does any act in preparation for, or planning, a terrorist act.</p> <p>Penalty: Imprisonment for life.</p>
	<p>(2) A person commits an offence under subsection (1) even if the terrorist act does not occur.</p>
	<p>(3) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1).</p>

**CCL NOTE:** an AFP officer may seek an emergency surveillance authorisation (without a warrant) if s/he reasonably suspects that the surveillance device is immediately necessary to prevent the loss of evidence relevant to an investigation of a terrorist offence (**Division 101**), terrorist organisation offence (**Division 102**) or financing terrorism offence (**Division 103**). See clause 18 of Schedule 7 of the Anti-Terrorism Bill 2005, amending section 30(1)(a)(viii) of the *Surveillance Devices Act 2004* (Cth).

	<b>101.6 Other acts done in preparation for, or planning, terrorist acts</b>
	<p>(1) A person commits an offence if the person does any act in preparation for, or planning, a terrorist act.</p> <p>Penalty: Imprisonment for life.</p>
[1.5]	<p><del>(2) A person commits an offence under subsection (1) even if the terrorist act does not occur.</del></p> <p>(2) A person commits an offence under subsection (1) even if :</p> <p>(a) a terrorist act does not occur; or</p> <p>(b) the person’s act is not done in preparation for, or planning, a specific terrorist act; or</p> <p>(c) the person’s act is done in preparation for, or planning, more than one terrorist act.</p>
	<p>(3) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1).</p>



	<b>Division 102—Terrorist organisations</b>
	<b>Subdivision A—Definitions</b>
	<b>102.1 Definitions</b>
	(1) In this Division:
	<p><i>associate</i>: a person associates with another person if the person meets or communicates with the other person.</p> <p><i>close family member</i> of a person means:</p> <ul style="list-style-type: none"> <li>(a) the person’s spouse, de facto spouse or same-sex partner; or</li> <li>(b) a parent, step-parent or grandparent of the person; or</li> <li>(c) a child, step-child or grandchild of the person; or</li> <li>(d) a brother, sister, step-brother or step-sister of the person; or</li> <li>(e) a guardian or carer of the person.</li> </ul> <p><i>Hamas organisation</i> means:</p> <ul style="list-style-type: none"> <li>(a) Hamas’ Izz al-Din al-Qassam Brigades (by whatever name that organisation is known from time to time); or</li> <li>(b) an organisation derived from that organisation.</li> </ul> <p><i>Hizballah organisation</i> means:</p> <ul style="list-style-type: none"> <li>(a) the Hizballah External Security Organisation (by whatever name that organisation is known from time to time); or</li> <li>(b) an organisation derived from that organisation.</li> </ul> <p><i>Lashkar-e-Tayyiba organisation</i> means:</p> <ul style="list-style-type: none"> <li>(a) the Lashkar-e-Tayyiba organisation (by whatever name that organisation is known from time to time); or</li> <li>(b) an organisation derived from that organisation.</li> </ul> <p><i>member</i> of an organisation includes:</p> <ul style="list-style-type: none"> <li>(a) a person who is an informal member of the organisation; and</li> <li>(b) a person who has taken steps to become a member of the organisation; and</li> <li>(c) in the case of an organisation that is a body corporate—a director or an officer of the body corporate.</li> </ul>
	<i>recruit</i> includes induce, incite and encourage.

	<b>Division 102—Terrorist organisations</b>
	<b>Subdivision A—Definitions</b>
	<b>102.1 Definitions</b>
	(1) In this Division:
[1.6]	<i>advocate</i> has the meaning given by subsection (1A).
	<p><i>associate</i>: a person associates with another person if the person meets or communicates with the other person.</p> <p><i>close family member</i> of a person means:</p> <ul style="list-style-type: none"> <li>(a) the person’s spouse, de facto spouse or same-sex partner; or</li> <li>(b) a parent, step-parent or grandparent of the person; or</li> <li>(c) a child, step-child or grandchild of the person; or</li> <li>(d) a brother, sister, step-brother or step-sister of the person; or</li> <li>(e) a guardian or carer of the person.</li> </ul> <p><i>Hamas organisation</i> means:</p> <ul style="list-style-type: none"> <li>(a) Hamas’ Izz al-Din al-Qassam Brigades (by whatever name that organisation is known from time to time); or</li> <li>(b) an organisation derived from that organisation.</li> </ul> <p><i>Hizballah organisation</i> means:</p> <ul style="list-style-type: none"> <li>(a) the Hizballah External Security Organisation (by whatever name that organisation is known from time to time); or</li> <li>(b) an organisation derived from that organisation.</li> </ul> <p><i>Lashkar-e-Tayyiba organisation</i> means:</p> <ul style="list-style-type: none"> <li>(a) the Lashkar-e-Tayyiba organisation (by whatever name that organisation is known from time to time); or</li> <li>(b) an organisation derived from that organisation.</li> </ul> <p><i>member</i> of an organisation includes:</p> <ul style="list-style-type: none"> <li>(a) a person who is an informal member of the organisation; and</li> <li>(b) a person who has taken steps to become a member of the organisation; and</li> <li>(c) in the case of an organisation that is a body corporate—a director or an officer of the body corporate.</li> </ul>
	<i>recruit</i> includes induce, incite and encourage.

**terrorist organisation** means:

- (a) an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act occurs); or
  - (b) an organisation that is specified by the regulations for the purposes of this paragraph (see subsections (2), (3) and (4)); or
  - (c) a Hizballah organisation, if that organisation is specified by the regulations for the purposes of this paragraph (see subsections (7), (8) and (9)); or
  - (d) a Hamas organisation, if that organisation is specified by the regulations for the purposes of this paragraph (see subsections (7), (8) and (10A)); or
  - (e) a Lashkar-e-Tayyiba organisation, if that organisation is specified by the regulations for the purposes of this paragraph (see subsections (7), (8) and (10C)).
- (2) Before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of **terrorist organisation** in this section, the Minister must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur).
- (2A) Before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of **terrorist organisation** in this section, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation.

**terrorist organisation** means:

- [1.7] (a) an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a ~~terrorist act~~ ~~terrorist act~~ occurs); or
  - [1.8] (b) an organisation that is specified by the regulations for the purposes of this paragraph (see subsections (2), (3) and (4)). ~~(4)); or~~
  - ~~(c) a Hizballah organisation, if that organisation is specified by the regulations for the purposes of this paragraph (see subsections (7), (8) and (9)); or~~
  - [1.9] ~~(d) a Hamas organisation, if that organisation is specified by the regulations for the purposes of this paragraph (see subsections (7), (8) and (10A)); or~~
  - ~~(e) a Lashkar-e-Tayyiba organisation, if that organisation is specified by the regulations for the purposes of this paragraph (see subsections (7), (8) and (10C)).~~
- Definition of advocates*
- [1.10] (1A) In this Division, an organisation advocates the doing of a terrorist act if:
- (a) the organisation directly or indirectly counsels or urges the doing of a terrorist act; or
  - (b) the organisation directly or indirectly provides instruction on the doing of a terrorist act; or
  - (c) the organisation directly praises the doing of a terrorist act.
- ~~(2) Before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of **terrorist organisation** in this section, the Minister must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur).~~
- Terrorist organisation regulations*
- [1.11] (2) Before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of **terrorist organisation** in this section, the Minister must be satisfied on reasonable grounds that the organisation:
- (a) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur); or
  - (b) advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).
- (2A) Before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of **terrorist organisation** in this section, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation.

- (3) Regulations for the purposes of paragraph (b) of the definition of **terrorist organisation** in this section cease to have effect on the second anniversary of the day on which they take effect. To avoid doubt, this subsection does not prevent:
- (a) the repeal of those regulations; or
  - (b) the cessation of effect of those regulations under subsection (4); or
  - (c) the making of new regulations the same in substance as those regulations (whether the new regulations are made or take effect before or after those regulations cease to have effect because of this subsection).
- (4) If:
- (a) an organisation is specified by regulations made for the purposes of paragraph (b) of the definition of **terrorist organisation** in this section; and
  - (b) the Minister ceases to be satisfied that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur);

the Minister must, by written notice published in the *Gazette*, make a declaration to the effect that the Minister has ceased to be so satisfied. The regulations, to the extent to which they specify the organisation, cease to have effect when the declaration is made.

- (5) To avoid doubt, subsection (4) does not prevent the organisation from being subsequently specified by regulations made for the purposes of paragraph (b) of the definition of **terrorist organisation** in this section if the Minister becomes satisfied as mentioned in subsection (2).
- (6) If, under subsection (3) or (4), a regulation ceases to have effect, section 50 of the *Acts Interpretation Act 1901* applies as if the regulation had been repealed.

- (3) Regulations for the purposes of paragraph (b) of the definition of **terrorist organisation** in this section cease to have effect on the second anniversary of the day on which they take effect. To avoid doubt, this subsection does not prevent:
- (a) the repeal of those regulations; or
  - (b) the cessation of effect of those regulations under subsection (4); or
  - (c) the making of new regulations the same in substance as those regulations (whether the new regulations are made or take effect before or after those regulations cease to have effect because of this subsection).
- (4) If:
- (a) an organisation is specified by regulations made for the purposes of paragraph (b) of the definition of **terrorist organisation** in this section; and
  - (b) the Minister ceases to be satisfied that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur);

[1.12]

- (b) the Minister ceases to be satisfied of either of the following (as the case requires):
  - (i) that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur);
  - (ii) that the organisation advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur);

the Minister must, by written notice published in the *Gazette*, make a declaration to the effect that the Minister has ceased to be so satisfied. The regulations, to the extent to which they specify the organisation, cease to have effect when the declaration is made.

- (5) To avoid doubt, subsection (4) does not prevent the organisation from being subsequently specified by regulations made for the purposes of paragraph (b) of the definition of **terrorist organisation** in this section if the Minister becomes satisfied as mentioned in subsection (2).
- (6) If, under subsection (3) or (4), a regulation ceases to have effect, section 15 of the *Legislative Instruments Act 2003* section 50 of the *Acts Interpretation Act 1901* applies as if the regulation had been repealed.

[1.13]

(7) Before the Governor-General makes a regulation specifying:

- (a) a Hizballah organisation for the purposes of paragraph (c) of the definition of **terrorist organisation** in this section; or
- (b) a Hamas organisation for the purposes of paragraph (d) of the definition of **terrorist organisation** in this section; or
- (c) a Lashkar-e-Tayyiba organisation for the purposes of paragraph (e) of the definition of **terrorist organisation** in this section;

the Minister must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur).

(8) Regulations for the purposes of paragraph (c), (d) or (e) of the definition of **terrorist organisation** in this section cease to have effect on the second anniversary of the day on which they take effect. To avoid doubt, this subsection does not prevent:

- (a) the repeal of those regulations; or
- (b) the cessation of effect of those regulations under subsection (9), (10A) or (10C); or
- (c) the making of new regulations the same in substance as those regulations (whether the new regulations are made or take effect before or after those regulations cease to have effect because of this subsection).

(9) If:

- (a) a Hizballah organisation is specified by regulations made for the purposes of paragraph (c) of the definition of **terrorist organisation** in this section; and
- (b) the Minister ceases to be satisfied that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur);

the Minister must, by written notice published in the *Gazette*, make a declaration to the effect that the Minister has ceased to be so satisfied. The regulations, to the extent to which they specify the organisation, cease to have effect when the declaration is made.

(10) To avoid doubt, subsection (9) does not prevent a Hizballah organisation from being subsequently specified by regulations made for the purposes of paragraph (c) of the definition of **terrorist organisation** in this section if the Minister again becomes satisfied as mentioned in subsection (7).

(7) Before the Governor-General makes a regulation specifying:

- (a) a Hizballah organisation for the purposes of paragraph (c) of the definition of **terrorist organisation** in this section; or
- (b) a Hamas organisation for the purposes of paragraph (d) of the definition of **terrorist organisation** in this section; or
- (c) a Lashkar-e-Tayyiba organisation for the purposes of paragraph (e) of the definition of **terrorist organisation** in this section;

the Minister must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur).

(8) Regulations for the purposes of paragraph (c), (d) or (e) of the definition of **terrorist organisation** in this section cease to have effect on the second anniversary of the day on which they take effect. To avoid doubt, this subsection does not prevent:

- (a) the repeal of those regulations; or
- (b) the cessation of effect of those regulations under subsection (9), (10A) or (10C); or
- (c) the making of new regulations the same in substance as those regulations (whether the new regulations are made or take effect before or after those regulations cease to have effect because of this subsection).

(9) If:

- (a) a Hizballah organisation is specified by regulations made for the purposes of paragraph (c) of the definition of **terrorist organisation** in this section; and
- (b) the Minister ceases to be satisfied that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur);

the Minister must, by written notice published in the *Gazette*, make a declaration to the effect that the Minister has ceased to be so satisfied. The regulations, to the extent to which they specify the organisation, cease to have effect when the declaration is made.

(10) To avoid doubt, subsection (9) does not prevent a Hizballah organisation from being subsequently specified by regulations made for the purposes of paragraph (c) of the definition of **terrorist organisation** in this section if the Minister again becomes satisfied as mentioned in subsection (7).

## (10A) If:

- (a) a Hamas organisation is specified by regulations made for the purposes of paragraph (d) of the definition of **terrorist organisation** in this section; and
- (b) the Minister ceases to be satisfied that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur);

the Minister must, by written notice published in the *Gazette*, make a declaration to the effect that the Minister has ceased to be so satisfied. The regulations, to the extent to which they specify the organisation, cease to have effect when the declaration is made.

- (10B) To avoid doubt, subsection (10A) does not prevent a Hamas organisation from being subsequently specified by regulations made for the purposes of paragraph (d) of the definition of **terrorist organisation** in this section if the Minister again becomes satisfied as mentioned in subsection (7).

## (10C) If:

- (a) a Lashkar-e-Tayyiba organisation is specified by regulations made for the purposes of paragraph (e) of the definition of **terrorist organisation** in this section; and
- (b) the Minister ceases to be satisfied that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur);

the Minister must, by written notice published in the *Gazette*, make a declaration to the effect that the Minister has ceased to be so satisfied. The regulations, to the extent to which they specify the organisation, cease to have effect when the declaration is made.

- (10D) To avoid doubt, subsection (10C) does not prevent a Lashkar-e-Tayyiba organisation from being subsequently specified by regulations made for the purposes of paragraph (e) of the definition of **terrorist organisation** in this section if the Minister again becomes satisfied as mentioned in subsection (7).

## (11) If:

- (a) at a particular time on a particular day, the Minister is satisfied on reasonable grounds that a particular Hizballah organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur); and
- (b) at a later time on that day, the Minister, or another Minister, makes a public announcement to the effect that:
  - (i) a regulation will be made specifying the organisation for the purposes of paragraph (c) of the definition of **terrorist organisation** in this section; and
  - (ii) the regulation will take effect at the time of the announcement; and
- (c) the regulation is made within 60 days after the day on which the *Criminal Code Amendment (Hizballah) Act 2003* receives the Royal Assent;

the regulation takes effect at the time of the announcement.

~~(10A) If:~~

- [1.14] ~~(a) a Hamas organisation is specified by regulations made for the purposes of paragraph (d) of the definition of **terrorist organisation** in this section; and~~
- ~~(b) the Minister ceases to be satisfied that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur);~~
- ~~the Minister must, by written notice published in the *Gazette*, make a declaration to the effect that the Minister has ceased to be so satisfied. The regulations, to the extent to which they specify the organisation, cease to have effect when the declaration is made.~~

- [1.14] ~~(10B) To avoid doubt, subsection (10A) does not prevent a Hamas organisation from being subsequently specified by regulations made for the purposes of paragraph (d) of the definition of **terrorist organisation** in this section if the Minister again becomes satisfied as mentioned in subsection (7).~~

~~(10C) If:~~

- [1.14] ~~(a) a Lashkar-e-Tayyiba organisation is specified by regulations made for the purposes of paragraph (e) of the definition of **terrorist organisation** in this section; and~~
- ~~(b) the Minister ceases to be satisfied that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur);~~
- ~~the Minister must, by written notice published in the *Gazette*, make a declaration to the effect that the Minister has ceased to be so satisfied. The regulations, to the extent to which they specify the organisation, cease to have effect when the declaration is made.~~

- [1.14] ~~(10D) To avoid doubt, subsection (10C) does not prevent a Lashkar-e-Tayyiba organisation from being subsequently specified by regulations made for the purposes of paragraph (e) of the definition of **terrorist organisation** in this section if the Minister again becomes satisfied as mentioned in subsection (7).~~

~~(11) If:~~

- [1.14] ~~(a) at a particular time on a particular day, the Minister is satisfied on reasonable grounds that a particular Hizballah organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur); and~~
- ~~(b) at a later time on that day, the Minister, or another Minister, makes a public announcement to the effect that:~~
- ~~(i) a regulation will be made specifying the organisation for the purposes of paragraph (c) of the definition of **terrorist organisation** in this section; and~~
- ~~(ii) the regulation will take effect at the time of the announcement; and~~
- ~~(c) the regulation is made within 60 days after the day on which the *Criminal Code Amendment (Hizballah) Act 2003* receives the Royal Assent;~~
- ~~the regulation takes effect at the time of the announcement.~~

## (11A) If:

- (a) at a particular time on a particular day, the Minister is satisfied on reasonable grounds that a particular Hamas organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur); and
- (b) at a later time on that day, the Minister, or another Minister, makes a public announcement to the effect that:
  - (i) a regulation will be made specifying the organisation for the purposes of paragraph (d) of the definition of **terrorist organisation** in this section; and
  - (ii) the regulation will take effect at the time of the announcement; and
- (c) the regulation is made within 60 days after the day on which the *Criminal Code Amendment (Hamas and Lashkar-e-Tayyiba) Act 2003* receives the Royal Assent; the regulation takes effect at the time of the announcement.

## (11B) If:

- (a) at a particular time on a particular day, the Minister is satisfied on reasonable grounds that a particular Lashkar-e-Tayyiba organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur); and
- (b) at a later time on that day, the Minister, or another Minister, makes a public announcement to the effect that:
  - (i) a regulation will be made specifying the organisation for the purposes of paragraph (e) of the definition of **terrorist organisation** in this section; and
  - (ii) the regulation will take effect at the time of the announcement; and
- (c) the regulation is made within 60 days after the day on which the *Criminal Code Amendment (Hamas and Lashkar-e-Tayyiba) Act 2003* receives the Royal Assent; the regulation takes effect at the time of the announcement.

## (12) A copy of the announcement referred to in paragraph (11)(b), (11A)(b) or (11B)(b) must be published:

- (a) on the Internet; and
- (b) in a newspaper circulating in each State and the Northern Territory.

(13) If, under subsection (8), (9), (10A) or (10C), a regulation ceases to have effect, section 50 of the *Acts Interpretation Act 1901* applies as if the regulation had been repealed.(14) The power to make regulations for the purposes of paragraph (c) of the definition of **terrorist organisation** in this section does not limit the power to make regulations specifying a Hizballah organisation for the purposes of paragraph (b) of that definition.~~(11A) If:~~

- ~~(a) at a particular time on a particular day, the Minister is satisfied on reasonable grounds that a particular Hamas organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur); and~~
- ~~(b) at a later time on that day, the Minister, or another Minister, makes a public announcement to the effect that:~~
  - ~~(i) a regulation will be made specifying the organisation for the purposes of paragraph (d) of the definition of **terrorist organisation** in this section; and~~
  - ~~(ii) the regulation will take effect at the time of the announcement; and~~
- ~~(c) the regulation is made within 60 days after the day on which the *Criminal Code Amendment (Hamas and Lashkar-e-Tayyiba) Act 2003* receives the Royal Assent; the regulation takes effect at the time of the announcement.~~

[1.14]

~~(11B) If:~~

- ~~(a) at a particular time on a particular day, the Minister is satisfied on reasonable grounds that a particular Lashkar-e-Tayyiba organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur); and~~
- ~~(b) at a later time on that day, the Minister, or another Minister, makes a public announcement to the effect that:~~
  - ~~(i) a regulation will be made specifying the organisation for the purposes of paragraph (e) of the definition of **terrorist organisation** in this section; and~~
  - ~~(ii) the regulation will take effect at the time of the announcement; and~~
- ~~(c) the regulation is made within 60 days after the day on which the *Criminal Code Amendment (Hamas and Lashkar-e-Tayyiba) Act 2003* receives the Royal Assent; the regulation takes effect at the time of the announcement.~~

[1.14]

~~(12) A copy of the announcement referred to in paragraph (11)(b), (11A)(b) or (11B)(b) must be published:~~

- ~~(a) on the Internet; and~~
- ~~(b) in a newspaper circulating in each State and the Northern Territory.~~

[1.14]

~~(13) If, under subsection (8), (9), (10A) or (10C), a regulation ceases to have effect, section 50 of the *Acts Interpretation Act 1901* applies as if the regulation had been repealed.~~

[1.14]

~~(14) The power to make regulations for the purposes of paragraph (c) of the definition of **terrorist organisation** in this section does not limit the power to make regulations specifying a Hizballah organisation for the purposes of paragraph (b) of that definition.~~

[1.14]

(15) The power to make regulations for the purposes of paragraph (d) of the definition of **terrorist organisation** in this section does not limit the power to make regulations specifying a Hamas organisation for the purposes of paragraph (b) of that definition.

(16) The power to make regulations for the purposes of paragraph (e) of the definition of **terrorist organisation** in this section does not limit the power to make regulations specifying a Lashkar-e-Tayyiba organisation for the purposes of paragraph (b) of that definition.

(17) If:

- (a) an organisation (the **listed organisation**) is specified in regulations made for the purposes of paragraph (b), (c), (d) or (e) of the definition of **terrorist organisation** in this section; and
- (b) an individual or an organisation (which may be the listed organisation) makes an application (the **de-listing application**) to the Minister for a declaration under subsection (4), (9), (10A) or (10C), as the case requires, in relation to the listed organisation; and
- (c) the de-listing application is made on the grounds that there is no basis for the Minister to be satisfied that the listed organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur);

the Minister must consider the de-listing application.

(18) Subsection (17) does not limit the matters that may be considered by the Minister for the purposes of subsections (4), (9), (10A) and (10C).

[1.14] — (15) The power to make regulations for the purposes of paragraph (d) of the definition of **terrorist organisation** in this section does not limit the power to make regulations specifying a Hamas organisation for the purposes of paragraph (b) of that definition.

[1.14] — (16) The power to make regulations for the purposes of paragraph (e) of the definition of **terrorist organisation** in this section does not limit the power to make regulations specifying a Lashkar-e-Tayyiba organisation for the purposes of paragraph (b) of that definition.

(17) If:

- [1.15] (a) an organisation (the **listed organisation**) is specified in regulations made for the purposes of paragraph (b), ~~(e), (d) or (e)~~ of the definition of **terrorist organisation** in this section; and
- [1.16] (b) an individual or an organisation (which may be the listed organisation) makes an application (the **de-listing application**) to the Minister for a declaration under subsection (4), ~~(9), (10A) or (10C), as the case requires,~~ in relation to the listed organisation; and

~~(c) the de-listing application is made on the grounds that there is no basis for the Minister to be satisfied that the listed organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur);~~

- [1.17] (c) the de-listing application is made on the grounds that there is no basis for the Minister to be satisfied that the listed organisation:
  - (i) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur); or
  - (ii) advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur);
 as the case requires;

the Minister must consider the de-listing application.

[1.18] (18) Subsection (17) does not limit the matters that may be considered by the Minister for the purposes of subsection (4), subsections (4), (9), (10A) and (10C).

**102.1A Reviews by Parliamentary Joint Committee on ASIO, ASIS and DSD***Review of listing regulation*

- (1) If a regulation made after the commencement of this section specifies an organisation for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in section 102.1, the Parliamentary Joint Committee on ASIO, ASIS and DSD may:
- (a) review the regulation as soon as possible after the making of the regulation; and
  - (b) report the Committee's comments and recommendations to each House of the Parliament before the end of the applicable disallowance period for that House.

*Review of listing provisions*

- (2) The Parliamentary Joint Committee on ASIO, ASIS and DSD has the following functions:
- (a) to review, as soon as possible after the third anniversary of the commencement of this section, the operation, effectiveness and implications of subsections 102.1(2), (2A), (4), (5), (6), (17) and (18) as in force after the commencement of this section;
  - (b) to report the Committee's comments and recommendations to each House of the Parliament and to the Minister.

*Review of listing regulation—extension of applicable disallowance period*

- (3) If the Committee's report on a review of a regulation is tabled in a House of the Parliament:
- (a) during the applicable disallowance period for that House; and
  - (b) on or after the eighth sitting day of the applicable disallowance period;
- then whichever of the following provisions is applicable:
- (c) subsections 48(4), (5) and (5A) and section 48B of the *Acts Interpretation Act 1901*;
  - (d) Part 5 of the *Legislative Instruments Act 2003*;
- have or has effect, in relation to that regulation and that House, as if each period of 15 sitting days referred to in those provisions were extended in accordance with the table:

**Extension of applicable disallowance period**

Item	If the Committee's report is tabled in that House...	extend the period of 15 sitting days by...
1	on the fifteenth sitting day of the applicable disallowance period	8 sitting days of that House
2	on the fourteenth sitting day of the applicable disallowance period	7 sitting days of that House
3	on the thirteenth sitting day of the applicable disallowance period	6 sitting days of that House
4	on the twelfth sitting day of the applicable disallowance period	5 sitting days of that House
5	on the eleventh sitting day of the applicable disallowance period	4 sitting days of that House
6	on the tenth sitting day of the applicable disallowance period	3 sitting days of that House
7	on the ninth sitting day of the applicable disallowance period	2 sitting days of that House

**102.1A Reviews by Parliamentary Joint Committee on ASIO, ASIS and DSD***Review of listing regulation*

- (1) If a regulation made after the commencement of this section specifies an organisation for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in section 102.1, the Parliamentary Joint Committee on ASIO, ASIS and DSD may:
- (a) review the regulation as soon as possible after the making of the regulation; and
  - (b) report the Committee's comments and recommendations to each House of the Parliament before the end of the applicable disallowance period for that House.

*Review of listing provisions*

- (2) The Parliamentary Joint Committee on ASIO, ASIS and DSD has the following functions:
- (a) to review, as soon as possible after the third anniversary of the commencement of this section, the operation, effectiveness and implications of subsections 102.1(2), (2A), (4), (5), (6), (17) and (18) as in force after the commencement of this section;
  - (b) to report the Committee's comments and recommendations to each House of the Parliament and to the Minister.

*Review of listing regulation—extension of applicable disallowance period*

- (3) If the Committee's report on a review of a regulation is tabled in a House of the Parliament:
- (a) during the applicable disallowance period for that House; and
  - (b) on or after the eighth sitting day of the applicable disallowance period;
- then whichever of the following provisions is applicable:
- (c) subsections 48(4), (5) and (5A) and section 48B of the *Acts Interpretation Act 1901*;
  - (d) Part 5 of the *Legislative Instruments Act 2003*;
- have or has effect, in relation to that regulation and that House, as if each period of 15 sitting days referred to in those provisions were extended in accordance with the table:

**Extension of applicable disallowance period**

Item	If the Committee's report is tabled in that House...	extend the period of 15 sitting days by...
1	on the fifteenth sitting day of the applicable disallowance period	8 sitting days of that House
2	on the fourteenth sitting day of the applicable disallowance period	7 sitting days of that House
3	on the thirteenth sitting day of the applicable disallowance period	6 sitting days of that House
4	on the twelfth sitting day of the applicable disallowance period	5 sitting days of that House
5	on the eleventh sitting day of the applicable disallowance period	4 sitting days of that House
6	on the tenth sitting day of the applicable disallowance period	3 sitting days of that House
7	on the ninth sitting day of the applicable disallowance period	2 sitting days of that House



	<p><i>Applicable disallowance period</i></p> <p>(4) For the purposes of the application of this section to a regulation, the <b><i>applicable disallowance period</i></b> for a House of the Parliament means the period of 15 sitting days of that House after the regulation, or a copy of the regulation, was laid before that House in accordance with whichever of the following provisions was applicable:</p> <p>(a) paragraph 48(1)(c) of the <i>Acts Interpretation Act 1901</i>;</p> <p>(b) section 38 of the <i>Legislative Instruments Act 2003</i>.</p>
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	<p><i>Applicable disallowance period</i></p> <p>(4) For the purposes of the application of this section to a regulation, the <b><i>applicable disallowance period</i></b> for a House of the Parliament means the period of 15 sitting days of that House after the regulation, or a copy of the regulation, was laid before that House in accordance with whichever of the following provisions was applicable:</p> <p>(a) paragraph 48(1)(c) of the <i>Acts Interpretation Act 1901</i>;</p> <p>(b) section 38 of the <i>Legislative Instruments Act 2003</i>.</p>
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	<b>Subdivision B—Offences</b>
	<b>102.2 Directing the activities of a terrorist organisation</b>
	<p>(1) A person commits an offence if:</p> <p>(a) the person intentionally directs the activities of an organisation; and</p> <p>(b) the organisation is a terrorist organisation; and</p> <p>(c) the person knows the organisation is a terrorist organisation.</p> <p>Penalty: Imprisonment for 25 years.</p>
	<p>(2) A person commits an offence if:</p> <p>(a) the person intentionally directs the activities of an organisation; and</p> <p>(b) the organisation is a terrorist organisation; and</p> <p>(c) the person is reckless as to whether the organisation is a terrorist organisation.</p> <p>Penalty: Imprisonment for 15 years.</p>
	<b>102.3 Membership of a terrorist organisation</b>
	<p>(1) A person commits an offence if:</p> <p>(a) the person intentionally is a member of an organisation; and</p> <p>(b) the organisation is a terrorist organisation; and</p> <p>(c) the person knows the organisation is a terrorist organisation.</p> <p>Penalty: Imprisonment for 10 years.</p>
	<p>(2) Subsection (1) does not apply if the person proves that he or she took all reasonable steps to cease to be a member of the organisation as soon as practicable after the person knew that the organisation was a terrorist organisation.</p> <p>Note: A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4).</p>

**CCL NOTE:** an AFP officer may seek an emergency surveillance authorisation (without a warrant) if s/he reasonably suspects that the surveillance device is immediately necessary to prevent the loss of evidence relevant to an investigation of a terrorist offence (**Division 101**), terrorist organisation offence (**Division 102**) or financing terrorism offence (**Division 103**). See clause 18 of Schedule 7 of the Anti-Terrorism Bill 2005, amending section 30(1)(a)(viii) of the *Surveillance Devices Act 2004* (Cth).

	<b>Subdivision B—Offences</b>
	<b>102.2 Directing the activities of a terrorist organisation</b>
	<p>(1) A person commits an offence if:</p> <p>(a) the person intentionally directs the activities of an organisation; and</p> <p>(b) the organisation is a terrorist organisation; and</p> <p>(c) the person knows the organisation is a terrorist organisation.</p> <p>Penalty: Imprisonment for 25 years.</p>
	<p>(2) A person commits an offence if:</p> <p>(a) the person intentionally directs the activities of an organisation; and</p> <p>(b) the organisation is a terrorist organisation; and</p> <p>(c) the person is reckless as to whether the organisation is a terrorist organisation.</p> <p>Penalty: Imprisonment for 15 years.</p>
	<b>102.3 Membership of a terrorist organisation</b>
	<p>(1) A person commits an offence if:</p> <p>(a) the person intentionally is a member of an organisation; and</p> <p>(b) the organisation is a terrorist organisation; and</p> <p>(c) the person knows the organisation is a terrorist organisation.</p> <p>Penalty: Imprisonment for 10 years.</p>
	<p>(2) Subsection (1) does not apply if the person proves that he or she took all reasonable steps to cease to be a member of the organisation as soon as practicable after the person knew that the organisation was a terrorist organisation.</p> <p>Note: A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4).</p>

	<b>102.4 Recruiting for a terrorist organisation</b>
	<p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> <li>(a) the person intentionally recruits a person to join, or participate in the activities of, an organisation; and</li> <li>(b) the organisation is a terrorist organisation; and</li> <li>(c) the first-mentioned person knows the organisation is a terrorist organisation.</li> </ul> <p>Penalty: Imprisonment for 25 years.</p>
	<p>(2) A person commits an offence if:</p> <ul style="list-style-type: none"> <li>(a) the person intentionally recruits a person to join, or participate in the activities of, an organisation; and</li> <li>(b) the organisation is a terrorist organisation; and</li> <li>(c) the first-mentioned person is reckless as to whether the organisation is a terrorist organisation.</li> </ul> <p>Penalty: Imprisonment for 15 years.</p>
	<b>102.5 Training a terrorist organisation or receiving training from a terrorist organisation</b>
	<p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> <li>(a) the person intentionally provides training to, or intentionally receives training from, an organisation; and</li> <li>(b) the organisation is a terrorist organisation; and</li> <li>(c) the person is reckless as to whether the organisation is a terrorist organisation.</li> </ul> <p>Penalty: Imprisonment for 25 years.</p>
	<p>(2) A person commits an offence if:</p> <ul style="list-style-type: none"> <li>(a) the person intentionally provides training to, or intentionally receives training from, an organisation; and</li> <li>(b) the organisation is a terrorist organisation that is covered by paragraph (b), (c), (d) or (e) of the definition of <i>terrorist organisation</i> in subsection 102.1(1).</li> </ul> <p>Penalty: Imprisonment for 25 years.</p>
	(3) Subject to subsection (4), strict liability applies to paragraph (2)(b).
	<p>(4) Subsection (2) does not apply unless the person is reckless as to the circumstance mentioned in paragraph (2)(b).</p> <p>Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3)).</p>

	<b>102.4 Recruiting for a terrorist organisation</b>
	<p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> <li>(a) the person intentionally recruits a person to join, or participate in the activities of, an organisation; and</li> <li>(b) the organisation is a terrorist organisation; and</li> <li>(c) the first-mentioned person knows the organisation is a terrorist organisation.</li> </ul> <p>Penalty: Imprisonment for 25 years.</p>
	<p>(2) A person commits an offence if:</p> <ul style="list-style-type: none"> <li>(a) the person intentionally recruits a person to join, or participate in the activities of, an organisation; and</li> <li>(b) the organisation is a terrorist organisation; and</li> <li>(c) the first-mentioned person is reckless as to whether the organisation is a terrorist organisation.</li> </ul> <p>Penalty: Imprisonment for 15 years.</p>
	<b>102.5 Training a terrorist organisation or receiving training from a terrorist organisation</b>
	<p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> <li>(a) the person intentionally provides training to, or intentionally receives training from, an organisation; and</li> <li>(b) the organisation is a terrorist organisation; and</li> <li>(c) the person is reckless as to whether the organisation is a terrorist organisation.</li> </ul> <p>Penalty: Imprisonment for 25 years.</p>
[1.19]	<p>(2) A person commits an offence if:</p> <ul style="list-style-type: none"> <li>(a) the person intentionally provides training to, or intentionally receives training from, an organisation; and</li> <li>(b) the organisation is a terrorist organisation that is covered by paragraph (b), <del>(c), (d) or (e)</del> of the definition of <i>terrorist organisation</i> in subsection 102.1(1).</li> </ul> <p>Penalty: Imprisonment for 25 years.</p>
	(3) Subject to subsection (4), strict liability applies to paragraph (2)(b).
	<p>(4) Subsection (2) does not apply unless the person is reckless as to the circumstance mentioned in paragraph (2)(b).</p> <p>Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3)).</p>

102.6 Getting funds to or from a terrorist organisation

- (1) A person commits an offence if:
- (a) the person intentionally receives funds from, or makes funds available to, an organisation (whether directly or indirectly); and
  - (b) the organisation is a terrorist organisation; and
  - (c) the person knows the organisation is a terrorist organisation.
- Penalty: Imprisonment for 25 years.
- (2) A person commits an offence if:
- (a) the person intentionally receives funds from, or makes funds available to, an organisation (whether directly or indirectly); and
  - (b) the organisation is a terrorist organisation; and
  - (c) the person is reckless as to whether the organisation is a terrorist organisation.
- Penalty: Imprisonment for 15 years.
- (3) Subsections (1) and (2) do not apply to the person's receipt of funds from the organisation if the person proves that he or she received the funds solely for the purpose of the provision of:
- (a) legal representation for a person in proceedings relating to this Division; or
  - (b) assistance to the organisation for it to comply with a law of the Commonwealth or a State or Territory.
- Note: A defendant bears a legal burden in relation to the matter in subsection (3) (see section 13.4).

[3.1]

~~102.6 Getting funds to or from a terrorist organisation~~

[3.1]

102.6 Getting funds to, from or for a terrorist organisation

- (1) A person commits an offence if:
- ~~(a) the person intentionally receives funds from, or makes funds available to, an organisation (whether directly or indirectly); and~~
  - (a) the person intentionally:
    - (i) receives funds from, or makes funds available to, an organisation (whether directly or indirectly); or
    - (ii) collects funds for, or on behalf of, an organisation (whether directly or indirectly); and
  - (b) the organisation is a terrorist organisation; and
  - (c) the person knows the organisation is a terrorist organisation.
- Penalty: Imprisonment for 25 years.
- (2) A person commits an offence if:
- ~~(a) the person intentionally receives funds from, or makes funds available to, an organisation (whether directly or indirectly); and~~
  - (a) the person intentionally:
    - (i) receives funds from, or makes funds available to, an organisation (whether directly or indirectly); or
    - (ii) collects funds for, or on behalf of, an organisation (whether directly or indirectly); and
  - (b) the organisation is a terrorist organisation; and
  - (c) the person is reckless as to whether the organisation is a terrorist organisation.
- Penalty: Imprisonment for 15 years.
- (3) Subsections (1) and (2) do not apply to the person's receipt of funds from the organisation if the person proves that he or she received the funds solely for the purpose of the provision of:
- (a) legal representation for a person in proceedings relating to this Division; or
  - (b) assistance to the organisation for it to comply with a law of the Commonwealth or a State or Territory.
- Note: A defendant bears a legal burden in relation to the matter in subsection (3) (see section 13.4).

102.7 Providing support to a terrorist organisation

- (1) A person commits an offence if:
- (a) the person intentionally provides to an organisation support or resources that would help the organisation engage in an activity described in paragraph (a) of the definition of *terrorist organisation* in this Division; and
  - (b) the organisation is a terrorist organisation; and
  - (c) the person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

- (2) A person commits an offence if:
- (a) the person intentionally provides to an organisation support or resources that would help the organisation engage in an activity described in paragraph (a) of the definition of *terrorist organisation* in this Division; and
  - (b) the organisation is a terrorist organisation; and
  - (c) the person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 15 years.

102.8 Associating with terrorist organisations

- (1) A person commits an offence if:
- (a) on 2 or more occasions:
    - (i) the person intentionally associates with another person who is a member of, or a person who promotes or directs the activities of, an organisation; and
    - (ii) the person knows that the organisation is a terrorist organisation; and
    - (iii) the association provides support to the organisation; and
    - (iv) the person intends that the support assist the organisation to expand or to continue to exist; and
    - (v) the person knows that the other person is a member of, or a person who promotes or directs the activities of, the organisation; and
  - (b) the organisation is a terrorist organisation because of paragraph (b), (c), (d) or (e) of the definition of *terrorist organisation* in this Division (whether or not the organisation is a terrorist organisation because of paragraph (a) of that definition also).

Penalty: Imprisonment for 3 years.

102.7 Providing support to a terrorist organisation

- (1) A person commits an offence if:
- (a) the person intentionally provides to an organisation support or resources that would help the organisation engage in an activity described in paragraph (a) of the definition of *terrorist organisation* in this Division; and
  - (b) the organisation is a terrorist organisation; and
  - (c) the person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

- (2) A person commits an offence if:
- (a) the person intentionally provides to an organisation support or resources that would help the organisation engage in an activity described in paragraph (a) of the definition of *terrorist organisation* in this Division; and
  - (b) the organisation is a terrorist organisation; and
  - (c) the person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 15 years.

102.8 Associating with terrorist organisations

- (1) A person commits an offence if:
- (a) on 2 or more occasions:
    - (i) the person intentionally associates with another person who is a member of, or a person who promotes or directs the activities of, an organisation; and
    - (ii) the person knows that the organisation is a terrorist organisation; and
    - (iii) the association provides support to the organisation; and
    - (iv) the person intends that the support assist the organisation to expand or to continue to exist; and
    - (v) the person knows that the other person is a member of, or a person who promotes or directs the activities of, the organisation; and
  - (b) the organisation is a terrorist organisation because of paragraph (b), ~~(c), (d) or (e)~~ of the definition of *terrorist organisation* in this Division (whether or not the organisation is a terrorist organisation because of paragraph (a) of that definition also).

Penalty: Imprisonment for 3 years.

[1.20]

- (2) A person commits an offence if:
- (a) the person has previously been convicted of an offence against subsection (1); and
  - (b) the person intentionally associates with another person who is a member of, or a person who promotes or directs the activities of, an organisation; and
  - (c) the person knows that the organisation is a terrorist organisation; and
  - (d) the association provides support to the organisation; and
  - (e) the person intends that the support assist the organisation to expand or to continue to exist; and
  - (f) the person knows that the other person is a member of, or a person who promotes or directs the activities of, the organisation; and
  - (g) the organisation is a terrorist organisation because of paragraph (b), (c), (d) or (e) of the definition of **terrorist organisation** in this Division (whether or not the organisation is a terrorist organisation because of paragraph (a) of that definition also).

Penalty: Imprisonment for 3 years.

- (3) Strict liability applies to paragraphs (1)(b) and (2)(g).

- (2) A person commits an offence if:
- (a) the person has previously been convicted of an offence against subsection (1); and
  - (b) the person intentionally associates with another person who is a member of, or a person who promotes or directs the activities of, an organisation; and
  - (c) the person knows that the organisation is a terrorist organisation; and
  - (d) the association provides support to the organisation; and
  - (e) the person intends that the support assist the organisation to expand or to continue to exist; and
  - (f) the person knows that the other person is a member of, or a person who promotes or directs the activities of, the organisation; and
  - (g) the organisation is a terrorist organisation because of paragraph (b), ~~(c), (d) or (e)~~ of the definition of **terrorist organisation** in this Division (whether or not the organisation is a terrorist organisation because of paragraph (a) of that definition also).

Penalty: Imprisonment for 3 years.

- (3) Strict liability applies to paragraphs (1)(b) and (2)(g).

(4) This section does not apply if:

- (a) the association is with a close family member and relates only to a matter that could reasonably be regarded (taking into account the person's cultural background) as a matter of family or domestic concern; or
- (b) the association is in a place being used for public religious worship and takes place in the course of practising a religion; or
- (c) the association is only for the purpose of providing aid of a humanitarian nature; or
- (d) the association is only for the purpose of providing legal advice or legal representation in connection with:
  - (i) criminal proceedings or proceedings related to criminal proceedings (including possible criminal proceedings in the future); or
  - (ii) proceedings relating to whether the organisation in question is a terrorist organisation; or
  - (iii) a decision made or proposed to be made under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*, or proceedings relating to such a decision or proposed decision; or
  - (iv) a listing or proposed listing under section 15 of the *Charter of the United Nations Act 1945* or an application or proposed application to revoke such a listing, or proceedings relating to such a listing or application or proposed listing or application; or
  - (v) proceedings conducted by a military commission of the United States of America established under a Military Order of 13 November 2001 made by the President of the United States of America and entitled "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism"; or
  - (vi) proceedings for a review of a decision relating to a passport or other travel document or to a failure to issue such a passport or other travel document (including a passport or other travel document that was, or would have been, issued by or on behalf of the government of a foreign country).

Note: A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3).

(5) This section does not apply unless the person is reckless as to the circumstance mentioned in paragraph (1)(b) and (2)(g) (as the case requires).

Note: A defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3).

(6) This section does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6). See subsection 13.3(3).

(4) This section does not apply if:

- (a) the association is with a close family member and relates only to a matter that could reasonably be regarded (taking into account the person's cultural background) as a matter of family or domestic concern; or
- (b) the association is in a place being used for public religious worship and takes place in the course of practising a religion; or
- (c) the association is only for the purpose of providing aid of a humanitarian nature; or
- (d) the association is only for the purpose of providing legal advice or legal representation in connection with:
  - (i) criminal proceedings or proceedings related to criminal proceedings (including possible criminal proceedings in the future); or
  - (ii) proceedings relating to whether the organisation in question is a terrorist organisation; or
  - (iii) a decision made or proposed to be made under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*, or proceedings relating to such a decision or proposed decision; or
  - (iv) a listing or proposed listing under section 15 of the *Charter of the United Nations Act 1945* or an application or proposed application to revoke such a listing, or proceedings relating to such a listing or application or proposed listing or application; or
  - (v) proceedings conducted by a military commission of the United States of America established under a Military Order of 13 November 2001 made by the President of the United States of America and entitled "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism"; or
  - (vi) proceedings for a review of a decision relating to a passport or other travel document or to a failure to issue such a passport or other travel document (including a passport or other travel document that was, or would have been, issued by or on behalf of the government of a foreign country).

Note: A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3).

(5) This section does not apply unless the person is reckless as to the circumstance mentioned in paragraph (1)(b) and (2)(g) (as the case requires).

Note: A defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3).

(6) This section does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6). See subsection 13.3(3).

- (7) A person who is convicted of an offence under subsection (1) in relation to the person's conduct on 2 or more occasions is not liable to be punished for an offence under subsection (1) for other conduct of the person that takes place:
- (a) at the same time as that conduct; or
  - (b) within 7 days before or after any of those occasions.

### Subdivision C—General provisions relating to offences

#### 102.9 Extended geographical jurisdiction for offences

Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this Division.

#### 102.10 Alternative verdicts

- (1) This section applies if, in a prosecution for an offence (the *prosecuted offence*) against a subsection of a section of this Division, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the *alternative offence*) against another subsection of that section.
- (2) The trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

**CCL NOTE:** an AFP officer may seek an emergency surveillance authorisation (without a warrant) if s/he reasonably suspects that the surveillance device is immediately necessary to prevent the loss of evidence relevant to an investigation of a terrorist offence (**Division 101**), terrorist organisation offence (**Division 102**) or financing terrorism offence (**Division 103**). See clause 18 of Schedule 7 of the Anti-Terrorism Bill 2005, amending section 30(1)(a)(viii) of the *Surveillance Devices Act 2004* (Cth).

- (7) A person who is convicted of an offence under subsection (1) in relation to the person's conduct on 2 or more occasions is not liable to be punished for an offence under subsection (1) for other conduct of the person that takes place:
- (a) at the same time as that conduct; or
  - (b) within 7 days before or after any of those occasions.

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- (2) The trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.



Division 103—Financing terrorism

103.1 Financing terrorism

- (1) A person commits an offence if:
  - (a) the person provides or collects funds; and
  - (b) the person is reckless as to whether the funds will be used to facilitate or engage in a terrorist act.
- Penalty: Imprisonment for life.
- Note: Intention is the fault element for the conduct described in paragraph (1)(a). See subsection 5.6(1).
- (2) A person commits an offence under subsection (1) even if the terrorist act does not occur.
- (3) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

**CCL NOTE:** an AFP officer may seek an emergency surveillance authorisation (without a warrant) if s/he reasonably suspects that the surveillance device is immediately necessary to prevent the loss of evidence relevant to an investigation of a terrorist offence (**Division 101**), terrorist organisation offence (**Division 102**) or financing terrorism offence (**Division 103**). See clause 18 of Schedule 7 of the Anti-Terrorism Bill 2005, amending section 30(1)(a)(viii) of the *Surveillance Devices Act 2004* (Cth).

Division 103—Financing terrorism

103.1 Financing terrorism

- (1) A person commits an offence if:
  - (a) the person provides or collects funds; and
  - (b) the person is reckless as to whether the funds will be used to facilitate or engage in a terrorist act.
- Penalty: Imprisonment for life.
- Note: Intention is the fault element for the conduct described in paragraph (1)(a). See subsection 5.6(1).

[1.22]

- ~~(2) A person commits an offence under subsection (1) even if the terrorist act does not occur.~~
- (2) A person commits an offence under subsection (1) even if:
  - (a) a terrorist act does not occur; or
  - (b) the funds will not be used to facilitate or engage in a specific terrorist act; or
  - (c) the funds will be used to facilitate or engage in more than one terrorist act.

[3.2]

- ~~(3) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1).~~

[3.3]

103.2 Financing a terrorist

- (1) A person commits an offence if:
  - (a) the person intentionally:
    - (i) makes funds available to another person (whether directly or indirectly); or
    - (ii) collects funds for, or on behalf of, another person (whether directly or indirectly); and
  - (b) the first-mentioned person is reckless as to whether the other person will use the funds to facilitate or engage in a terrorist act.

[3.3]

Penalty: Imprisonment for life.

[3.3]

- (2) A person commits an offence under subsection (1) even if:
  - (a) a terrorist act does not occur; or
  - (b) the funds will not be used to facilitate or engage in a specific terrorist act; or
  - (c) the funds will be used to facilitate or engage in more than one terrorist act.

103.3 Extended geographical jurisdiction for offences

Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this Division.

not in existing Act

**CCL NOTE:** Decisions of the Attorney-General under the new **section 104.1** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

[4.19]

**Division 104—Control orders**

**Subdivision A—Making control orders**

**104.1 Seeking Attorney-General’s consent to request a control order**

[4.19]

- (1) A senior AFP member must not request a control order in relation to a person without the Attorney-General’s written consent.
- (2) A senior AFP member may only seek the Attorney-General’s written consent to request a control order in respect of a person if the member:
  - (a) considers on reasonable grounds that the control order in the terms to be requested would substantially assist in preventing a terrorist act; or
  - (b) suspects on reasonable grounds that the person has provided training to, or received training from, a listed terrorist organisation.
- (3) In seeking the Attorney-General’s consent, the member must give the Attorney-General a draft request that includes the following:
  - (a) a draft of the control order to be requested;
  - (b) a statement of the facts and other grounds on which the member considers it necessary that the order should be made;
  - (c) an explanation as to why each of the obligations, prohibitions and restrictions to be imposed on the person by the order is necessary;
  - (d) a statement of the particulars and outcomes of all previous requests for control orders and preventative detention orders in relation to the person.
- (4) The Attorney-General’s consent may be made subject to changes being made to the draft request.
- (5) To avoid doubt, this section operates in relation to a request for a control order in relation to a person, even if such a request has previously been made in relation to the person.

not in existing Act

[4.19]

**104.2 Requesting the Court to make a control order**

If the Attorney-General consents to the request under section 104.1, the senior AFP member may request the control order by giving an issuing Court:

- (a) a request:
  - (i) that is the same as the draft request, except for the changes (if any) required by the Attorney-General; and
  - (ii) the information in which is sworn or affirmed by the member; and
- (b) a copy of the Attorney-General's consent.

Note: In urgent circumstances, a senior AFP member may request a control order by electronic means: see section 104.5.

[4.19]

**104.3 Making a control order**

The issuing Court may make an order under this section in relation to the person, but only if:

- (a) the senior AFP member has requested it in accordance with section 104.2; and
- (b) the Court is satisfied on the balance of probabilities:
  - (i) that making the order would substantially assist in preventing a terrorist act; or
  - (ii) that the person has provided training to, or received training from, a listed terrorist organisation; and
- (c) the Court is satisfied on the balance of probabilities that each of the obligations, prohibitions and restrictions to be imposed on the person by the order is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the public from a terrorist act.

[4.19]

**104.4 Terms of control order**

- (1) If the issuing Court makes the control order, the order must:
  - (a) state that the Court is satisfied of the matters mentioned in paragraphs 104.3(b) and (c); and
  - (b) specify the name of the person to whom the order relates; and
  - (c) specify all of the obligations, prohibitions and restrictions mentioned in subsection (3) that are to be imposed on the person by the order; and
  - (d) specify the period during which the order is to be in force, which must not end more than 12 months after the day on which the order is made; and
  - (e) state that the order does not begin to be in force until it is served personally on the person; and
  - (f) state that the person's lawyer may attend a specified place in order to obtain a copy of the order.

Note: An order in relation to a 16- to 18-year-old must not end more than 3 months after the day on which the order is made: see section 104.14.

*not in existing Act*

[4.19]

- (2) Paragraph (1)(d) does not prevent the making of successive orders in relation to the same person.
- (3) The obligations, prohibitions and restrictions that the Court may impose on the person by the control order are the following:
  - (a) a prohibition or restriction on the person 1 being at specified areas or places;
  - (b) a prohibition or restriction on the person leaving Australia;
  - (c) a requirement that the person remain at specified premises between specified times each day, or on specified days;
  - (d) a requirement that the person wear a tracking device;
  - (e) a prohibition or restriction on the person communicating or associating with specified individuals;
  - (f) a prohibition or restriction on the person accessing or using specified forms of telecommunication or other technology (including the Internet);
  - (g) a prohibition or restriction on the person possessing or using specified articles or substances;
  - (h) a prohibition or restriction on the person carrying out specified activities (including in respect of his or her work or occupation);
  - (i) a requirement that the person report to specified persons at specified times and places;
  - (j) a requirement that the person allow himself or herself to be photographed;
  - (k) a requirement that the person allow his or her fingerprints to be taken;
  - (l) if the person consents—a requirement that the person participate in specified counselling or education.

[4.19]

- (4) Subsection 102.8(4) applies to paragraph (3)(e) and the person’s communication or association in the same way as that subsection applies to section 102.8 and a person’s association.
- (5) This section does not affect the person’s right to contact, communicate or associate with the person’s lawyer unless the person’s lawyer is a specified individual as mentioned in paragraph (3)(e). If the person’s lawyer is so specified, the person may contact, communicate or associate with any other lawyer who is not so specified.
- (6) A photograph, or an impression of fingerprints, taken as mentioned in paragraph (3)(j) or (3)(k) must only be used for the purpose of ensuring compliance with the control order.

not in existing Act

[4.19] **104.5 Requesting an urgent control order by electronic means**

- (1) A senior AFP member may request, by telephone, fax, email or other electronic means, an issuing Court to make a control order in relation to a person if:
  - (a) the member thinks it necessary to use such means because of urgent circumstances; and
  - (b) the member either considers or suspects the matters mentioned in subsection 104.1(2) on reasonable grounds.
- (2) The Attorney-General's consent under section 104.1 is not required before the request is made.

Note: However, if the Attorney-General's consent is not sought before the request is made, his or her consent must be sought within 4 hours of making the request: see section 104.7.
- (3) The issuing Court may require communication by voice to the extent that is practicable in the circumstances.
- (4) The request must include the following:
  - (a) all that is required in an ordinary request under subsection 104.1(3) for a control order (including, if the Attorney-General's consent has been sought before making the request, the changes (if any) required by the Attorney-General);
  - (b) an explanation as to why the making of the control order is urgent;
  - (c) if the Attorney-General's consent has been sought before making the request—a copy of the Attorney-General's consent.
- (5) The information and the explanation included in the request must be sworn or affirmed by the member, but do not have to be sworn or affirmed before the request is made.

Note: Subsection 104.6(5) requires the information and explanation to be sworn or affirmed within 24 hours of the order being completed.

not in existing Act

[4.19] **104.6 Making an urgent control order**

- (1) Before making a control order in response to a request under section 104.5, the issuing Court must:
  - (a) consider the information and the explanation 1 included in the request; and
  - (b) receive and consider such further information (if any) as the Court requires.
- (2) If the issuing Court is satisfied that a control order in the terms of the request should be made urgently, the Court may complete the same form of control order that would be made under section 104.3.

*Procedure after urgent control order is made*

- (3) If the issuing Court makes the control order, the Court must inform the senior AFP member, by telephone, fax, email or other electronic means, of:
  - (a) the terms of the order; and
  - (b) the day on which, and the time at which, it was completed.
- (4) The member must then complete a form of control order in terms substantially corresponding to those given by the issuing Court, stating on the form:
  - (a) the name of the Court; and
  - (b) the day on which, and the time at which, the order was completed.
- (5) Within 24 hours of being informed under subsection (3), the member must give or transmit the following to the issuing Court:
  - (a) the form of control order completed by the member;
  - (b) if the information and explanation included in the request were not already sworn or affirmed—that information and explanation duly sworn or affirmed;
  - (c) if the Attorney-General’s consent was not sought before making the request—a copy of the Attorney-General’s consent.

Note: The Attorney-General’s consent must be sought within 4 hours of making the request: see section 104.7.

- (6) The issuing Court must attach to the documents provided under subsection (5) the form of control order the Court has completed.

not in existing Act

[4.19]

**104.7 Seeking Attorney-General’s consent within 4 hours**

- (1) Within 4 hours of making the request under section 104.6, the senior AFP member must, in accordance with subsection 104.1(3), seek the Attorney-General’s consent to request the control order in relation to the person.
- (2) If the Attorney-General:
  - (a) refuses his or her consent to request the order; or
  - (b) has not given his or her consent to request the order;

within 4 hours of the request being made, the order immediately ceases to be in force.

Note:           However, the senior AFP member can vary the request and seek the Attorney-General’s consent to request a new control order in relation to the person: see subsection 104.1(5).

[4.19]

**104.8 Court to assume that exercise of power not authorised by urgent control order**

- If:
- (a) it is material, in any proceedings, for a Court to be satisfied that the exercise of a power under, or in respect of, a control order made under section 104.6 was duly authorised; and
  - (b) the form of control order completed by the relevant issuing Court is not produced in evidence;
- the first-mentioned Court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

not in existing Act

[4.19]

**Subdivision B—Rights in respect of control order**

**104.9 Service and explanation of control order**

[4.19]

- (1) As soon as practicable after a control order is made in relation to a person, the senior AFP member who requested the order:
  - (a) must serve the control order personally on the person; and
  - (b) must inform the person of the following:
    - (i) the effect of the order;
    - (ii) the period for which the order is in force;
    - (iii) the effect of sections 104.10 to 104.13; and
  - (c) must ensure that the person understands the information provided under paragraph (b) (taking into account the person's age, mental capacity and any other relevant factor).
- (2) A failure to comply with paragraph (1)(c) does not make the control order ineffective to any extent.

[4.19]

**104.10 Lawyer may request copy of control order**

- (1) A lawyer of the person in relation to whom the control order is made may attend the place specified in the order under paragraph 104.4(1)(f) in order to obtain a copy of the order.
- (2) This section does not:
  - (a) require more than one person to give the lawyer a copy of the order; or
  - (b) entitle the lawyer to request or be given a copy of, or see, a document other than the order.



not in existing Act

[4.19]

**104.11 Application by person for revocation of control order**

- (1) A person in relation to whom a control order is made may apply to an issuing Court for the Court to revoke the order.
- (2) The person may make the application at any time after the order is served on the person.
- (3) The person must give written notice to the Commissioner of the Australian Federal Police of both the application and the grounds on which the revocation is sought.
- (4) However, the control order remains in force until the Court revokes the order.
- (5) The Commissioner, or an AFP member on behalf of the Commissioner, may adduce additional material to the Court in relation to the application to revoke the control order.
- (6) The Court may revoke the control order if, at the time of considering the application, it is satisfied that there would not be sufficient grounds on which to make the order.

[4.19]

**104.12 Application by AFP Commissioner for revocation of control order**

- (1) If, before a control order ceases to be in force, the Commissioner of the Australian Federal Police is satisfied that the grounds on which the order was made have ceased to exist, the Commissioner must apply to an issuing Court for the Court to revoke the order.
- (2) The Court may revoke the control order if, at the time of considering the application, it is satisfied that there would not be sufficient grounds on which to make the order.
- (3) As soon as practicable after the Court has revoked the control order, the Commissioner must cause the person in relation to whom the order was made to be served personally with the revocation.

[4.19]

**Subdivision C—Contravening a control order**

[4.19]

**104.13 Offence for contravening a control order**

- A person commits an offence if:
- (a) a control order is in force in relation to the person; and
  - (b) the person contravenes the order.
    - (i) the effect of the order;
    - (ii) the period for which the order is in force;

Penalty: Imprisonment for 5 years.

not in existing Act

[4.19]

**Subdivision D— Miscellaneous**

**104.14 Special rules for young people**

*Rules for persons under 16*

- (1) A control order has no effect if the person in relation to whom the order is made is under 16.

[4.19]

*Rules for persons under 16*

- (2) If an issuing Court is satisfied that a person in relation to whom a control order is being made is at least 16 but under 18, the period during which the order is to be in force must not end more than 3 months after the day on which the order is made by the Court.

Note: The order does not begin to be in force until it is served 1 personally on the person: see paragraph 104.4(1)(e).

**104.15 Annual report**

- (1) The Attorney-General must, as soon as practicable after each 30 June, cause to be prepared a report about the operation of this Division during the year ended on that 30 June.

[4.19]

- (2) Without limiting subsection (1), a report relating to a year must include the following matters:
- (a) the number of control orders made under section 104.3;
  - (b) the number of control orders made under section 104.6;
  - (c) particulars of any complaints made or referred to:
    - (i) the Commonwealth Ombudsman; or
    - (ii) the Internal Investigation Division of the Australian Federal Police.

- (3) The Attorney-General must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the report is completed.

[4.19]

**104.16 Sunset provision**

This Division ceases to have effect at the end of 10 years after it commences.

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

[4.19]

**Division 105— Preventative detention orders**

**Subdivision A— Preliminary**

**105.1 Object**

[4.19]

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

- (a) prevent an imminent terrorist act occurring; or
- (b) preserve evidence of, or relating to, a recent terrorist act.

**105.2 Issuing authorities for continued preventative detention orders**

- (1) The Minister may, by writing, appoint as an issuing authority for continued preventative detention orders a person who is:
  - (a) a Federal Magistrate; or
  - (b) a Judge.
- (2) The Minister must not appoint a person unless:
  - (a) the person has, by writing, consented to being appointed; and
  - (b) the consent is in force.

**105.3 AFP member detaining person under a preventative detention order**

If:

- (a) a number of AFP members are detaining, or involved in the detention of, a person under a preventative detention order at a particular time; and
- (b) an obligation is expressed in this Division to be imposed on the AFP member detaining the person;

the obligation is imposed at that time on the most senior of those AFP members.

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

[4.19]

**Subdivision B— Preventative detention orders**

**105.4 Basis for applying for, and making, preventative detention orders**

- (1) An AFP member may apply for, and an issuing authority may make, a preventative detention order in relation to a person (the subject) only if subsection (2) or (4) applies.

Note: For the meaning of *issuing authority*, see subsection 100.1(1) and section 105.2.

- (2) This subsection applies if the AFP member or the issuing authority, as the case may be, is satisfied that:
- (a) there are reasonable grounds to suspect that the subject:
    - (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, or will do, an act in preparation for, or planning, a terrorist act; and
  - (b) making the order would substantially assist in preventing a terrorist act occurring.

[4.19]

- (3) A terrorist act referred to in subsection (2):
- (a) must be one that is imminent; and
  - (b) must be one that is expected to occur, in any event, at some time in the next 14 days.
- (4) This subsection applies if the AFP member or the issuing authority, as the case may be, is satisfied that:
- (a) a terrorist act has occurred within the last 28 days; and
  - (b) it is necessary to detain the subject to preserve evidence of, or relating to, the terrorist act.
- (5) An issuing authority may refuse to make a preventative detention order unless the AFP member applying for the order gives the issuing authority any further information that the issuing authority requests concerning the grounds on which the order is sought.

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

[4.19]

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

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

Note: See also section @105.36 and subsections @105.40(4) to (9) and (11) for the special rules for people who are under 18 years of age.

- (2) If:
- (a) a person is being detained under a preventative detention order; and
  - (b) the AFP member who is detaining the person is satisfied on reasonable grounds that the person is under 16 years of age;

the AFP member must, as soon as practicable, release the person from detention under the order.

[4.19]

**105.6 Preventative detention allowed only once in relation to a particular terrorist act**

- (1) If:
- (a) an initial preventative detention order is made 1 in relation to a person on the basis of assisting in preventing a particular terrorist act occurring within a particular period; and
  - (b) the person is detained under the order;

another initial preventative detention order cannot be applied for, or made, in relation to 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 initial preventative detention order in relation to the person on the basis of preserving evidence of, or relating to, the terrorist act if it occurs.

- (2) If:
- (a) an initial preventative detention order is made in relation to a person on the basis of preserving evidence of, or relating to, a terrorist act; and
  - (b) the person is detained under the order;

another initial preventative detention order cannot be applied for, or made, in relation to the person on the basis of preserving evidence of, or relating to, the same terrorist act.

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

**105.7 Application for initial preventative detention order**

- [4.19] (1) An AFP member may apply to an issuing authority for an initial preventative detention order in relation to a person.
- (2) The application must:
- (a) be made in writing; and
  - (b) set out the facts and other grounds on which the AFP member considers that the order should be made; and
  - (c) set out the particulars and outcomes of all previous applications for preventative detention orders, and requests for control orders, in relation to the person.

**105.8 Initial preventative detention order**

- [4.19] (1) On application by an AFP member, an issuing authority may make an initial preventative detention order under this section in relation to a person.
- (2) Subsection (1) has effect subject to sections 105.4, 105.5 and 105.6.
- (3) An initial preventative detention order under 1 this section is an order that the person specified in the order may be:
- (a) taken into custody; and
  - (b) detained during the period that:
    - (i) starts when the person is first taken into custody under the order; and
    - (ii) ends a specified 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 specified in the order under subparagraph (3)(b)(ii) must not exceed 24 hours.
- (6) An initial preventative detention order under this section must set out:
- (a) the name of the person in relation to whom it is made; and
  - (b) the period during which the person may be detained under the order; and
  - (c) the 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.

Note: Paragraph (d)—see subsection 105.9(2).

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

[4.19]

**105.9 Duration of initial preventative detention order**

- (1) An initial preventative detention order in relation to a person starts to have effect when it is made.
- (2) An initial preventative detention order in relation to a person ceases to have effect at the end of the period of 48 hours after the order is made if the person has not been taken into custody under the order within that period.
- (3) If the person is taken into custody under the order within 48 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 specified in the order as the period during which the person may be detained under the order; or
    - (ii) if that period is extended or further 1 extended under section 105.10—that period as extended or further extended;
  - (b) the revocation of the order under section 105.17.

Note 1: The order does not cease to be have effect merely because the person is released from detention under the order.

Note 2: An AFP member may apply under section 105.11 for a continued preventative detention order in relation to the person to allow the person to continue to be detained for up to 48 hours after the person is first taken into custody under the initial preventative detention order.

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

[4.19]

**105.10 Extension of initial preventative detention order**

- (1) If:
  - (a) an initial preventative detention order is made in relation to a person; and
  - (b) the order is in force in relation to the person;

an AFP member may apply to an issuing authority for initial preventative detention orders for an extension, or a further extension, of the period for which the order is to be in force in relation to the person.
- (2) The application must:
  - (a) be made in writing; and
  - (b) set out the facts and other grounds on which the AFP member considers that the extension or further extension should be made; and
  - (c) set out the particulars and outcomes of all previous applications for extensions of the order.
- (3) The issuing authority may extend, or further extend, the period for which the order is to be in force in relation to the person.
- (4) The extension, or further extension, must be made in writing.
- (5) The period as extended, or further extended, must end no later than 24 hours after the person is first taken into custody under the order.

[4.19]

**105.11 Application for continued preventative detention order**

- (1) An AFP member may apply to an issuing authority for continued preventative detention orders for a continued preventative detention order in relation to a person in relation to whom an initial preventative detention order is in force.
- (2) The application must:
  - (a) be made in writing; and
  - (b) set out the facts and other grounds on which the AFP member considers that the order should be made; and
  - (c) set out the particulars and outcomes of all previous applications for preventative detention orders, and requests for control orders, in relation to the person.
- (3) Paragraph (2)(c) does not require the application to set out details in relation to the application that was made for the initial preventative detention order in relation to which the continued preventative detention order is sought.
- (4) The information in the application must be sworn or affirmed by the AFP member.



not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

[4.19]

**105.12 Judge or magistrate may make continued preventative detention order**

- (1) On application by an AFP member, an issuing authority may make a continued preventative detention order under this section in relation to a person if:
  - (a) an initial preventative detention order is in force in relation to the person; and
  - (b) the person has been taken into custody under the order (whether or not the person is being detained under the order).
- (2) Subsection (1) has effect subject to sections 105.4, 105.5 and 105.6.
- (3) A continued preventative detention order under this section is an order that the person specified in the order may be detained during a further period that:
  - (a) starts at the end of the period during which the person may be detained under the initial preventative detention order; and
  - (b) ends a specified period of time after the person is first taken into custody under the initial preventative detention order.
- (4) The order must be in writing.
- (5) The period of time specified under paragraph 1 (3)(b) must not exceed 48 hours.
- (6) A continued preventative detention order under this section must set out:
  - (a) the name of the person in relation to whom it is made; and
  - (b) the further 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.

[4.19]

**105.13 Duration of continued preventative detention order**

- (1) A continued preventative detention order in relation to a person starts to have effect when it is made.
- (2) A continued preventative detention order in relation to a person ceases to have effect when whichever of the following first occurs:
  - (a) the end of:
    - (i) the period specified in the order as the further period during which the person may be detained; or
    - (ii) if that period is extended or further extended under section 105.14—that period as extended or further extended;
  - (b) the revocation of the order under section 105.17.

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

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

**105.14 Extension of continued preventative detention order**

- (1) If:
- (a) an initial preventative detention order is made in relation to a person; and
  - (b) a continued preventative detention order is made in relation to the person in relation to that initial preventative detention order; and
  - (c) the continued preventative detention order is in force in relation to the person;
- an AFP member may apply to an issuing authority for continued preventative detention orders for an extension, or a further extension, of the period for which the continued preventative detention order is to be in force in relation to the person.
- (2) The application must:
- (a) be made in writing; and
  - (b) set out the facts and other grounds on which the AFP member considers that the extension or further extension should be made; and
  - (c) set out the particulars and outcomes of all previous applications for extensions of the continued preventative detention order.
- (3) The information in the application must be sworn or affirmed by the AFP member.
- (4) The issuing authority may extend, or further extend, the period for which the continued preventative detention order is to be in force in relation to the person.
- (5) The extension, or further extension, must be made in writing.
- (6) The period as extended, or further extended, must end no later than 48 hours after the person is first taken into custody under the initial preventative detention order.

[4.19]

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

[4.19]

- 105.15 Prohibited contact order (person in relation to whom preventative detention order is being sought)**
- (1) An AFP member who applies to an issuing authority for a preventative detention order in relation to a person (the subject) may also apply for a prohibited contact order under this section in relation to the subject's detention under the preventative detention order.
  - (2) The application must set out:
    - (a) the terms of the order sought; and
    - (b) the facts and other grounds on which the AFP member considers that the order should be made.
  - (3) If a continued preventative detention order is being applied for, the information in the application for the prohibited contact order must be sworn or affirmed by the AFP member.
  - (4) If the issuing authority:
    - (a) makes the preventative detention order; and
    - (b) is satisfied that making the prohibited 1 contact order will assist in achieving the objectives of the preventative detention order;the issuing authority may make a prohibited contact order under this section that the subject is not, while being detained under the preventative detention order, to contact a person specified in the prohibited contact order.
  - (5) The prohibited contact order must be in writing.

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

[4.19]

- 105.16 Prohibited contact order (person in relation to whom preventative detention order is already in force)**
- (1) If a preventative detention order is in force in relation to a person (the *subject*), an AFP member may apply to an issuing authority for preventative detention orders of that kind for a prohibited contact order under this section in relation to the subject's detention under the preventative detention order.
  - (2) The application must set out:
    - (a) the terms of the order sought; and
    - (b) the facts and other grounds on which the AFP member considers that the order should be made.
  - (3) If the preventative detention order is a continued preventative detention order, the information in the application for the prohibited contact order must be sworn or affirmed by the AFP member.
  - (4) If the issuing authority is satisfied that making the prohibited contact order will assist in achieving the objectives of the preventative detention order, the issuing authority may make a prohibited contact order under this section that the subject is not, while being detained under the preventative detention order, to contact a person specified in the prohibited contact order.
  - (5) The prohibited contact order must be in writing.

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

**105.17 Revocation of preventative detention order or prohibited contact order**

- (1) If:
- (a) a preventative detention order is in force in relation to a person; and
  - (b) the AFP member who is detaining the person under the order is satisfied that the grounds on which the order was made have ceased to exist;
- the AFP member must apply to an issuing authority for preventative detention orders of that kind for the revocation of the order.
- (2) If:
- (a) a preventative detention order is in force in relation to a person; and
  - (b) an issuing authority for preventative detention orders of that kind is satisfied, on application by an AFP member, that the grounds on which the order was made have ceased to 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 AFP member who is detaining the person under the preventative detention order is satisfied that the grounds on which the prohibited contact order was made have ceased to exist;
- the AFP member must apply to an issuing authority for preventative detention orders of that kind for the revocation of the prohibited contact order.
- (4) If:
- (a) a prohibited contact order is in force in relation to a person's detention under a preventative detention order; and
  - (b) an issuing authority for preventative detention orders of that kind is satisfied, on application by an AFP member, that the grounds on which the prohibited contact order was made have ceased to exist;
- the issuing authority must revoke the prohibited contact order.

[4.19]

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

	<p><b>105.18 Status of person making continued preventative detention order</b></p> <p>(1) An issuing authority who makes:</p> <p>(a) a continued preventative 1 detention order; or</p> <p>(b) a prohibited contact order in relation to a person’s detention under a continued preventative detention order;</p> <p>has, in the performance of his or her duties under this Subdivision, the same protection and immunity as a Justice of the High Court.</p> <p>(2) A function of:</p> <p>(a) making or revoking a continued preventative detention order; or</p> <p>(b) extending, or further extending, the period for which a continued preventative detention order is to be in force; or</p> <p>(c) making or revoking a prohibited contact order in relation to a person’s detention under a continued preventative detention order;</p> <p>that is conferred on a judge or magistrate is conferred on the judge or magistrate in a personal capacity and not as a court or a member of a court.</p>
[4.19]	<p><b>Subdivision C— Carrying out preventative detention orders</b></p> <p><b>105.19 Power to detain person under preventative detention order</b></p> <p>While a preventative detention order is in force in relation to a person:</p> <p>(a) any AFP member may take the person into custody; and</p> <p>(b) any AFP member may detain the person.</p> <p><b>105.20 Endorsement of order with date and time person taken into custody</b></p> <p>As soon as practicable after a person is first taken into custody under an initial preventative detention order, the AFP member 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.</p>

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

[4.19]

**105.21 Requirement to provide name etc.**

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

(2) If an AFP member:

- (a) makes a request of a person under subsection (1); and
- (b) informs the person of the reason for the request; and
- (c) complies with subsection (4) if the person makes a request under that subsection;

the person must not:

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

Penalty: 20 penalty units.

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

Note : A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

(4) If an AFP member who makes a request of a person under subsection (1) is requested by the person to provide to the person:

- (a) his or her name or the address of his or her place of duty; or
- (b) his or her name and that address; or
- (c) if he or she is not in uniform and it is practicable for the AFP member to provide the evidence—evidence that he or she is an AFP member;

the AFP member must not:

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

Penalty: 5 penalty units.

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

**105.22 Power to enter premises**

- (1) Subject to subsection (2), if:
- (a) a preventative detention order is in force in relation to a person; and
  - (b) an AFP member believes on reasonable grounds that the person is on any premises;
- the AFP member may enter the premises, using such force as is necessary and reasonable in the circumstances, at any time of the day or night for the purpose of searching the premises for the person or taking the person into custody.
- (2) An AFP member must not enter a dwelling house under subsection (1) at any time during the period commencing at 9 pm on a day and ending at 6 am on the following day unless the AFP member believes on reasonable grounds that:
- (a) it would not be practicable to take the person into custody, either at the dwelling house or elsewhere, at another time; or
  - (b) it is necessary to do so in order to prevent the concealment, loss or destruction of evidence of, or relating to, a terrorist act.
- (3) In subsection (2):
- dwelling house* includes a conveyance, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.

[4.19]



not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

**105.23 Use of force**

[4.19]

- (1) An AFP member must not, in the course of taking a person into custody or detaining a person under a preventative detention order, use more force, or subject the person to greater indignity, than is necessary and reasonable:
  - (a) to take the person into custody; or
  - (b) to prevent the escape of the person after being taken into custody.
- (2) An AFP member must not, in the course of taking a person into custody or detaining a person under a preventative detention order:
  - (a) do anything that is likely to cause the death of, or grievous bodily harm to, the person unless the AFP member believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the AFP member); or
  - (b) if the person is attempting to escape being taken into custody by fleeing—do such a thing unless:
    - (i) the AFP member believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the AFP member); and
    - (ii) the person has, if practicable, been called on to surrender and the AFP member believes on reasonable grounds that the person cannot be apprehended in any other manner.
- (3) Subsection (2) does not limit subsection (1).

**105.24 Power to conduct a frisk search**

[4.19]

- An AFP member 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 AFP member suspects on reasonable grounds that it is prudent to do so in order to ascertain 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.

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

[4.19]

**105.25 Power to conduct an ordinary search**

An AFP member 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 AFP member 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 any such thing found as a result of the search.

[4.19]

**105.26 Warrant under section 34D of the *Australian Security Intelligence Organisation Act 1979***

- (1) This section applies if:
  - (a) a person is being detained under a preventative detention order; and
  - (b) a warrant under section 34D of the *Australian Security Intelligence Organisation Act 1979* is in force in relation to the person; and
  - (c) a copy of the warrant is given to the AFP member who is detaining the person under the preventative detention order.
- (2) The AFP member must take such steps as are necessary to ensure that the person may be dealt with in accordance with the warrant.
- (3) Without limiting subsection (2), the AFP member may, under section 105.27, release the person from detention under the preventative detention order so that the person may be dealt with in accordance with the warrant.
- (4) To avoid doubt, the fact that the person is released from detention under the preventative detention order so that the person may be:
  - (a) questioned before a prescribed authority under the warrant; or
  - (b) detained under the warrant in connection with that questioning;

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

Note : See paragraph 105.27(6)(a).

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

**105.27 Release of person from preventative detention**

- (1) A person who is being detained under a preventative detention order may be released from detention under the order.  
  
Note :       A person may be released, for example, so that the person may be arrested and otherwise dealt with under Part IC of the *Crimes Act 1914*.
- (2) The AFP member 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. The statement must be signed by the AFP member.
- (3) Subsection (2) does not apply if the person is released from detention so that the person may be dealt with:
  - (a) in accordance with a warrant under section 34D of the *Australian Security Intelligence Organisation Act 1979*; or
  - (b) under Division 4 of Part IAA of the *Crimes Act 1914*.
- (4) To avoid doubt, a person may be taken to have been released from detention under a preventative detention order even if:
  - (a) the person is informed that he or she is being released from detention under the order; and
  - (b) the person is taken into custody on some other basis immediately after the person is informed that he or she is being released from detention under the order.
- (5) To avoid doubt, the person is taken not to be detained under the preventative detention order during the period during which the person is released from detention under the order.  
  
Note :       During this period, the provisions of this Division that apply to a person who is being detained under a protective detention order (for example, section 105.31 which deals with the people the person may contact) do not apply to the person.
- (6) To avoid doubt:
  - (a) the release of the person under subsection (1) from detention under the preventative detention order does not extend the period for which the preventative detention order remains in force; and
  - (b) a person released under subsection (1) from detention under a preventative detention order may again be taken into custody and detained under the order at any time while the order remains in force in relation to the person.

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

[4.19]

**Subdivision D— Informing person detained about preventative detention order**

**105.28 Effect of preventative detention order to be explained to person detained**

*Initial preventative detention order*

- (1) As soon as practicable after a person is first taken into custody under an initial preventative detention order, the AFP member who is detaining the person under the order must inform the person of the matters covered by subsection (2).

Note 1: A contravention of this subsection may be an offence under section 105.42.

Note 2: A contravention of this subsection does not affect the lawfulness of the person's detention under the order (see subsection (11)).

- (2) The matters covered by this subsection are:
- (a) the fact that the preventative detention order has been made in relation to the person; and
  - (b) the period during which the person may be detained under the order; and
  - (c) the restrictions that apply to the people the person may contact while the person is being detained under the order; and
  - (d) the fact that an application may be made under section 105.11 for an order that the person continue to be detained for a further period; and
  - (e) the person's right to make a complaint orally or in writing to the Commonwealth Ombudsman under Part III of the *Complaints (Australian Federal Police) Act 1981*; and
  - (f) the fact that the person may seek from a federal court a remedy relating to:
    - (i) the order; or
    - (ii) the treatment of the person in connection with the order; and
  - (g) the person's entitlement under section 105.34 to contact a lawyer.

[4.19]

*Continued preventative detention order*

- (3) As soon as practicable after a continued preventative detention order (the **continued order**) is made in relation to a person, the AFP member who is detaining the person must inform the person of the matters covered by subsection (4).

Note 1: A contravention of this subsection may be an offence under section 105.42.

Note 2: A contravention of this subsection does not affect the lawfulness of the person's detention under the order (see subsection (11)).

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

- (4) The matters covered by this subsection are:
- (a) the fact that the continued order has been made in relation to the person; and
  - (b) the further period during which the person may continue to be detained under the order; and
  - (c) the restrictions that apply to the people the person may contact while the person is being detained under the order; and
  - (d) the person's right to make a complaint orally or in writing to the Commonwealth Ombudsman under Part III of the *Complaints (Australian Federal Police) Act 1981*; and
  - (e) the fact that the person may seek from a federal court a remedy relating to:
    - (i) the continued order; or
    - (ii) the treatment of the person in connection with the continued order; and
  - (f) the person's entitlement under section 105.34 to contact a lawyer.

*Prohibited contact order need not be disclosed*

- (5) Paragraphs (2)(c) and (4)(c) do not require the AFP member 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 specified in a prohibited contact order that has been made in relation to the person's detention.

*Extension of preventative detention order*

- (6) If a preventative detention order is extended, or further extended, under section 105.10 or 105.14, the AFP member detaining the person under the order must inform the person of the extension as soon as practicable after the extension, or further extension, is made.

Note 1: A contravention of this subsection may be an offence under section 105.42.

Note 2: A contravention of this subsection does not affect the lawfulness of the person's detention under the order (see subsection (11)).

*Compliance with obligation to inform*

- (7) Subsection (1), (3) or (6) does not apply if the actions of the person being detained under the preventative detention order make it impracticable for the AFP member to comply with that subsection.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7). See subsection 13.3(3).

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

[4.19]

- (8) The AFP member detaining the person under the preventative detention order complies with subsection (1) or (3) if the AFP member informs the person in substance of the 1 matters covered by subsection (2) or (4) (even if this is not done in language of a precise or technical nature).
- (9) The AFP member who is detaining the person under the preventative detention order must arrange for the assistance of an interpreter in complying with subsection (1), (3) or (6) if the AFP member 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.
- (10) Without limiting subsection (9), the assistance of the interpreter may be provided by telephone.

*Failure to comply does not affect lawfulness of detention*

- (11) The lawfulness of a person’s detention under a preventative detention order is not affected by a failure to comply with subsection (1), (3) or (6).

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

#### 105.29 Copy of preventative detention order

- (1) As soon as practicable after a person is first taken into custody under an initial preventative detention order, the AFP member who is detaining the person under the order must give the person a copy of the order.
- (2) As soon as practicable after a continued preventative detention order is made in relation to a person, the AFP member who is detaining the person under the order must give the person a copy of the order.
- (3) A person who is being detained under a preventative detention order may request an AFP member who is detaining the person to arrange for a copy of the order, or any extension or further extension of the order under section 105.10 or 105.14, to be given to a lawyer nominated by the person being detained.
- (4) The AFP member must make arrangements for a copy of the order, or the extension or further extension, to be given to the lawyer as soon as practicable after the request is made.
- (5) Without limiting subsection (4), the copy of the order, or the extension, may be faxed or emailed to the lawyer.
- (6) Subsection (4) does not apply if the lawyer nominated by the person being detained is a person specified in a prohibited contact order made in relation to the person's detention.
- (7) To avoid doubt, subsection (4) does not entitle the lawyer to be given a copy of, or see, a document other than the order or the extension.
- (8) Nothing in this section requires a copy of a prohibited contact order to be given to a person.
- (9) The AFP member who gives:
  - (a) the person being detained under an initial preventative detention order; or
  - (b) a lawyer nominated by the person;

a copy of the initial 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.

- (10) The lawfulness of a person's detention under a preventative detention order is not affected by a failure to comply with subsection (1), (2), (4) or (9).

[4.19]

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

[4.19]

**Subdivision E—Treatment of person detained**

**105.30 Humane treatment of person being detained**

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

[4.19]

- (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 subsection may be an offence under section 105.42.

**105.31 Humane treatment of person being detained**

Except as provided by sections 105.32, 105.33, 105.34 and 105.36, while a person is being detained under a preventative detention order, the person:

[4.19]

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

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

Note 2: A person's entitlement to contact other people under sections 105.32, 105.33, 105.34 and 105.36 may be subject to a prohibited contact order made under section 105.15 or 105.16 (see section 105.37).



not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

[4.19]

**105.32 Contacting family members etc.**

- (1) The person being detained is entitled to contact:
- (a) one of his or her 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;

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

- (2) In this section:

*family member* of a person means:

- (a) the person's spouse, de facto 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.

**105.33 Contacting Ombudsman**

The person being detained is entitled to contact the Commonwealth Ombudsman in accordance with the *Complaints (Australian Federal Police) Act 1981*.

Note: Section 22 of the *Complaints (Australian Federal Police) Act 1981* provides for the manner in which a person who is in custody may make a complaint to the Commonwealth Ombudsman under that Act.

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

#### 105.34 Contacting lawyer

- (1) The person being detained is entitled to contact a lawyer by telephone, fax or email but solely for the purpose of:
  - (a) arranging for the lawyer to act for the person in relation to, and instructing the lawyer to bring, proceedings in a federal court for a remedy relating to:
    - (i) the preventative detention order; or
    - (ii) the treatment of the person in connection with the order; or
  - (b) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, a complaint to the Commonwealth Ombudsman under the *Complaints (Australian Federal Police) Act 1981* in relation to:
    - (i) the preventative detention order; or
    - (ii) the treatment of the person in connection with the order.

[4.19]

- (2) 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 105.37 (prohibited contact order); or
    - (ii) the person is not able to contact that lawyer;

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

- (3) In recommending lawyers to the person being detained as part of giving the person assistance under subsection (2), the AFP member who is detaining the person may give priority to lawyers who have been given a security clearance at an appropriate level by the Department.
- (4) Despite subsection (3) but subject to section 105.37, the person being detained is entitled under this section to contact a lawyer who does not have a security clearance of the kind referred to in subsection (3).

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

[4.19]

**105.35 Monitoring contact under section 105.32 or 105.34**

- (1) The contact the person being detained has with another person under section 105.32 or 105.34 may take place only if it is conducted in such a way that the contact, and the content and meaning of the communication that takes place during the contact, can be effectively monitored by an AFP member exercising authority under the preventative detention order.
- (2) The contact may take place in a language other than English only if the content and meaning of the communication that takes place during the contact can be effectively monitored with the assistance of an interpreter.
- (3) Without limiting subsection (2), the interpreter referred to in that subsection may be an AFP member.
- (4) If the person being detained indicates that he or she wishes the contact to take place in a language other than English, the AFP member 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.

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

**105.36 Special contact rules for person under 18 or incapable of managing own affairs**

- (1) This section applies if the person being detained under a protective detention order:
  - (a) is under 18 years of age; or
  - (b) is incapable of managing his or her affairs.
- (2) The person is entitled, while being detained under the order, to have contact with:
  - (a) a parent or guardian of the person; or
  - (b) another person who:
    - (i) is able to represent the person's interests; and
    - (ii) is, as far as practicable in the circumstances, acceptable to the person and to the AFP member who is detaining the person; and
    - (iii) is not an AFP member; and
    - (iv) is not an AFP employee (within the meaning of the *Australian Federal Police Act 1979*); and
    - (v) is not a member (however described) of a police force of a State or Territory; and
    - (vi) is not an officer or employee of the Australian Security Intelligence Organisation.
- (3) The form of contact that the person being detained is entitled to have with another person under subsection (2) includes:
  - (a) being visited by that other person; and
  - (b) communicating with that other person by telephone, fax or email.
- (4) The period for which the person being detained is entitled to have contact with another person under subsection (2) is 2 hours each day.
- (5) Despite subsection (4), the AFP member who is detaining the person may permit the person to have contact with another person under subsection (2) for a longer period.
- (6) The contact that the person being detained has with another person under subsection (2) must be conducted in a way that the content and meaning of any communication that takes place during the contact can be monitored by an AFP member exercising authority under the preventative detention order.
- (7) 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.

[4.19]

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

[4.19]

- (8) Without limiting subsection (7), the interpreter referred to in that subsection may be an AFP member.
- (9) 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 AFP member 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.

[4.19]

**105.37 Entitlement to contact subject to prohibited contact order**

Sections 105.32, 105.34 and 105.36 have effect subject to any prohibited contact order made in relation to the person’s detention.

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

[4.19]

**105.38 Disclosure offences**

- (1) A person (the *offender*) commits an offence if:
- (a) a person being detained under a preventative detention order (the *detainee*) contacts the offender under section 105.34; and
  - (b) the offender 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 under the order; or
    - (iii) any information that the detainee gives the offender in the course of the contact; and
  - (c) the disclosure occurs while the order is in force in relation to the detainee; and
  - (d) the disclosure is not made for the purposes of:
    - (i) proceedings in a federal court for a remedy relating to the preventative detention order or the treatment of the person in connection with the order; or
    - (ii) a complaint to the Commonwealth Ombudsman under the *Complaints (Australian Federal Police) Act 1981* in relation to the preventative detention order or the treatment of the person in connection with the order.

Penalty: Imprisonment for 5 years.

[4.19]

- (2) A person (the *offender*) commits an offence if:
- (a) a person being detained under a preventative detention order (the *detainee*) has contact with the offender under section 105.36; and
  - (b) the offender 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 under the order; or
    - (iii) any information that the detainee gives the offender in the course of the contact; and
  - (c) the disclosure occurs while the order is in force in relation to the detainee; and
  - (d) the disclosure is not made for the purposes of a complaint to the Commonwealth Ombudsman under the *Complaints (Australian Federal Police) Act 1981* in relation to the preventative detention order or the treatment of the person in connection with the order.

Penalty: Imprisonment for 5 years.

- (3) To avoid doubt, a person does not contravene subsection (2) merely by letting another person contacted know that the detainee is safe but is not able to be contacted for the time being.

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

[4.19]

**105.39 Questioning of person prohibited while person is detained**

- (1) Subject to subsection (2), an AFP member must not question a person while the person is being detained under a preventative detention order.
- Note 1: This section will not apply to the person if the person is released from detention under the order (even though the order may still be in force in relation to the person).
- Note 2: A contravention of this section may be an offence under section 105.42.
- (2) An AFP member may question the person for the purpose of confirming the person's identity as the person specified in the preventative detention order.

[4.19]

**105.40 Taking fingerprints, recordings, samples of handwriting or photographs**

- (1) An AFP member must not:
- (a) take identification material from a person who is being detained under a preventative detention order except in accordance with this section; or
  - (b) require any other person to submit to the taking of identification material (but nothing in this paragraph prevents such a person consenting to the taking of identification material).
- Note: A contravention of this subsection may be an offence under section 105.42.
- (2) An AFP member who is of the rank of sergeant or higher may take identification material from the person, or cause identification material from the person to be taken, if:
- (a) the person consents in writing; or
  - (b) the AFP member believes on reasonable grounds that it is necessary to do so for the purpose of confirming the person's identity as the person specified in the order.
- (3) An AFP member may use such force as is necessary and reasonable in the circumstances to take identification material from a person under this section.
- (4) Subject to this section, an AFP member must not take identification material (other than hand prints, finger prints, foot prints or toe prints) from the person if the person:
- (a) is under 18; or
  - (b) is incapable of managing his or her affairs;
- unless a Federal Magistrate orders that the material be taken.
- Note: A contravention of this subsection may be an offence under section 105.42.
- (5) In deciding whether to make such an order, the 1 Federal Magistrate must have regard to:
- (a) the age, or any disability, of the person; and
  - (b) such other matters as the Federal Magistrate thinks fit.

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

- (6) The taking of identification material from a person who:
- (a) is under 18; or
  - (b) is incapable of managing his or her affairs;

must be done in the presence of:

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

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

Note 2: A contravention of this subsection may be an offence under section 105.42.

- (7) Despite this section, identification material may be taken from a person who is under 18 years of age, or is capable of managing his or her affairs, if:
- (a) subsections (8) and (9) are satisfied; or
  - (b) subsection (8) or (9) is satisfied (but not both) and a Federal Magistrate orders that the material be taken.

In deciding whether to make such an order, the Federal Magistrate must have regard to the matters set out in subsection (5).

- (8) This subsection applies if the person agrees in writing to the taking of the material.
- (9) 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 material.

Note: For *appropriate person*, see subsection (12).

- (10) Despite this section, identification material may be taken from a person who:
- (a) is at least 18 years of age; and
  - (b) is capable of managing his or her affairs;
- if the person consents in writing.



not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

[4.19]

- (11) A reference in this section to an *appropriate person* in relation to a person (the subject) who is under 18 years of age, or incapable of managing his or her affairs, is a reference to a person who:
- (a) is capable of representing the subject's interests; and
  - (b) as far as is practicable in the circumstances, is acceptable to the subject and the AFP member who is detaining the subject; and
  - (c) is none of the following:
    - (i) an AFP member;
    - (ii) an AFP employee (within the meaning of the *Australian Federal Police Act 1979*);
    - (iii) a member (however described) of a police force of a State or Territory;
    - (iv) an officer or employee of the Australian Security Intelligence Organisation.

[4.19]

**105.41 Use of identification material**

- (1) This section applies if identification material is taken under section 105.40 from a person being detained under a preventative detention order.
  - (2) The material may be used only for the purpose of confirming the person's identity as the person specified in the order.
  - (3) If:
    - (a) a period of 12 months elapses after the identification material is taken; and
    - (b) proceedings in respect of:
      - (i) the preventative detention order; or
      - (ii) the treatment of the person in connection with the order;have not been brought, or have been brought and discontinued, within that period;the material must be destroyed as soon as practicable after the end of that period.
- Note: A contravention of this subsection may be an offence under section 105.42.

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

[4.19]

**105.42 Offences of contravening safeguards**

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
  - (b) the conduct contravenes subsection 105.28(1), (3) or (6) or section 105.30, 105.39, 105.40 or 105.41.

Penalty: Imprisonment for 2 years.

- (2) In this section:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act

[4.19]

**Subdivision F—Miscellaneous**

**105.43 Nature of functions of Federal Magistrate**

[4.19]

- (1) A function of making an order conferred on a Federal Magistrate by section 105.40 is conferred on the Federal Magistrate in a personal capacity and not as a court or a member of a court.
- (2) Without limiting the generality of subsection (1), an order made by a Federal Magistrate under section 105.40 has effect only by virtue of this Act and is not to be taken by implication to be made by a court.
- (3) A Federal Magistrate performing a function of, or connected with, making an order under section 105.40 has the same protection and immunity as if he or she were performing that function as, or as a member of, the Federal Magistrates Court.

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

[4.19]

**105.44 Annual report**

- (1) The Attorney-General must, as soon as practicable after each 30 June, cause to be prepared a report about the operation of this Division during the year ended on that 30 June.
- (2) Without limiting subsection (1), a report relating to a year must include the following matters:
  - (a) the number of initial preventative detention orders made under section 105.8 during the year;
  - (b) the number of continued preventative detention orders made under section 105.12 during the year;
  - (c) whether a person was taken into custody under each of those orders and, if so, how long the person was detained for;
  - (d) particulars of any complaints in relation to the detention of a person under a preventative detention order made or referred during the year to:
    - (i) the Commonwealth Ombudsman; or
    - (ii) the Internal Investigation Division of the Australian Federal Police;
  - (e) the number of prohibited contact orders made under sections 105.15 and 105.16 during the year.
- (3) The Attorney-General must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the report is completed.

[4.19]

**105.45 Ombudsman functions and powers not affected**

This Division does not affect a function or power of the Commonwealth Ombudsman under the *Complaints (Australian Federal Police) Act 1981*.

[4.19]

**105.46 Law relating to legal professional privilege not affected**

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

not in existing Act

**CCL NOTE:** All decisions under the new **Division 105** are exempt from judicial review under the ADJR Act. See clause 20 of Schedule 4 of the Anti-Terrorism Bill 2005, amending Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

**105.47 Jurisdiction of State and Territory courts excluded**

- [4.19] (1) A court of a State or Territory does not have jurisdiction in proceedings for a remedy if:
- (a) the remedy relates to:
    - (i) a preventative detention order; or
    - (ii) the treatment of a person in connection with such an order; and
  - (b) the proceedings are commenced while the order is in force.
- (2) This section has effect despite any other law of the Commonwealth (whether passed or made before or after the commencement of this section).

**105.48 Sunset provision**

- [4.19] This Division ceases to have effect at the end of 10 years after it commences.

Division 106—Transitional provisions

106.1 Saving—regulations made for the purposes of the definition of *terrorist organisation*

- (1) If:
  - (a) regulations were made before commencement for the purposes of paragraph (c) of the definition of *terrorist organisation* in subsection 102.1(1), as in force before commencement; and
  - (b) the regulations were in force immediately before commencement; the regulations have effect, after commencement, as if they had been made for the purposes of paragraph (b) of the definition of *terrorist organisation* in subsection 102.1(1), as in force after commencement.
- (2) In this section, *commencement* means the commencement of this section.

Division 106—Transitional provisions

106.1 Saving—regulations made for the purposes of the definition of *terrorist organisation*

- (1) If:
  - (a) regulations were made before commencement for the purposes of paragraph (c) of the definition of *terrorist organisation* in subsection 102.1(1), as in force before commencement; and
  - (b) the regulations were in force immediately before commencement; the regulations have effect, after commencement, as if they had been made for the purposes of paragraph (b) of the definition of *terrorist organisation* in subsection 102.1(1), as in force after commencement.
- (2) In this section, *commencement* means the commencement of this section.

106.2 Saving—regulations made for the purposes of paragraph (a) of the definition of *terrorist organisation*

- [1.23] (1) If:
  - (a) regulations were made before commencement for the purposes of paragraph (a) of the definition of *terrorist organisation* in subsection 102.1(1), as in force before commencement; and
  - (b) the regulations were in force immediately before commencement; the regulations continue to have effect, after commencement, as if they had been made for the purposes of that paragraph, as in force after commencement.
- (2) In this section, *commencement* means the commencement of this section.

106.3 Application provision

- [1.23] The amendments made by items 2 to 5 and item 25 of Schedule 1 to the *Anti-Terrorism Bill 2005* apply to offences committed whether before or after the commencement of this section.
- [1.23] Note: The heading to section 106.1 of the *Criminal Code* is replaced by the heading “Saving—regulations originally made for the purposes of paragraph (c) of the definition of *terrorist organisation*”.

Part 5.4—Harming Australians

Division 104—Harming Australians

104.1 Murder of an Australian citizen or a resident of Australia

- (1) A person is guilty of an offence if:
- (a) the person engages in conduct outside Australia; and
  - (b) the conduct causes the death of another person; and
  - (c) the other person is an Australian citizen or a resident of Australia; and
  - (d) the first-mentioned person intends to cause, or is reckless as to causing, the death of the Australian citizen or resident of Australia or any other person by the conduct.

Penalty: Imprisonment for life.

- (2) Absolute liability applies to paragraph (1)(c).

104.2 Manslaughter of an Australian citizen or a resident of Australia

- (1) A person is guilty of an offence if:
- (a) the person engages in conduct outside Australia; and
  - (b) the conduct causes the death of another person; and
  - (c) the other person is an Australian citizen or a resident of Australia; and
  - (d) the first-mentioned person intends that the conduct will cause serious harm, or is reckless as to a risk that the conduct will cause serious harm, to the Australian citizen or resident of Australia or any other person.

Penalty: Imprisonment for 25 years.

- (2) Absolute liability applies to paragraphs (1)(b) and (c).

Part 5.4—Harming Australians

~~Division 104—Harming Australians~~

[2.1]

Division 115—Harming Australians

[2.2]

~~104.1 Murder of an Australian citizen or a resident of Australia~~

115.1 Murder of an Australian citizen or a resident of Australia

- (1) A person is guilty of an offence if:
- (a) the person engages in conduct outside Australia; and
  - (b) the conduct causes the death of another person; and
  - (c) the other person is an Australian citizen or a resident of Australia; and
  - (d) the first-mentioned person intends to cause, or is reckless as to causing, the death of the Australian citizen or resident of Australia or any other person by the conduct.

Penalty: Imprisonment for life.

- (2) Absolute liability applies to paragraph (1)(c).

[2.2]

~~104.2 Manslaughter of an Australian citizen or a resident of Australia~~

115.2 Manslaughter of an Australian citizen or a resident of Australia

- (1) A person is guilty of an offence if:
- (a) the person engages in conduct outside Australia; and
  - (b) the conduct causes the death of another person; and
  - (c) the other person is an Australian citizen or a resident of Australia; and
  - (d) the first-mentioned person intends that the conduct will cause serious harm, or is reckless as to a risk that the conduct will cause serious harm, to the Australian citizen or resident of Australia or any other person.

Penalty: Imprisonment for 25 years.

- (2) Absolute liability applies to paragraphs (1)(b) and (c).

**104.3 Intentionally causing serious harm to an Australian citizen or a resident of Australia**

- (1) A person is guilty of an offence if:
- (a) the person engages in conduct outside Australia; and
  - (b) the conduct causes serious harm to another person; and
  - (c) the other person is an Australian citizen or a resident of Australia; and
  - (d) the first-mentioned person intends to cause serious harm to the Australian citizen or resident of Australia or any other person by the conduct.

Penalty: Imprisonment for 20 years.

- (2) Absolute liability applies to paragraph (1)(c).

**104.4 Recklessly causing serious harm to an Australian citizen or a resident of Australia**

- (1) A person is guilty of an offence if:
- (a) the person engages in conduct outside Australia; and
  - (b) the conduct causes serious harm to another person; and
  - (c) the other person is an Australian citizen or a resident of Australia; and
  - (d) the first-mentioned person is reckless as to causing serious harm to the Australian citizen or resident of Australia or any other person by the conduct.

Penalty: Imprisonment for 15 years.

- (2) Absolute liability applies to paragraph (1)(c).

**104.5 Saving of other laws**

This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or of a State or Territory.

[2.2]

~~**104.3 Intentionally causing serious harm to an Australian citizen or a resident of Australia**~~

**115.3 Intentionally causing serious harm to an Australian citizen or a resident of Australia**

- (1) A person is guilty of an offence if:
- (a) the person engages in conduct outside Australia; and
  - (b) the conduct causes serious harm to another person; and
  - (c) the other person is an Australian citizen or a resident of Australia; and
  - (d) the first-mentioned person intends to cause serious harm to the Australian citizen or resident of Australia or any other person by the conduct.

Penalty: Imprisonment for 20 years.

- (2) Absolute liability applies to paragraph (1)(c).

[2.2]

~~**104.4 Recklessly causing serious harm to an Australian citizen or a resident of Australia**~~

**115.4 Recklessly causing serious harm to an Australian citizen or a resident of Australia**

- (1) A person is guilty of an offence if:
- (a) the person engages in conduct outside Australia; and
  - (b) the conduct causes serious harm to another person; and
  - (c) the other person is an Australian citizen or a resident of Australia; and
  - (d) the first-mentioned person is reckless as to causing serious harm to the Australian citizen or resident of Australia or any other person by the conduct.

Penalty: Imprisonment for 15 years.

- (2) Absolute liability applies to paragraph (1)(c).

[2.2]

~~**104.5 Saving of other laws**~~

**115.5 Saving of other laws**

This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or of a State or Territory.

104.6 Bringing proceedings under this Division

- (1) Proceedings for an offence under this Division must not be commenced without the Attorney-General’s written consent.
- (2) However, a person may be arrested, charged, remanded in custody, or released on bail, in connection with an offence under this Division before the necessary consent has been given.

104.7 Ministerial certificates relating to proceedings

- (1) A Minister who administers one or more of the following Acts:
  - (a) the *Australian Citizenship Act 1948*;
  - (b) the *Migration Act 1958*;
  - (c) the *Australian Passports Act 2005*;may issue a certificate stating that a person is or was an Australian citizen or a resident of Australia at a particular time.
- (2) In any proceedings, a certificate under this section is prima facie evidence of the matters in the certificate.

104.8 Geographical jurisdiction

- Each offence against this Division applies:
- (a) whether or not a result of the conduct constituting the alleged offence occurs in Australia; and
  - (b) if the alleged offence is an ancillary offence and the conduct to which the ancillary offence relates occurs outside Australia—whether or not the conduct constituting the ancillary offence occurs in Australia.

104.9 Meaning of *causes* death or harm

In this Division, a person’s conduct *causes* death or harm if it substantially contributes to the death or harm.

[2.2] ~~104.6 Bringing proceedings under this Division~~

**115.6 Bringing proceedings under this Division**

- (1) Proceedings for an offence under this Division must not be commenced without the Attorney-General’s written consent.
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[2.2] ~~104.7 Ministerial certificates relating to proceedings~~

**115.7 Ministerial certificates relating to proceedings**

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  - (a) the *Australian Citizenship Act 1948*;
  - (b) the *Migration Act 1958*;
  - (c) the *Australian Passports Act 2005*;may issue a certificate stating that a person is or was an Australian citizen or a resident of Australia at a particular time.
- (2) In any proceedings, a certificate under this section is prima facie evidence of the matters in the certificate.

[2.2] ~~104.8 Geographical jurisdiction~~

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- Each offence against this Division applies:
- (a) whether or not a result of the conduct constituting the alleged offence occurs in Australia; and
  - (b) if the alleged offence is an ancillary offence and the conduct to which the ancillary offence relates occurs outside Australia—whether or not the conduct constituting the ancillary offence occurs in Australia.

[2.2] ~~104.9 Meaning of *causes* death or harm~~

**115.9 Meaning of *causes* death or harm**

In this Division, a person’s conduct *causes* death or harm if it substantially contributes to the death or harm.



**Crimes Act 1914 (Cth)**

**Part IAA—Search warrants and powers of arrest**

**Division 1—Preliminary**

**3C Interpretation**

(1) In this Part, unless the contrary intention appears:

*constable assisting*, in relation to a warrant, means:

- (a) a person who is a constable and who is assisting in executing the warrant; or
- (b) a person who is not a constable and who has been authorised by the relevant executing officer to assist in executing the warrant.

*data* includes:

- (a) information in any form; or
- (b) any program (or part of a program).

*data held in a computer* includes:

- (a) data held in any removable data storage device for the time being held in a computer; or
- (b) data held in a data storage device on a computer network of which the computer forms a part.

*data storage device* means a thing containing, or designed to contain, data for use by a computer.

*evidential material* means a thing relevant to an indictable offence or a thing relevant to a summary offence, including such a thing in electronic form.

*executing officer*, in relation to a warrant, means:

- (a) the constable named in the warrant by the issuing officer as being responsible for executing the warrant; or
- (b) if that constable does not intend to be present at the execution of the warrant—another constable whose name has been written in the warrant by the constable so named; or
- (c) another constable whose name has been written in the warrant by the constable last named in the warrant.

**Crimes Act 1914 (Cth)**

**Part IAA—Search warrants and powers of arrest**

[5.1]

**Part IAA—Search, information gathering, arrest and related powers**

**Division 1—Preliminary**

**3C Interpretation**

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*constable assisting*, in relation to a warrant, means:

- (a) a person who is a constable and who is assisting in executing the warrant; or
- (b) a person who is not a constable and who has been authorised by the relevant executing officer to assist in executing the warrant.

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*executing officer*, in relation to a warrant, means:

- (a) the constable named in the warrant by the issuing officer as being responsible for executing the warrant; or
- (b) if that constable does not intend to be present at the execution of the warrant—another constable whose name has been written in the warrant by the constable so named; or
- (c) another constable whose name has been written in the warrant by the constable last named in the warrant.

**frisk search** means:

- (a) a search of a person conducted by quickly running the hands over the person's outer garments; and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

**issuing officer**, in relation to a warrant to search premises or a person or a warrant for arrest under this Part, means:

- (a) a magistrate; or
- (b) a justice of the peace or other person employed in a court of a State or Territory who is authorised to issue search warrants or warrants for arrest, as the case may be.

**magistrate**, in sections 3ZI, 3ZJ, 3ZK, 3ZN and 3ZW, has a meaning affected by section 3CA.

**offence** means:

- (a) an offence against a law of the Commonwealth (other than the *Defence Force Discipline Act 1982*); or
- (b) an offence against a law of a Territory; or
- (c) a State offence that has a federal aspect.

**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 and hat; and
- (b) an examination of those items.

**police station** includes:

- (a) a police station of a State or Territory; and
- (b) a building occupied by the Australian Federal Police.

**premises** includes a place and a conveyance.

**recently used conveyance**, in relation to a search of a person, means a conveyance that the person had operated or occupied at any time within 24 hours before the search commenced.

**seizable item** means anything that would present a danger to a person or that could be used to assist a person to escape from lawful custody.

**frisk search** means:

- (a) a search of a person conducted by quickly running the hands over the person's outer garments; and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

**issuing officer**, in relation to a warrant to search premises or a person or a warrant for arrest under this Part, means:

- (a) a magistrate; or
- (b) a justice of the peace or other person employed in a court of a State or Territory who is authorised to issue search warrants or warrants for arrest, as the case may be.

**magistrate**, in sections 3ZI, 3ZJ, 3ZK, 3ZN and 3ZW, has a meaning affected by section 3CA.

**offence** means:

- (a) an offence against a law of the Commonwealth (other than the *Defence Force Discipline Act 1982*); or
- (b) an offence against a law of a Territory; or
- (c) a State offence that has a federal aspect.

**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 and hat; and
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- (a) a police station of a State or Territory; and
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**premises** includes a place and a conveyance.

**recently used conveyance**, in relation to a search of a person, means a conveyance that the person had operated or occupied at any time within 24 hours before the search commenced.

**seizable item** means anything that would present a danger to a person or that could be used to assist a person to escape from lawful custody.

**strip 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 all of his or her garments; and
- (b) an examination of the person's body (but not of the person's body cavities) and of those garments.

**warrant** means a warrant under this Part.

**warrant premises** means premises in relation to which a warrant is in force.

- (2) A person referred to in paragraph (b) of the definition of **constable assisting** in subsection (1) must not take part in searching or arresting a person.

[5.2

- serious offence** means an offence:
- (a) that is punishable by imprisonment for 2 years or more; and
  - (b) that is one of the following:
    - (i) a Commonwealth offence;
    - (ii) an offence against a law of a State that has a federal aspect;
    - (iii) an offence against a law of a Territory; and
  - (c) that is not a serious terrorism offence.

[5.3

- serious terrorism offence** means an offence:
- (a) a terrorism offence (other than offence against section 102.8, Division 104 or Division 105 of the *Criminal Code*); or
  - (b) an offence against a law of a State:
    - (i) that has a federal aspect; and
    - (ii) that has the characteristics of a terrorism offence (other than such an offence that has the characteristics of an offence against section 102.8, Division 104 or Division 105 of the *Criminal Code*); or
  - (c) an offence against a law of a Territory that has the characteristics of a terrorism offence (other than such an offence that has the characteristics of an offence against section 102.8, Division 104 or Division 105 of the *Criminal Code*).

**strip 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 all of his or her garments; and
- (b) an examination of the person's body (but not of the person's body cavities) and of those garments.

**warrant** means a warrant under this Part.

**warrant premises** means premises in relation to which a warrant is in force.

- (2) A person referred to in paragraph (b) of the definition of **constable assisting** in subsection (1) must not take part in searching or arresting a person.

### 3CA Nature of functions of magistrate

- (1) A function of making an order conferred on a magistrate by section 3ZI, 3ZJ, 3ZK, 3ZN or 3ZW is conferred on the magistrate in a personal capacity and not as a court or a member of a court.
- (2) Without limiting the generality of subsection (1), an order made by a magistrate under section 3ZI, 3ZJ, 3ZK, 3ZN or 3ZW has effect only by virtue of this Act and is not to be taken by implication to be made by a court.
- (3) A magistrate performing a function of, or connected with, making an order under section 3ZI, 3ZJ, 3ZK, 3ZN or 3ZW has the same protection and immunity as if he or she were performing that function as, or as a member of, a court (being the court of which the magistrate is a member).
- (4) The Governor-General may make arrangements with the Governor of a State, the Chief Minister of the Australian Capital Territory, the Administrator of the Northern Territory or the Administrator of Norfolk Island for the performance, by all or any of the persons who from time to time hold office as magistrates in that State or Territory, of the function of making orders under sections 3ZI, 3ZJ, 3ZK, 3ZN and 3ZW.

### 3CA Nature of functions of magistrate

- (1) A function of making an order conferred on a magistrate by section 3ZI, 3ZJ, 3ZK, 3ZN or 3ZW is conferred on the magistrate in a personal capacity and not as a court or a member of a court.
- (2) Without limiting the generality of subsection (1), an order made by a magistrate under section 3ZI, 3ZJ, 3ZK, 3ZN or 3ZW has effect only by virtue of this Act and is not to be taken by implication to be made by a court.
- (3) A magistrate performing a function of, or connected with, making an order under section 3ZI, 3ZJ, 3ZK, 3ZN or 3ZW has the same protection and immunity as if he or she were performing that function as, or as a member of, a court (being the court of which the magistrate is a member).
- (4) The Governor-General may make arrangements with the Governor of a State, the Chief Minister of the Australian Capital Territory, the Administrator of the Northern Territory or the Administrator of Norfolk Island for the performance, by all or any of the persons who from time to time hold office as magistrates in that State or Territory, of the function of making orders under sections 3ZI, 3ZJ, 3ZK, 3ZN and 3ZW.

3D Application of Part

(1) This Part is not intended to limit or exclude the operation of another law of the Commonwealth relating to:

- (a) the search of persons or premises; or
- (b) arrest and related matters; or
- (c) the stopping, detaining or searching of conveyances; or
- (d) the seizure of things.

(2) To avoid any doubt, it is declared that even though another law of the Commonwealth provides power to do one or more of the things referred to in subsection (1), a similar power conferred by this Part may be used despite the existence of the power under the other law.

(4) This Part is not intended to limit or exclude the operation of a law of a Territory relating to:

- (a) the search of persons or premises; or
- (b) arrest and related matters; or
- (c) the stopping, detaining or searching of conveyances; or
- (d) the seizure of things;

in relation to offences against a law of that Territory.

(5) This Part does not apply to the exercise by a constable of powers under the *Defence Force Discipline Act 1982*.

(6) The application of this Part in relation to State offences that have a federal aspect is not intended to limit or exclude the concurrent operation of any law of a State or of the Australian Capital Territory.

Note 1: Subsection 3(1) defines *State* to include the Northern Territory.

Note 2: Section 3AA has the effect that an offence against the law of the Australian Capital Territory is a State offence that has a federal aspect.

Division 2—Search warrants

CCL note: not reproduced

Division 3—Stopping and searching conveyances

CCL note: not reproduced

3D Application of Part

(1) This Part is not intended to limit or exclude the operation of another law of the Commonwealth relating to:

- [5.4] (a) the search of ~~persons or~~ premises; or
- [5.5] (b) arrest and related matters; or
- (c) the stopping, detaining or searching of conveyances ~~or persons~~; or
- (d) the seizure of things; ~~or~~
- [5.6] (e) requesting information or documents from persons.

(2) To avoid any doubt, it is declared that even though another law of the Commonwealth provides power to do one or more of the things referred to in subsection (1), a similar power conferred by this Part may be used despite the existence of the power under the other law.

(4) This Part is not intended to limit or exclude the operation of a law of a Territory relating to:

- [5.7] (a) the search of ~~persons or~~ premises; or
- [5.8] (b) arrest and related matters; or
- (c) the stopping, detaining or searching of conveyances ~~or persons~~; or
- (d) the seizure of things; ~~or~~
- [5.9] (e) requesting information or documents from persons;

in relation to offences against a law of that Territory.

(5) This Part does not apply to the exercise by a constable of powers under the *Defence Force Discipline Act 1982*.

(6) The application of this Part in relation to State offences that have a federal aspect is not intended to limit or exclude the concurrent operation of any law of a State or of the Australian Capital Territory.

Note 1: Subsection 3(1) defines *State* to include the Northern Territory.

Note 2: Section 3AA has the effect that an offence against the law of the Australian Capital Territory is a State offence that has a federal aspect.

Division 2—Search warrants

CCL note: not reproduced

Division 3—Stopping and searching conveyances

CCL note: not reproduced

not in existing Act

[5.10]

**Division 3A—Powers to stop, question and search persons in relation to terrorist acts**

[5.10]

**Subdivision A—Definitions**

[5.10]

**3UA Definitions**

[5.10]

In this Division:

*Commonwealth place* means a Commonwealth place within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*.

*police officer* means:

- (a) a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or
- (b) a special member (within the meaning of that Act); or
- (c) a member, however described, of a police force of a State or Territory.

*prescribed security zone* means a zone in respect of which a declaration under section 3UJ is in force.

*serious offence related item* means a thing that a police officer conducting a search under section 3UD reasonably suspects:

[5.10]

- (a) may be used in a serious offence; or
- (b) is connected with the preparation for, or the engagement of a person in, a serious offence; or
- (c) is evidence of, or relating to, a serious offence.

*terrorism related item* a thing that a police officer conducting a search under section 3UD reasonably suspects:

- (a) may be used in a terrorist offence; or
- (b) is connected with the preparation for, or the engagement of a person in, a terrorist offence; or
- (c) is evidence of, or relating to, a terrorist offence.

*terrorist act* has the same meaning as in subsection 100.1(1) of the *Criminal Code*.

*vehicle* includes any means of transport (and, without limitation, includes a vessel and an aircraft).

not in existing Act

[5.10] **Subdivision B—Powers**

[5.10] **3UB Application of Subdivision**

A police officer may exercise the powers under this Subdivision in relation to a person if:

- [5.10] (a) the person is in a Commonwealth place (other than a prescribed security zone) and the officer suspects on reasonable grounds that the person might have just committed, might be committing or might be about to commit, a terrorist act; or
- (b) the person is in a Commonwealth place in a prescribed security zone.

[5.10] **3UC Requirement to provide name etc.**

- (1) A police officer may request the person to provide the officer with the following details:
- (a) the person's name;
- (b) the person's residential address;
- (c) the person's reason for being in that particular Commonwealth place;
- (d) evidence of the person's identity.
- (2) If a police officer:
- (a) makes a request under subsection (1); and
- (b) informs the person:
- (i) of the officer's authority to make the request; and
- (ii) that it may be an offence not to comply with the request;
- [5.10]

the person commits an offence if:

- (c) the person fails to comply with the request; or
- (d) the person gives a name or address that is false in a material particular.

Penalty: 20 penalty units.

Note: A more serious offence of obstructing a Commonwealth public official may also apply (see section 149.1 of the *Criminal Code*).

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

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

not in existing Act

[5.10]

**3UD Stopping and searching**

- (1) A police officer may:
- (a) stop and detain the person for the purpose of conducting a search under paragraph (b); and
  - (b) conduct one of the following searches for a terrorism related item:
    - (i) an ordinary search or a frisk search of the person;
    - (ii) a search of any thing that is, or that the officer suspects on reasonable grounds to be, under the person's immediate control;
    - (iii) a search of any vehicle that is operated or occupied by the person;
    - (iv) a search of any thing that the person has, or that the officer suspects on reasonable grounds that the person has, brought into the Commonwealth place.
  - (c) the person's reason for being in that particular Commonwealth place;
  - (d) evidence of the person's identity.

[5.10]

*Conditions relating to conduct of search of person*

- (2) A police officer who conducts a search of a person under this section must not use more force, or subject the person to greater indignity, than is reasonable and necessary in order to conduct the search.
- (3) A person must not be detained under this section for longer than is reasonably necessary for a search to be conducted under this section.

*Other conditions relating to conduct of search of person or thing*

- (4) In searching a thing (including a vehicle) under subsection (1), a police officer may use such force as is reasonable and necessary in the circumstances, but must not damage the thing by forcing it, or a part of it, open unless:
- (a) the person has been given a reasonable opportunity to open the thing or part of it; or
  - (b) it is not possible to give that opportunity.

[5.10]

**3UE Seizure of terrorism related items and serious offence related items**

- If a police officer:
- (a) conducts a search under section 3UD; and
  - (b) finds, in the course of the search, a thing that is:
    - (i) a terrorism related item; or
    - (ii) a serious offence related item;

[5.10]

the officer may seize the thing.



not in existing Act

[5.10]

**3UF How seized things must be dealt with**

*Seizure notice to be served*

- (1) A police officer who is for the time being responsible for a thing seized under section 3UE must, within 7 days after the day on which the thing was seized, serve a seizure notice on:
  - (a) the owner of the thing; or
  - (b) if the owner of the thing cannot be identified after reasonable inquiries—the person from whom the thing was seized.
- (2) Subsection (1) does not apply if:
  - (a) both:
    - (i) the owner of the thing cannot be identified after reasonable inquiries; and
    - (ii) the thing was not seized from a person; or
  - (b) it is not possible to serve the person required to be served under subsection (1).
- (3) A seizure notice must:
  - (a) identify the thing; and
  - (b) state the date on which the thing was seized; and
  - (c) state the ground or grounds on which the thing was seized; and
  - (d) state that, if the owner does not request the return of the thing within 90 days after the date of the notice, the thing is forfeited to the Commonwealth.

[5.10]

*Return of thing seized*

- (4) The owner of a thing seized under section 3UE may request the return of the thing.
- (5) A police officer who is for the time being responsible for a thing seized under section 3UE must return the thing to its owner if:
  - (a) the owner requests the return of the thing; and
  - (b) neither subsection (6) nor (7) applies.
- (6) This subsection applies if the police officer suspects, on reasonable grounds that, if the thing is returned to the owner, the thing is likely to be used by the owner or another person in the commission of a terrorist act or serious offence.
- (7) This subsection applies if the thing is evidence of, or relating to, a terrorist act or serious offence.

not in existing Act

*Forfeiture of thing seized*

- (8) A thing is forfeited to the Commonwealth if the owner of the thing does not request its return:
- (a) before the end of the 90th day after the date of the seizure notice in relation to the thing; or
  - (b) if subsection (2) applied in relation to the thing so that a seizure notice was not served—before the end of the 90th day after the day on which the thing was seized.

*Application to magistrate*

- [5.10] (9) If:
- (a) the owner of a thing requests the return of the thing:
    - (i) within 90 days after the date of the seizure notice in relation to the thing; or
    - (ii) if subsection (2) applied in relation to the thing so that a seizure notice was not served—within 90 days after the day on which the thing was seized; and
  - (b) the thing has not been returned to the owner by the end of the 90th day;
- the police officer who is for the time being responsible for the thing must, before the end of the 95th day:
- (c) return the thing to the owner; or
  - (d) apply to a magistrate for an order under section 3UG.

[5.10] **3UG Application to magistrate**

- (1) If subsection 3UF(9) applies, the police officer may apply to a magistrate for an order in relation to the thing.
  - (2) The magistrate must, in determining an application by a police officer under subsection (1), allow the owner of the thing to appear and be heard.
  - (3) If the magistrate is satisfied that the thing is evidence of, or relating to, a terrorist act or serious offence, the magistrate must order that the thing be retained by the police officer for the period specified in the order.
- [5.10] (4) If the magistrate is satisfied that there are reasonable grounds to suspect that, if the thing is returned to the owner, the thing is likely to be used by the owner or another person in the commission of a terrorist act or serious offence, the magistrate may make any of the following orders:
- (a) that the thing be retained by the police officer for the period specified in the order;
  - (b) that the thing is forfeited to the Commonwealth;
  - (c) that the thing is to be sold and the proceeds given to the owner;
  - (d) that the thing is to be otherwise sold or disposed of.
- (5) If the magistrate is not satisfied as mentioned in subsection (3) or (4), the magistrate must order that the thing be returned to the owner.

not in existing Act

[5.10]	<b>3UH Relationship of Subdivision to other laws</b>
	(1) The powers conferred, and duties imposed, by this Subdivision on police officers are in addition to, and not in derogation of, any other powers conferred, or duties imposed, by any other law of the Commonwealth or the law of a State or Territory.
[5.10]	(2) This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or the law of a State or Territory in so far as it is capable of operating concurrently with this Subdivision.
[5.10]	<b>Subdivision C—Prescribed security zones</b>
[5.10]	<b>3UI Applications for declarations</b>
[5.10]	A police officer may apply to the Minister for a declaration that a Commonwealth place be declared as a prescribed security zone.
[5.10]	<b>3UJ Minister may make declarations</b>
	<i>Declaration</i>
	(1) The Minister may declare, in writing, a Commonwealth place to be a prescribed security zone if he or she considers that a declaration would assist: (a) in preventing a terrorist act occurring; or (b) in responding to a terrorist act that has occurred.
	<i>Declaration has effect</i>
	(2) A declaration under this section has effect accordingly.
[5.10]	<i>Duration of declaration</i>
	(3) A declaration ceases to have effect at the end of 28 days after it is made, unless the declaration is revoked by the Minister before then.
	<i>Revocation of declaration</i>
	(4) The Minister must revoke a declaration, in writing, if he or she is satisfied that: (a) in the case of a declaration made on the ground mentioned in paragraph (1)(a)—there is no longer a terrorism threat that justifies the declaration being continued; or (b) in the case of a declaration made on the ground mentioned in paragraph (1)(b)—the declaration is no longer required.

not in existing Act

*Gazettal and publication of declaration*

- [5.10]
- (5) If a declaration of a Commonwealth place as a prescribed security zone under this section is made or revoked, the Minister must arrange for:

(a) a statement to be prepared that:

(i) states that the declaration has been made or revoked, as the case may be; and

(ii) identifies the prescribed security zone; and

(b) the statement to be:

(i) broadcast by a television or radio station so as to be capable of being received within the place; and

(ii) published in the Gazette; and

(iii) published on the Internet.

*Effect of failure to publish*

- (6) A failure to comply with subsection (5) does not make the declaration or its revocation ineffective to any extent.

*Declaration or revocation not legislative instruments*

- (7) A declaration or revocation made under this section is not a legislative instrument.

[5.10]

**Subdivision D—Sunset provision**

[5.10]

**3UK Sunset provision**

[5.10]

This Division ceases to have effect at the end of 10 years after it commences.

**Division 4—Arrest and related matters**

*CCL note: not reproduced*

**Division 4A—Determining a person’s age**

*CCL note: not reproduced*

**Division 4—Arrest and related matters**

*CCL note: not reproduced*

**Division 4A—Determining a person’s age**

*CCL note: not reproduced*

[6.1] **Division 4B—Power to obtain information and documents**

[6.1] **Subdivision A—Definitions**

[6.1] **3ZQL Definitions**

- [6.1] In this Division:
- [6.1] *authorised AFP officer* means:
- (a) the Commissioner; or
  - (b) a Deputy Commissioner; or
  - (c) a senior executive AFP employee who:
    - (i) is a member of the Australian Federal Police; and
    - (ii) is authorised in writing by the Commissioner for the purposes of this paragraph.

*Federal Magistrate* has the meaning given by the *Federal Magistrates Act 1999*.

[6.1] **Subdivision B—Power to request information or documents about terrorist acts from operators of aircraft or ships**

[6.1] **3ZQM Power to request information or documents about terrorist acts from operators of aircraft or ships**

- [6.1] (1) This section applies if an authorised AFP officer believes on reasonable grounds that an operator of an aircraft or ship has information or documents (including in electronic form) that are relevant to a matter that relates to the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

not in existing Act

[6.1]

- (2) The officer may:
- (a) ask the operator questions relating to the aircraft or ship, or its cargo, crew, passengers, stores or voyage, that are relevant to the matter; or
  - (b) request the operator to produce documents relating to the aircraft or
    - (i) that are relevant to the matter; and
    - (ii) that are in the possession or under the control of the operator.

(3) A person who is asked a question or requested to produce a document under subsection (2) must answer the question or produce the document as soon as practicable.

*Offence*

- (4) A person commits an offence if:
- (a) the person is an operator of an aircraft or ship; and
  - (b) the person is asked a question or requested to produce a document under subsection (2); and
  - (c) the person fails to answer the question or produce the document.

Penalty: 60 penalty units.

[6.1]

(5) Subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (6) It is a defence to a prosecution for an offence against subsection (4) if the person charged had a reasonable excuse for:
- (a) failing to answer the question; or
  - (b) failing to produce the document.

*Definitions*

(7) In this section:

**operator** has the meaning given by section 4 of the *Customs Act 1901*.

**terrorist act** has the meaning given by 1 section 100.1 of the *Criminal Code*.

not in existing Act

- [6.1]

**Subdivision C—Power to obtain documents relating to serious terrorism and non-terrorism offences**
- [6.1]

**3ZQN Power to obtain documents relating to serious terrorism offences**
- (1) This section applies if an authorised AFP officer considers on reasonable grounds that a person has documents (including in electronic form) that will assist the investigation of a serious terrorism offence.

(2) The officer may give the person a written notice requiring the person to produce documents that:

(a) relate to one or more of the matters set out in section 3ZQP, as specified in the notice; and

(b) are in the possession or under the control of the person.
- [6.1]

(3) The notice must:

(a) specify the name of the person to whom the notice is given; and

(b) specify the matters to which the documents to be produced relate; and

(c) specify the manner in which the documents are to be produced; and

(d) specify the place at which the documents are to be produced; and

(e) state that the person must comply with the notice as soon as practicable; and

(f) set out the effect of section 3ZQS (offence for failure to comply); and

(g) if the notice specifies that information about the notice must not be disclosed—set out the effect of section 3ZQT (offence for disclosing existence or nature of a notice).
- Page 206 of 269

not in existing Act

- [6.1]

**3ZQO Power to obtain documents relating to serious offences**

(1) An authorised AFP officer may apply to a Federal Magistrate for a notice under this section in respect of a person if the AFP officer considers on reasonable grounds that the person has documents (including in electronic form) that will assist the investigation of a serious offence.

(2) If the Magistrate is satisfied on the balance of probabilities, by information on oath or by affirmation, that a person has documents (including in electronic form) that will assist the investigation of a serious offence, the Magistrate may give the person a written notice requiring the person to produce documents that:

(a) relate to one or more of the matters set out in section 3ZQP, as specified in the notice; and

(b) are in the possession or under the control of the person.

(3) The Magistrate must not give the notice unless the authorised AFP officer or some other person has given to the Magistrate, either orally or by affidavit, such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the notice is being sought.

[6.1]

(4) The notice must:

(a) specify the name of the person to whom the notice is given; and

(b) specify the matters to which the documents to be produced relate; and

(c) specify the manner in which the documents are to be produced; and

(d) specify the place at which the documents are to be produced; and

(e) state that the person must comply with the notice within 14 days after the day on which the notice is given; and

(f) set out the effect of section 3ZQS (offence for failure to comply); and

(g) if the notice specifies that information about the notice must not be disclosed—set out the effect of section 3ZQT (offence for disclosing existence or nature of a notice).

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not in existing Act

[6.1] **3ZQP Matters to which documents must relate**

A document to be produced under a notice under section 3ZQN or 3ZQO must relate to one or more of the following matters:

- (a) determining whether an account is held by a specified person with a specified financial institution, and details relating to the account (including details of any related accounts);
- (b) determining whether a specified person is a signatory to an account with a specified financial institution, and details relating to the account (including details of any related accounts);
- (c) determining whether a transaction has been conducted by a specified financial institution on behalf of a specified person, and details relating to the transaction (including details relating to other parties to the transaction);
- (d) determining whether a specified person travelled or will travel between specified dates or specified locations, and details relating to the travel (including details relating to other persons travelling with the specified person);
- (e) determining whether assets have been transferred to or from a specified person between specified dates, and details relating to the transfers (including details relating to the names of any other persons to or from whom the assets were transferred);
- (f) determining whether an account is held by a specified person in respect of a specified utility (such as gas, water or electricity), and details relating to the account (including the names of any other persons who also hold the account);
- (g) determining who holds an account in respect of a specified utility (such as gas, water or electricity) at a specified place, and details relating to the account;
- (h) determining whether a telephone account is held by a specified person, and details relating to the account (including:
  - (i) details in respect of calls made to or from the relevant telephone number; or
  - (ii) details in respect of calls made to or from the relevant telephone number; or
  - (iii) the lengths of such calls; or
  - (iv) the telephone numbers to which such calls were made and from which such calls were received);
- (i) determining who holds a specified telephone account, and details relating to the account (including details mentioned in paragraph (h));
- (j) determining whether a specified person resides at a specified place;
- (k) determining who resides at a specified place.

not in existing Act

- [6.1]

**3ZQQ Powers conferred on Federal Magistrates in their personal capacity**
- [6.1]

(1) A power conferred on a Federal Magistrate by section 3ZQO is conferred on the Magistrate in a personal capacity and not as a court or a member of a court.

(2) A Federal Magistrate need not accept the power conferred.

(3) A Federal Magistrate exercising a power conferred by section 3ZQO has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the Magistrate is a member.
- [6.1]

**3ZQR Documents must be produced**
- [6.1]

(1) A person is not excused from producing a document under section 3ZQN or 3ZQO on the ground that to do so:

(a) would contravene any other law; or

(b) might tend to incriminate the person or otherwise expose the person to a penalty or other liability; or

(c) would disclose material that is protected against disclosure by legal professional privilege or any other duty of confidence; or

(d) would be otherwise contrary to the public interest.

(2) However, neither:

(a) the production of the document; nor

(b) any information, document or thing obtained as a direct or indirect consequence of producing the document;

is admissible in evidence against the person in proceedings other than proceedings for an offence against section 137.1, 137.2 or 149.1 of the *Criminal Code* that relates to this Act.

(3) A person is not liable to any penalty by reason of his or her producing a document when required to do so under section 3ZQN or 3ZQO.

(4) The fact that a person is not excused under subsection (1) from producing a document does not otherwise affect a claim of legal professional privilege that anyone may make in relation to that document.

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not in existing Act

[6.1] **3ZQS Offence for failure to comply with notice under section 3ZQN or 3ZQO**

- [6.1] A person commits an offence if:
- (a) the person is given a notice under section 3ZQN or 3ZQO; and
  - (b) the person fails to comply with the notice.

Penalty: 30 penalty units.

[6.1] **3ZQT Offence for disclosing existence or nature of notice**

- (1) A person commits an offence if:
- (a) the person is given a notice under section 3ZQN or 3ZQO; and
  - (b) the notice specifies that information about the notice must not be disclosed; and
  - (c) the person discloses the existence or nature of the notice.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (2) Subsection (1) does not apply if:
- (a) the person discloses the information to another person in order to obtain a document that is required by the notice in order to comply with it, and that other person is directed not to inform the person to whom the document relates about the matter; or
  - (b) the disclosure is made to obtain legal advice or legal representation in relation to the notice; or
  - (c) the disclosure is made for the purposes of, or in the course of, legal proceedings.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

## Part IA—General

*CCL note: intervening sections not reproduced*

### 4J Certain indictable offences may be dealt with summarily

- (1) Subject to subsection (2), an indictable offence (other than an offence referred to in subsection (4)) against a law of the Commonwealth, being an offence punishable by imprisonment for a period not exceeding 10 years, may, unless the contrary intention appears, be heard and determined, with the consent of the prosecutor and the defendant, by a court of summary jurisdiction.
- (2) Subsection (1) does not apply in relation to an indictable offence where, under a law of the Commonwealth other than this Act, that offence may be heard and determined by a court of summary jurisdiction.
- (3) Subject to subsection (6), where an offence is dealt with by a court of summary jurisdiction under subsection (1), the court may impose:
  - (a) where the offence is punishable by imprisonment for a period not exceeding 5 years—a sentence of imprisonment for a period not exceeding 12 months or a fine not exceeding 60 penalty units, or both; or
  - (b) where the offence is punishable by imprisonment for a period exceeding 5 years but not exceeding 10 years—a sentence of imprisonment for a period not exceeding 2 years or a fine not exceeding 120 penalty units, or both.
- (4) A court of summary jurisdiction may, if it thinks fit, upon the request of the prosecutor, hear and determine any proceeding in respect of an indictable offence against a law of the Commonwealth if the offence relates to property whose value does not exceed \$5,000.
- (5) Subject to subsection (6), where an offence is dealt with by a court of summary jurisdiction under subsection (4), the court may impose a sentence of imprisonment for a period not exceeding 12 months or a fine not exceeding 60 penalty units, or both.
- (6) A court of summary jurisdiction shall not impose under subsection (3) or (5):
  - (a) a sentence of imprisonment for a period exceeding the maximum period that could have been imposed had the offence been tried on indictment;
  - (b) a fine exceeding the maximum fine that could have been imposed had the offence been so tried; or
  - (c) both a sentence of imprisonment and a fine if the offence is punishable on trial on indictment by a sentence of imprisonment or a fine, but not both.
- (7) This section does not apply to an offence against:
  - (a) section 24AA or 24AB or subsection 79(2) or (5) of this Act; or
  - (b) section 80.1 or 91.1 of the *Criminal Code*.

## Part IA—General

*CCL note: intervening sections not reproduced*

### 4J Certain indictable offences may be dealt with summarily

- (1) Subject to subsection (2), an indictable offence (other than an offence referred to in subsection (4)) against a law of the Commonwealth, being an offence punishable by imprisonment for a period not exceeding 10 years, may, unless the contrary intention appears, be heard and determined, with the consent of the prosecutor and the defendant, by a court of summary jurisdiction.
- (2) Subsection (1) does not apply in relation to an indictable offence where, under a law of the Commonwealth other than this Act, that offence may be heard and determined by a court of summary jurisdiction.
- (3) Subject to subsection (6), where an offence is dealt with by a court of summary jurisdiction under subsection (1), the court may impose:
  - (a) where the offence is punishable by imprisonment for a period not exceeding 5 years—a sentence of imprisonment for a period not exceeding 12 months or a fine not exceeding 60 penalty units, or both; or
  - (b) where the offence is punishable by imprisonment for a period exceeding 5 years but not exceeding 10 years—a sentence of imprisonment for a period not exceeding 2 years or a fine not exceeding 120 penalty units, or both.
- (4) A court of summary jurisdiction may, if it thinks fit, upon the request of the prosecutor, hear and determine any proceeding in respect of an indictable offence against a law of the Commonwealth if the offence relates to property whose value does not exceed \$5,000.
- (5) Subject to subsection (6), where an offence is dealt with by a court of summary jurisdiction under subsection (4), the court may impose a sentence of imprisonment for a period not exceeding 12 months or a fine not exceeding 60 penalty units, or both.
- (6) A court of summary jurisdiction shall not impose under subsection (3) or (5):
  - (a) a sentence of imprisonment for a period exceeding the maximum period that could have been imposed had the offence been tried on indictment;
  - (b) a fine exceeding the maximum fine that could have been imposed had the offence been so tried; or
  - (c) both a sentence of imprisonment and a fine if the offence is punishable on trial on indictment by a sentence of imprisonment or a fine, but not both.
- (7) This section does not apply to an offence against:
  - (a) section 24AA or 24AB or subsection 79(2) or (5) of this Act; or
  - (b) ~~section 80.1 or 91.1~~ Division 80 or section 91.1 of the *Criminal Code*.

[7.1]

CCL note: intervening sections not reproduced

Part II—Offences against the Government

CCL note: intervening sections not reproduced

24A Definition of seditious intention

An intention to effect any of the following purposes, that is to say:

- (a) to bring the Sovereign into hatred or contempt;
- (d) to excite disaffection against the Government or Constitution of the Commonwealth or against either House of the Parliament of the Commonwealth;
- (f) to excite Her Majesty’s subjects to attempt to procure the alteration, otherwise than by lawful means, of any matter in the Commonwealth established by law of the Commonwealth; or
- (g) to promote feelings of ill-will and hostility between different classes of Her Majesty’s subjects so as to endanger the peace, order or good government of the Commonwealth;

is a seditious intention.

24B Definition of seditious enterprise

- (1) A seditious enterprise is an enterprise undertaken in order to carry out a seditious intention.
- (2) Seditious words are words expressive of a seditious intention.

24C Seditious enterprises

A person who engages in a seditious enterprise with the intention of causing violence, or creating public disorder or a public disturbance, is guilty of an indictable offence punishable on conviction by imprisonment for not longer than 3 years.

24D Seditious words

- (1) Any person who, with the intention of causing violence or creating public disorder or a public disturbance, writes, prints, utters or publishes any seditious words shall be guilty of an indictable offence.  
  
Penalty: Imprisonment for 3 years.
- (2) A person cannot be convicted of any of the offences defined in section 24C or this section upon the uncorroborated testimony of one witness.

CCL note: intervening sections not reproduced

Part II—Offences against the Government

CCL note: intervening sections not reproduced

~~24A Definition of seditious intention~~

~~An intention to effect any of the following purposes, that is to say:~~

- ~~(a) to bring the Sovereign into hatred or contempt;~~
- ~~(d) to excite disaffection against the Government or Constitution of the Commonwealth or against either House of the Parliament of the Commonwealth;~~
- ~~(f) to excite Her Majesty’s subjects to attempt to procure the alteration, otherwise than by lawful means, of any matter in the Commonwealth established by law of the Commonwealth; or~~
- ~~(g) to promote feelings of ill-will and hostility between different classes of Her Majesty’s subjects so as to endanger the peace, order or good government of the Commonwealth;~~

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~~24B Definition of seditious enterprise~~

- ~~(1) A seditious enterprise is an enterprise undertaken in order to carry out a seditious intention.~~
- ~~(2) Seditious words are words expressive of a seditious intention.~~

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~~A person who engages in a seditious enterprise with the intention of causing violence, or creating public disorder or a public disturbance, is guilty of an indictable offence punishable on conviction by imprisonment for not longer than 3 years.~~

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- ~~(1) Any person who, with the intention of causing violence or creating public disorder or a public disturbance, writes, prints, utters or publishes any seditious words shall be guilty of an indictable offence.  
  
Penalty: Imprisonment for 3 years.~~
- ~~(2) A person cannot be convicted of any of the offences defined in section 24C or this section upon the uncorroborated testimony of one witness.~~

[7.2]

24E Punishment of offences

- (1) An offence under section 24C or 24D shall be punishable either on indictment or summarily, but shall not be prosecuted summarily without the consent of the Attorney-General.
- (2) If any person who is prosecuted summarily in respect of an offence against section 24C or 24D, elects, immediately after pleading, to be tried upon indictment, the court or magistrate shall not proceed to summarily convict that person but may commit him for trial.
- (3) The penalty for an offence against section 24C or 24D shall, where the offence is prosecuted summarily, be imprisonment for a period not exceeding 12 months.

~~24E Punishment of offences~~

- [7.2]
- ~~(1) An offence under section 24C or 24D shall be punishable either on indictment or summarily, but shall not be prosecuted summarily without the consent of the Attorney-General.~~
  - ~~(2) If any person who is prosecuted summarily in respect of an offence against section 24C or 24D, elects, immediately after pleading, to be tried upon indictment, the court or magistrate shall not proceed to summarily convict that person but may commit him for trial.~~
  - ~~(3) The penalty for an offence against section 24C or 24D shall, where the offence is prosecuted summarily, be imprisonment for a period not exceeding 12 months.~~

*CCL note: intervening sections not reproduced*

## Part IIA—Protection of the Constitution and of public and other services

### 30A Unlawful associations

- (1) The following are hereby declared to be unlawful associations, namely:
  - (a) any body of persons, incorporated or unincorporated, which by its constitution or propaganda or otherwise advocates or encourages:
    - (i) the overthrow of the Constitution of the Commonwealth by revolution or sabotage;
    - (ii) the overthrow by force or violence of the established government of the Commonwealth or of a State or of any other civilized country or of organized government; or
    - (iii) the destruction or injury of property of the Commonwealth or of property used in trade or commerce with other countries or among the States;or which is, or purports to be, affiliated with any organization which advocates or encourages any of the doctrines or practices specified in this paragraph;
  - (b) any body of persons, incorporated or unincorporated, which by its constitution or propaganda or otherwise advocates or encourages the doing of any act having or purporting to have as an object the carrying out of a seditious intention as defined in section 24A.
- (1A) Without limiting the effect of the provisions of subsection (1), any body of persons, incorporated or unincorporated, which is, in pursuance of section 30AA, declared by the Federal Court of Australia to be an unlawful association, shall be deemed to be an unlawful association for the purposes of this Act.
- (2) Any branch or committee of an unlawful association, and any institution or school conducted by or under the authority or apparent authority of an unlawful association, shall, for all the purposes of this Act, be deemed to be an unlawful association.

*CCL note: intervening sections not reproduced*

## Part IIA—Protection of the Constitution and of public and other services

### 30A Unlawful associations

- (1) The following are hereby declared to be unlawful associations, namely:
  - (a) any body of persons, incorporated or unincorporated, which by its constitution or propaganda or otherwise advocates or encourages:
    - (i) the overthrow of the Constitution of the Commonwealth by revolution or sabotage;
    - (ii) the overthrow by force or violence of the established government of the Commonwealth or of a State or of any other civilized country or of organized government; or
    - (iii) the destruction or injury of property of the Commonwealth or of property used in trade or commerce with other countries or among the States;or which is, or purports to be, affiliated with any organization which advocates or encourages any of the doctrines or practices specified in this paragraph;
  - (b) any body of persons, incorporated or unincorporated, which by its constitution or propaganda or otherwise advocates or encourages the doing of any act having or purporting to have as an object the carrying out of a seditious intention (see subsection (3)) as defined in section 24A.
- (1A) Without limiting the effect of the provisions of subsection (1), any body of persons, incorporated or unincorporated, which is, in pursuance of section 30AA, declared by the Federal Court of Australia to be an unlawful association, shall be deemed to be an unlawful association for the purposes of this Act.
- (2) Any branch or committee of an unlawful association, and any institution or school conducted by or under the authority or apparent authority of an unlawful association, shall, for all the purposes of this Act, be deemed to be an unlawful association.

[7.3]

not in existing Act

[7.4]

- (3) In this section:
- sedition intention*** means an intention to effect any of the following purposes:
- (a) to bring the Sovereign into hatred or contempt;
  - (b) to urge disaffection against the following:
    - (i) the Constitution;
    - (ii) the Government of the Commonwealth;
    - (iii) either House of the Parliament;
  - (c) to urge another person to attempt, otherwise than by lawful means, to procure a change to any matter established by law in the Commonwealth;
  - (d) to promote feelings of ill-will or hostility between different groups so as to threaten the peace, order and good government of the Commonwealth.



Australian Security Intelligence Organisation Act 1979

4 Definitions

CCL Note: already existing definitions not reproduced here

Part III—Functions and powers of Organisation

Division 2—Special powers

22 Interpretation

In this Division, unless the contrary intention appears:

*carrier* means:

- (a) a carrier within the meaning of the *Telecommunications Act 1997*; or
- (b) a carriage service provider within the meaning of that Act.

*communicate* includes cause to be communicated.

*computer* means a computer, a computer system or part of a computer system.

*data* includes information, a computer program or part of a computer program.

*examination* includes any act or process for the purpose of producing sounds, images or information from a record, and *examine* has a corresponding meaning.

*listening device* means any instrument, device or equipment capable of being used, whether alone or in conjunction with any other instrument, device or equipment, to record or listen to words, images, sounds or signals.

*premises* includes any land, place, vehicle, vessel or aircraft.

*record* when used as a noun, means:

- (a) a document (including any written or printed material); or
- (b) an object (including a sound recording, magnetic tape or disc, microform, photograph or film) by which words, images, sounds or signals are recorded or stored or from which information can be obtained.

*signals* includes light emissions and electromagnetic emissions.

*telecommunications facility* means a facility within the meaning of section 7 of the *Telecommunications Act 1997*.

Australian Security Intelligence Organisation Act 1979

4 Definitions

[10.1]

*data storage device* means a thing (for example, a disk or file server) containing (whether temporarily or permanently), or designed to contain (whether temporarily or permanently), data for use by a computer.

CCL Note: already existing definitions not reproduced here

Part III—Functions and powers of Organisation

Division 2—Special powers

22 Interpretation

In this Division, unless the contrary intention appears:

*carrier* means:

- (a) a carrier within the meaning of the *Telecommunications Act 1997*; or
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*data* includes information, a computer program or part of a computer program.

*examination* includes any act or process for the purpose of producing sounds, images or information from a record, and *examine* has a corresponding meaning.

*listening device* means any instrument, device or equipment capable of being used, whether alone or in conjunction with any other instrument, device or equipment, to record or listen to words, images, sounds or signals.

*premises* includes any land, place, vehicle, vessel or aircraft.

*record* when used as a noun, means:

- (a) a document (including any written or printed material); or
- (b) an object (including a sound recording, magnetic tape or disc, microform, photograph or film) by which words, images, sounds or signals are recorded or stored or from which information can be obtained.

*signals* includes light emissions and electromagnetic emissions.

*telecommunications facility* means a facility within the meaning of section 7 of the *Telecommunications Act 1997*.

not in existing Act

- [10.2] **23 Requesting information or documents from operators of aircraft or vessels**
- [10.2] 

(1) For the purposes of carrying out the Organisation’s functions, an authorised officer or employee may:
  - (a) ask an operator of an aircraft or vessel questions relating to the aircraft or vessel, or its cargo, crew, passengers, stores or voyage; or
  - (b) request an operator of an aircraft or vessel to produce documents relating to the aircraft or vessel, or its cargo, crew, passengers, stores or voyage, that are in the possession or under the control of the operator.

(2) A person who is asked a question or requested to produce a document under subsection (1) must answer the question or produce the document as soon as practicable.

*Offence*

(3) A person commits an offence if:
  - (a) the person is an operator of an aircraft or vessel; and
  - (b) the person is asked a question or requested to produce a document under subsection (1); and
  - (c) the person fails to answer the question or produce the document.

Penalty: 60 penalty units.

(4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(5) It is a defence to a prosecution for an offence against subsection (3) if the person charged had a reasonable excuse for:
  - (a) failing to answer the question; or
  - (b) failing to produce the document.

(6) The Director-General, or a senior officer appointed by the Director-General in writing to be an authorising officer for the purposes of this subsection, may authorise, in writing, an officer or employee of the Organisation, or a class of such officers or employees, for the purposes of this section.

(7) In this section:  
*authorised officer or employee* means an officer or employee who is authorised under subsection (6) for the purposes of this section.  
*operator* has the meaning given by section 4 of the *Customs Act 1901*.
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## 24 Exercise of authority under warrants etc.

- (1) The Director-General, or a senior officer of the Organisation appointed by the Director-General in writing to be an authorising officer for the purposes of this subsection, may, by signed writing, approve officers and employees of the Organisation, and other people, as people authorised to exercise, on behalf of the Organisation, the authority conferred by relevant warrants or relevant device recovery provisions.
- (2) The authority conferred by a relevant warrant or relevant device recovery provision may be exercised on behalf of the Organisation only by the Director-General or an officer, employee or other person approved under subsection (1).
- (3) In this section:

**relevant device recovery provision** means subsection 26(6A), 26B(7), 26C(7), 27A(3A) or (3B).

**relevant warrant** means a warrant issued under section 25, 25A, 26, 26B, 26C, 27, 27A, 27AA, 29 or 34D.

**senior officer of the Organisation** means an officer of the Organisation who holds or performs the duties of an office that is:

- (a) equivalent to a position occupied by an SES employee; or
- (b) designated as an office of Coordinator by the Director-General under section 85.

## 25 Search warrants

### *Issue of search warrant*

- (1) If the Director-General requests the Minister to do so, and the Minister is satisfied as mentioned in subsection (2), the Minister may issue a warrant in accordance with this section.

### *Test for issue of warrant*

- (2) The Minister is only to issue the warrant if he or she is satisfied that there are reasonable grounds for believing that access by the Organisation to records or other things on particular premises (the **subject premises**) will substantially assist the collection of intelligence in accordance with this Act in respect of a matter (the **security matter**) that is important in relation to security.

## 24 Exercise of authority under warrants etc.

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- (2) The authority conferred by a relevant warrant or relevant device recovery provision may be exercised on behalf of the Organisation only by the Director-General or an officer, employee or other person approved under subsection (1).
- (3) In this section:

**relevant device recovery provision** means subsection 26(6A), 26B(7), 26C(7), 27A(3A) or (3B).

**relevant warrant** means a warrant issued under section 25, 25A, 26, 26B, 26C, 27, 27A, 27AA, 29 or 34D.

**senior officer of the Organisation** means an officer of the Organisation who holds or performs the duties of an office that is:

- (a) equivalent to a position occupied by an SES employee; or
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- (2) The Minister is only to issue the warrant if he or she is satisfied that there are reasonable grounds for believing that access by the Organisation to records or other things on particular premises (the **subject premises**) will substantially assist the collection of intelligence in accordance with this Act in respect of a matter (the **security matter**) that is important in relation to security.

*Authorisation in warrant*

- (3) The warrant must be signed by the Minister and must authorise the Organisation to do specified things, subject to any restrictions or conditions specified in the warrant, in relation to the subject premises, which must also be specified in the warrant.

*Things that may be specified in warrant*

- (4) The things that may be specified are any of the following that the Minister considers appropriate in the circumstances:
- (a) entering the subject premises;
  - (b) searching the subject premises for the purpose of finding records or other things relevant to the security matter and, for that purpose, opening any safe, box, drawer, parcel, envelope or other container in which there is reasonable cause to believe that any such records or other things may be found;
  - (c) inspecting or otherwise examining any records or other things so found, and making copies or transcripts of any such record or other thing that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act;
  - (d) removing and retaining for such time as is reasonable any record or other thing so found, for the purposes of:
    - (i) inspecting or examining it; and
    - (ii) in the case of a record—making copies or transcripts of it, in accordance with the warrant;
  - (e) any thing reasonably necessary to conceal the fact that any thing has been done under the warrant;
  - (f) any other thing reasonably incidental to any of the above.

*Authorisation in warrant*

- (3) The warrant must be signed by the Minister and must authorise the Organisation to do specified things, subject to any restrictions or conditions specified in the warrant, in relation to the subject premises, which must also be specified in the warrant.

*Things that may be specified in warrant*

- (4) The things that may be specified are any of the following that the Minister considers appropriate in the circumstances:
- (a) entering the subject premises;
  - (b) searching the subject premises for the purpose of finding records or other things relevant to the security matter and, for that purpose, opening any safe, box, drawer, parcel, envelope or other container in which there is reasonable cause to believe that any such records or other things may be found;
  - (c) inspecting or otherwise examining any records or other things so found, and making copies or transcripts of any such record or other thing that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act;
  - (d) removing and retaining ~~for such time as is reasonable~~ any record or other thing so found, for the purposes of:
    - (i) inspecting or examining it; and
    - (ii) in the case of a record—making copies or transcripts of it, in accordance with the warrant;
  - (e) any thing reasonably necessary to conceal the fact that any thing has been done under the warrant;
  - (f) any other thing reasonably incidental to any of the above.

[10.3]

*Personal searches may be specified*

- (4A) The Minister may also specify any of the following things if he or she considers it appropriate in the circumstances:
- (a) conducting an ordinary search or a frisk search of a person if:
    - (i) the person is at or near the subject premises when the warrant is executed; and
    - (ii) there is reasonable cause to believe that the person has on his or her person records or other things relevant to the security matter;
  - (b) inspecting or otherwise examining any records or other things so found, and making copies or transcripts of any such record or other thing that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act;
  - (c) removing and retaining for such time as is reasonable any record or other thing so found, for the purposes of:
    - (i) inspecting or examining it; and
    - (ii) in the case of a record—making copies or transcripts of it, in accordance with the warrant.

*Certain personal searches not authorised*

- (4B) Subsection (4A) does not authorise a strip search or a search of a person’s body cavities.

*Personal searches may be specified*

- (4A) The Minister may also specify any of the following things if he or she considers it appropriate in the circumstances:
- (a) conducting an ordinary search or a frisk search of a person if:
    - (i) the person is at or near the subject premises when the warrant is executed; and
    - (ii) there is reasonable cause to believe that the person has on his or her person records or other things relevant to the security matter;
  - (b) inspecting or otherwise examining any records or other things so found, and making copies or transcripts of any such record or other thing that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act;
  - (c) removing and retaining ~~for such time as is reasonable~~ any record or other thing so found, for the purposes of:
    - (i) inspecting or examining it; and
    - (ii) in the case of a record—making copies or transcripts of it, in accordance with the warrant.

[10.4]

*Certain personal searches not authorised*

- (4B) Subsection (4A) does not authorise a strip search or a search of a person’s body cavities.

[10.5]

*Time period for retaining records and other things*

- (4C) A record or other thing retained as mentioned in paragraph (4)(d) or (4A)(c) may be retained for only such time as is reasonable, unless returning the record or thing would be prejudicial to security.

*Other things that may be specified*

- (5) The Minister may also specify any of the following things if he or she considers it appropriate in the circumstances:
- (a) where there is reasonable cause to believe that data relevant to the security matter may be accessible by using a computer or other electronic equipment found on the subject premises—using the computer or other electronic equipment for the purpose of obtaining access to any such data and, if necessary to achieve that purpose, adding, deleting or altering other data in the computer or other electronic equipment;
  - (b) using the computer or other electronic equipment to do any of the following:
    - (i) inspecting and examining any data to which access has been obtained;
    - (ii) converting any data to which access has been obtained, that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act, into documentary form and removing any such document;
    - (iii) copying any data to which access has been obtained, that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act, to a storage device and removing the storage device;
  - (c) any thing reasonably necessary to conceal the fact that any thing has been done under the warrant;
  - (d) any other thing reasonably incidental to any of the above.

*Certain acts not authorised*

- (6) Subsection (5) does not authorise the addition, deletion or alteration of data, or the doing of any thing, that interferes with, interrupts or obstructs the lawful use of the computer or other electronic equipment by other persons, or that causes any loss or damage to other persons lawfully using the computer or other electronic equipment.

*Other things that may be specified*

- (5) The Minister may also specify any of the following things if he or she considers it appropriate in the circumstances:
- [10.5] (a) where there is reasonable cause to believe that data relevant to the security matter may be accessible by using a computer or other electronic equipment, ~~or a data storage device, brought to or found on the subject premises—using the computer, equipment or device or other electronic equipment~~ for the purpose of obtaining access to any such data and, if necessary to achieve that purpose, adding, deleting or altering other data in the computer, ~~equipment or device or other electronic equipment~~;
  - [10.6] (b) using the computer ~~equipment or device or other electronic equipment~~ to do any of the following:
    - [10.7] (i) inspecting and examining any data to which access has been obtained;
    - (ii) converting any data to which access has been obtained, that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act, into documentary form and removing any such document;
    - [10.8] (iii) copying any data to which access has been obtained, that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act, to ~~any data storage device a storage device~~ and removing the ~~device the storage device~~;
    - [10.9] (c) any thing reasonably necessary to conceal the fact that any thing has been done under the warrant;
    - (d) any other thing reasonably incidental to any of the above.

*Certain acts not authorised*

- [10.10] (6) Subsection (5) does not authorise the addition, deletion or alteration of data, or the doing of any thing, that interferes with, interrupts or obstructs the lawful use ~~of the computer or other electronic equipment by other persons~~ by other persons of a computer or other electronic equipment, or a data storage device, found on the subject premises, or that causes any loss or damage to other persons lawfully using the computer, ~~equipment or device, or other electronic equipment~~
- [10.11]

Authorisation of entry measures

- (7) The warrant must:
- (a) authorise the use of any force that is necessary and reasonable to do the things specified in the warrant; and
  - (b) state whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night.

Statement about warrant coming into force

- (8) The warrant may state that it comes into force on a specified day (after the day of issue) or when a specified event happens. The day must not begin nor the event happen more than 28 days after the end of the day on which the warrant is issued.

When warrant comes into force

- (9) If the warrant includes such a statement, it comes into force at the beginning of the specified day or when the specified event happens. Otherwise, it comes into force when it is issued.

Duration of warrant

- (10) The warrant must specify the period during which it is to be in force. The period must not be more than 28 days, although the Minister may revoke the warrant before the period has expired.

Issue of further warrants not prevented

- (11) Subsection (10) does not prevent the issue of any further warrant.

25AA Conduct of ordinary or frisk search under search warrant

An ordinary search or frisk search of a person that is authorised under paragraph 25(4A)(a) must, if practicable, be conducted by a person of the same sex as the person being searched.

Authorisation of entry measures

- (7) The warrant must:
- (a) authorise the use of any force that is necessary and reasonable to do the things specified in the warrant; and
  - (b) state whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night.

Statement about warrant coming into force

- (8) The warrant may state that it comes into force on a specified day (after the day of issue) or when a specified event happens. The day must not begin nor the event happen more than 28 days after the end of the day on which the warrant is issued.

When warrant comes into force

- (9) If the warrant includes such a statement, it comes into force at the beginning of the specified day or when the specified event happens. Otherwise, it comes into force when it is issued.

Duration of warrant

- [10.12] (10) The warrant must specify the period during which it is to be in force. The period must not be more than 90 days ~~28 days~~, although the Minister may revoke the warrant before the period has expired.

Issue of further warrants not prevented

- (11) Subsection (10) does not prevent the issue of any further warrant.

25AA Conduct of ordinary or frisk search under search warrant

An ordinary search or frisk search of a person that is authorised under paragraph 25(4A)(a) must, if practicable, be conducted by a person of the same sex as the person being searched.

25A Computer access warrant

Issue of computer access warrant

- (1) If the Director-General requests the Minister to do so, and the Minister is satisfied as mentioned in subsection (2), the Minister may issue a warrant in accordance with this section.

Test for issue of warrant

- (2) The Minister is only to issue the warrant if he or she is satisfied that there are reasonable grounds for believing that access by the Organisation to data held in a particular computer (the **target computer**) will substantially assist the collection of intelligence in accordance with this Act in respect of a matter (the **security matter**) that is important in relation to security.

Authorisation in warrant

- (3) The warrant must be signed by the Minister and must authorise the Organisation to do specified things, subject to any restrictions or conditions specified in the warrant, in relation to the target computer, which must also be specified in the warrant.
- (4) The things that may be specified are any of the following that the Minister considers appropriate in the circumstances:

- (a) using:
- (i) a computer; or
  - (ii) a telecommunications facility operated or provided by the Commonwealth or a carrier; or
  - (iii) any other electronic equipment;

for the purpose of obtaining access to data that is relevant to the security matter and is stored in the target computer and, if necessary to achieve that purpose, adding, deleting or altering other data in the target computer;

- (b) copying any data to which access has been obtained, that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act;
- (c) any thing reasonably necessary to conceal the fact that any thing has been done under the warrant;
- (d) any other thing reasonably incidental to any of the above.

Note: As a result of the warrant, an ASIO officer who, by means of a telecommunications facility, obtains access to data stored in the target computer etc. will not commit an offence under Part 10-7 of the *Criminal Code* or equivalent State or Territory laws (provided that the ASIO officer acts within the authority of the warrant).

25A Computer access warrant

Issue of computer access warrant

- (1) If the Director-General requests the Minister to do so, and the Minister is satisfied as mentioned in subsection (2), the Minister may issue a warrant in accordance with this section.

Test for issue of warrant

- (2) The Minister is only to issue the warrant if he or she is satisfied that there are reasonable grounds for believing that access by the Organisation to data held in a particular computer (the **target computer**) will substantially assist the collection of intelligence in accordance with this Act in respect of a matter (the **security matter**) that is important in relation to security.

Authorisation in warrant

- (3) The warrant must be signed by the Minister and must authorise the Organisation to do specified things, subject to any restrictions or conditions specified in the warrant, in relation to the target computer, which must also be specified in the warrant.
- (4) The things that may be specified are any of the following that the Minister considers appropriate in the circumstances:

[10.13] (aa) entering specified premises for the purposes of doing the things mentioned in this subsection;

- (a) using:
- (i) a computer; or
  - (ii) a telecommunications facility operated or provided by the Commonwealth or a carrier; or
  - (iii) any other electronic equipment;

[10.14] (iv) a data storage device;

for the purpose of obtaining access to data that is relevant to the security matter and is stored in the target computer and, if necessary to achieve that purpose, adding, deleting or altering other data in the target computer;

- (b) copying any data to which access has been obtained, that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act;
- (c) any thing reasonably necessary to conceal the fact that any thing has been done under the warrant;
- (d) any other thing reasonably incidental to any of the above.

Note: As a result of the warrant, an ASIO officer who, by means of a telecommunications facility, obtains access to data stored in the target computer etc. will not commit an offence under Part 10-7 of the *Criminal Code* or equivalent State or Territory laws (provided that the ASIO officer acts within the authority of the warrant).



*Certain acts not authorised*

- (5) Subsection (4) does not authorise the addition, deletion or alteration of data, or the doing of any thing, that interferes with, interrupts or obstructs the lawful use of the target computer by other persons, or that causes any loss or damage to other persons lawfully using the target computer.

*Duration of warrant*

- (6) The warrant must specify the period during which it is to remain in force. The period must not be more than 6 months, although the Minister may revoke the warrant before the period has expired.

*Issue of further warrants not prevented*

- (7) Subsection (6) does not prevent the issue of any further warrant.

**26 Use of listening devices**

*CCL note: section reproduced*

**26A Unlawful and lawful uses of tracking devices**

*CCL note: section reproduced*

**26B Tracking device warrants relating to persons**

*CCL note: section reproduced*

**26C Tracking device warrants relating to objects**

*CCL note: section reproduced*

*Certain acts not authorised*

- (5) Subsection (4) does not authorise the addition, deletion or alteration of data, or the doing of any thing, that interferes with, interrupts or obstructs the lawful use of the target computer by other persons, or that causes any loss or damage to other persons lawfully using the target computer.

*Authorisation of entry measures*

[10.15]

- (5A) The warrant must:
  - (a) authorise the use of any force that is necessary and reasonable to do the things specified in the warrant; and
  - (b) state whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night.

*Duration of warrant*

- (6) The warrant must specify the period during which it is to remain in force. The period must not be more than 6 months, although the Minister may revoke the warrant before the period has expired.

*Issue of further warrants not prevented*

- (7) Subsection (6) does not prevent the issue of any further warrant.

**26 Use of listening devices**

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**26A Unlawful and lawful uses of tracking devices**

*CCL note: section reproduced*

**26B Tracking device warrants relating to persons**

*CCL note: section reproduced*

**26C Tracking device warrants relating to objects**

*CCL note: section reproduced*

## **27 Inspection of postal articles**

(1) It is unlawful:

- (a) for a person, being an officer, employee or agent of the Organisation acting in his or her capacity as such, to seek from the Australian Postal Corporation or from an employee or agent of that Corporation; or
- (b) for that Corporation or an employee or agent of that Corporation to provide to such a person;

access to a postal article that is in the course of the post or information concerning the contents or cover of any postal article except in pursuance of, or for the purposes of, a warrant under this section or section 27A, and it is the duty of the Director-General to take all reasonable steps to ensure that this subsection is not contravened.

(2) Where, upon receipt by the Minister of a request by the Director-General for the issue of a warrant under this section in relation to a person, the Minister is satisfied that:

- (a) that person is engaged in or is reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
- (b) access by the Organisation to postal articles posted by or on behalf of, addressed to or intended to be received by, that person, while the articles are in the course of the post, will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security;

the Minister may, by warrant under his or her hand, authorize the Organisation to do such of the following acts and things as the Minister considers appropriate in the circumstances, namely, with respect to postal articles in the course of the post that were posted by or on behalf of, or are addressed to, that person or are reasonably suspected by a person authorized to exercise the authority of the Organisation under the warrant to be intended to be received by that person, to inspect, and make copies of, or of the covers of, the articles, and to open the articles and inspect and make copies of the contents of any such article.

## **27 Inspection of postal articles**

(1) It is unlawful:

- (a) for a person, being an officer, employee or agent of the Organisation acting in his or her capacity as such, to seek from the Australian Postal Corporation or from an employee or agent of that Corporation; or
- (b) for that Corporation or an employee or agent of that Corporation to provide to such a person;

access to a postal article that is in the course of the post or information concerning the contents or cover of any postal article except in pursuance of, or for the purposes of, a warrant under this section or section 27A, and it is the duty of the Director-General to take all reasonable steps to ensure that this subsection is not contravened.

(2) Where, upon receipt by the Minister of a request by the Director-General for the issue of a warrant under this section in relation to a person, the Minister is satisfied that:

- (a) that person is engaged in or is reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
- (b) access by the Organisation to postal articles posted by or on behalf of, addressed to or intended to be received by, that person, while the articles are in the course of the post, will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security;

the Minister may, by warrant under his or her hand, authorize the Organisation to do such of the following acts and things as the Minister considers appropriate in the circumstances, namely, with respect to postal articles in the course of the post that were posted by or on behalf of, or are addressed to, that person or are reasonably suspected by a person authorized to exercise the authority of the Organisation under the warrant to be intended to be received by that person, to inspect, and make copies of, or of the covers of, the articles, and to open the articles and inspect and make copies of the contents of any such article.

- (3) Where, upon receipt by the Minister of a request by the Director-General for the issue of a warrant under this section in relation to an address, the Minister is satisfied that:
- (a) some or all of the postal articles that are being, or are likely to be, sent by post to that address are or will be intended to be received by a person (whether of known identity or not) engaged in, or reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
  - (b) access by the Organisation to postal articles posted to that address and intended to be received by the person referred to in paragraph (a) will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security;
- the Minister may, by warrant under his or her hand, authorize the Organisation to do such of the following acts and things as the Minister considers appropriate in the circumstances, namely, with respect to postal articles in the course of the post that are addressed to that address and appear on their face to be, or are reasonably suspected by a person authorized to exercise the authority of the Organisation under the warrant to be, intended to be received by the person referred to in paragraph (a), to inspect, and make copies of, or of the covers of, the articles and to open the articles and inspect and make copies of the contents of any such article.
- (4) A warrant under this section shall specify the period for which it is to remain in force, being a period not exceeding 90 days, but may be revoked by the Minister at any time before the expiration of the period so specified.
- (5) Subsection (4) shall not be construed as preventing the issue of any further warrant.
- (6) Where the Director-General is informed under section 32 of the issue of a warrant under this section, the Director-General must:
- (a) cause the Australian Postal Corporation to be informed of the issue of the warrant without delay; and
  - (b) where, under section 32, the Director-General receives the warrant—cause a certified copy of the warrant to be given to the Australian Postal Corporation as soon as practicable.

- (3) Where, upon receipt by the Minister of a request by the Director-General for the issue of a warrant under this section in relation to an address, the Minister is satisfied that:
- (a) some or all of the postal articles that are being, or are likely to be, sent by post to that address are or will be intended to be received by a person (whether of known identity or not) engaged in, or reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
  - (b) access by the Organisation to postal articles posted to that address and intended to be received by the person referred to in paragraph (a) will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security;
- the Minister may, by warrant under his or her hand, authorize the Organisation to do such of the following acts and things as the Minister considers appropriate in the circumstances, namely, with respect to postal articles in the course of the post that are addressed to that address and appear on their face to be, or are reasonably suspected by a person authorized to exercise the authority of the Organisation under the warrant to be, intended to be received by the person referred to in paragraph (a), to inspect, and make copies of, or of the covers of, the articles and to open the articles and inspect and make copies of the contents of any such article.
- [10.16] (4) A warrant under this section shall specify the period for which it is to remain in force, being a period not exceeding ~~6 months~~ 90 days, but may be revoked by the Minister at any time before the expiration of the period so specified.
- (5) Subsection (4) shall not be construed as preventing the issue of any further warrant.
- (6) Where the Director-General is informed under section 32 of the issue of a warrant under this section, the Director-General must:
- (a) cause the Australian Postal Corporation to be informed of the issue of the warrant without delay; and
  - (b) where, under section 32, the Director-General receives the warrant—cause a certified copy of the warrant to be given to the Australian Postal Corporation as soon as practicable.

(6A) Where:

- (a) the Director-General has been informed under section 32 of the issue of a warrant under this section; and
- (b) the Director-General is informed under that section that the warrant has been revoked;

the Director-General must:

- (c) cause the Australian Postal Corporation to be informed of the revocation without delay; and
- (d) where, under section 32, the Director-General receives the instrument of revocation—cause a certified copy of the instrument of revocation to be given to the Australian Postal Corporation as soon as practicable.

(7) The Australian Postal Corporation shall give to a person acting in pursuance of a warrant under this section all reasonable assistance.

(8) Nothing in Part VIIA of the *Crimes Act 1914* or the *Australian Postal Corporation Act 1989* shall be taken to prohibit the doing of anything in pursuance of, or for the purposes of, a warrant under this section.

(9) Nothing in subsection (1) applies in relation to a postal article addressed to, or appearing to be intended to be received by or on behalf of, the Organisation.

(10) In this section:

**address** means any premises or place (including a post office box or bag service) to which postal articles may be addressed.

**agent**, in relation to the Australian Postal Corporation, includes any person performing services for that Corporation otherwise than under a contract of service and an employee of such a person.

(6A) Where:

- (a) the Director-General has been informed under section 32 of the issue of a warrant under this section; and
- (b) the Director-General is informed under that section that the warrant has been revoked;

the Director-General must:

- (c) cause the Australian Postal Corporation to be informed of the revocation without delay; and
- (d) where, under section 32, the Director-General receives the instrument of revocation—cause a certified copy of the instrument of revocation to be given to the Australian Postal Corporation as soon as practicable.

(7) The Australian Postal Corporation shall give to a person acting in pursuance of a warrant under this section all reasonable assistance.

(8) Nothing in Part VIIA of the *Crimes Act 1914* or the *Australian Postal Corporation Act 1989* shall be taken to prohibit the doing of anything in pursuance of, or for the purposes of, a warrant under this section.

(9) Nothing in subsection (1) applies in relation to a postal article addressed to, or appearing to be intended to be received by or on behalf of, the Organisation.

(10) In this section:

**address** means any premises or place (including a post office box or bag service) to which postal articles may be addressed.

**agent**, in relation to the Australian Postal Corporation, includes any person performing services for that Corporation otherwise than under a contract of service and an employee of such a person.

## 27AA Inspection of delivery service articles

### *Unlawful access to delivery service articles*

(1) It is unlawful for:

- (a) an officer, employee or agent of the Organisation, for the purposes of the Organisation, to seek from a delivery service provider or from an employee or agent of a delivery service provider; or
- (b) a delivery service provider or an employee or agent of a delivery service provider to give an officer, employee or agent of the Organisation, for the purposes of the Organisation;

access to:

- (c) an article that is being delivered by the delivery service provider; or
- (d) information concerning the contents or cover of any such article;

except in accordance with, or for the purposes of, a warrant under this Division. It is the duty of the Director-General to take all reasonable steps to ensure that this subsection is not contravened.

Note: **Delivery service provider, agent and article** are defined in subsection (12).

### *Issue of delivery services warrant*

- (2) If the Director-General requests the Minister to do so, and the Minister is satisfied as mentioned in subsection (3) or (6), the Minister may issue a warrant in accordance with this section.

### *Test 1 for issue of warrant*

(3) The Minister may issue a warrant if he or she is satisfied that:

- (a) a person (the **subject**) is engaged in or is reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
- (b) access by the Organisation to articles sent by or on behalf of, addressed to or intended to be received by, the subject while the articles are being delivered by a delivery service provider, will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security.

## 27AA Inspection of delivery service articles

### *Unlawful access to delivery service articles*

(1) It is unlawful for:

- (a) an officer, employee or agent of the Organisation, for the purposes of the Organisation, to seek from a delivery service provider or from an employee or agent of a delivery service provider; or
- (b) a delivery service provider or an employee or agent of a delivery service provider to give an officer, employee or agent of the Organisation, for the purposes of the Organisation;

access to:

- (c) an article that is being delivered by the delivery service provider; or
- (d) information concerning the contents or cover of any such article;

except in accordance with, or for the purposes of, a warrant under this Division. It is the duty of the Director-General to take all reasonable steps to ensure that this subsection is not contravened.

Note: **Delivery service provider, agent and article** are defined in subsection (12).

### *Issue of delivery services warrant*

- (2) If the Director-General requests the Minister to do so, and the Minister is satisfied as mentioned in subsection (3) or (6), the Minister may issue a warrant in accordance with this section.

### *Test 1 for issue of warrant*

(3) The Minister may issue a warrant if he or she is satisfied that:

- (a) a person (the **subject**) is engaged in or is reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
- (b) access by the Organisation to articles sent by or on behalf of, addressed to or intended to be received by, the subject while the articles are being delivered by a delivery service provider, will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security.

*Authorisation in warrant*

- (4) The warrant must be signed by the Minister and must authorise the Organisation to do specified things, subject to any restrictions or conditions specified in the warrant, in relation to articles that:
- (a) are being delivered by the delivery service provider; and
  - (b) in respect of which any of the following are satisfied:
    - (i) the articles have been sent by or on behalf of the subject, who must be specified in the warrant, or addressed to the subject; or
    - (ii) the articles are reasonably suspected, by a person authorised to exercise the authority of the Organisation under the warrant, of having been so sent or addressed; or
    - (iii) the articles are intended to be received by the subject, who must be specified in the warrant, or are reasonably suspected, by a person authorised to exercise the authority of the Organisation under the warrant, of being intended to be received by the subject.

*Things that may be specified for a warrant issued under subsection (3)*

- (5) The things that may be specified are any of the following that the Minister considers appropriate in the circumstances:
- (a) inspecting or making copies of the articles or the covers of the articles;
  - (b) opening the articles;
  - (c) inspecting and making copies of the contents of the articles;
  - (d) any other thing reasonably incidental to any of the above.

*Test 2 for issue of warrant*

- (6) The Minister may issue a warrant if he or she is satisfied that:
- (a) some or all of the articles that are being, or are likely to be, sent by a delivery service provider to an address (the **subject address**) are, or will be intended to be, received by a person (the **subject**) (whether of known identity or not) engaged in, or reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
  - (b) access by the Organisation to articles sent to, or intended to be received by, the subject while the articles are being delivered by a delivery service provider will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security.

*Authorisation in warrant*

- (4) The warrant must be signed by the Minister and must authorise the Organisation to do specified things, subject to any restrictions or conditions specified in the warrant, in relation to articles that:
- (a) are being delivered by the delivery service provider; and
  - (b) in respect of which any of the following are satisfied:
    - (i) the articles have been sent by or on behalf of the subject, who must be specified in the warrant, or addressed to the subject; or
    - (ii) the articles are reasonably suspected, by a person authorised to exercise the authority of the Organisation under the warrant, of having been so sent or addressed; or
    - (iii) the articles are intended to be received by the subject, who must be specified in the warrant, or are reasonably suspected, by a person authorised to exercise the authority of the Organisation under the warrant, of being intended to be received by the subject.

*Things that may be specified for a warrant issued under subsection (3)*

- (5) The things that may be specified are any of the following that the Minister considers appropriate in the circumstances:
- (a) inspecting or making copies of the articles or the covers of the articles;
  - (b) opening the articles;
  - (c) inspecting and making copies of the contents of the articles;
  - (d) any other thing reasonably incidental to any of the above.

*Test 2 for issue of warrant*

- (6) The Minister may issue a warrant if he or she is satisfied that:
- (a) some or all of the articles that are being, or are likely to be, sent by a delivery service provider to an address (the **subject address**) are, or will be intended to be, received by a person (the **subject**) (whether of known identity or not) engaged in, or reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
  - (b) access by the Organisation to articles sent to, or intended to be received by, the subject while the articles are being delivered by a delivery service provider will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security.

*Authorisation in warrant*

- (7) The warrant must be signed by the Minister and must authorise the Organisation to do specified things, subject to any restrictions or conditions specified in the warrant, in relation to articles that:
- (a) are being delivered by the delivery service provider; and
  - (b) are addressed to the subject address, which must be specified in the warrant; and
  - (c) appear on their face to be, or are reasonably suspected by a person authorised to exercise the authority of the Organisation under the warrant to be, intended to be received by the subject.

*Things that may be specified for warrant issued under subsection (6)*

- (8) The things that may be specified are any of the following that the Minister considers appropriate in the circumstances:
- (a) inspecting or making copies of any of the articles or the covers of the articles;
  - (b) opening any of the articles;
  - (c) inspecting and making copies of the contents of any of the articles;
  - (d) any other thing reasonably incidental to any of the above.

*Duration of warrant*

- (9) A warrant issued under this section must specify the period during which it is to remain in force. The period must not be more than 90 days, although the Minister may revoke the warrant before the period has expired.

*Issue of further warrants not prevented*

- (10) Subsection (9) does not prevent the issue of any further warrant.

*Definitions*

- (11) To avoid doubt, the expression **deliver** an article includes any thing done by the deliverer, for the purpose of delivering the article, from the time when the article is given to the deliverer by the sender until it is given by the deliverer to the recipient.

- (12) In this section:

**agent**, in relation to a delivery service provider, includes:

- (a) any person performing services for the delivery service provider otherwise than under a contract of service; and
- (b) an employee of the person mentioned in paragraph (a).

**article** means any object reasonably capable of being sent through the post.

**delivery service provider** means a person whose business is or includes delivering articles.

*Authorisation in warrant*

- (7) The warrant must be signed by the Minister and must authorise the Organisation to do specified things, subject to any restrictions or conditions specified in the warrant, in relation to articles that:
- (a) are being delivered by the delivery service provider; and
  - (b) are addressed to the subject address, which must be specified in the warrant; and
  - (c) appear on their face to be, or are reasonably suspected by a person authorised to exercise the authority of the Organisation under the warrant to be, intended to be received by the subject.

*Things that may be specified for warrant issued under subsection (6)*

- (8) The things that may be specified are any of the following that the Minister considers appropriate in the circumstances:
- (a) inspecting or making copies of any of the articles or the covers of the articles;
  - (b) opening any of the articles;
  - (c) inspecting and making copies of the contents of any of the articles;
  - (d) any other thing reasonably incidental to any of the above.

*Duration of warrant*

[10.17]

- (9) A warrant issued under this section must specify the period during which it is to remain in force. The period must not be more than 6 months 90 days, although the Minister may revoke the warrant before the period has expired.

*Issue of further warrants not prevented*

- (10) Subsection (9) does not prevent the issue of any further warrant.

*Definitions*

- (11) To avoid doubt, the expression **deliver** an article includes any thing done by the deliverer, for the purpose of delivering the article, from the time when the article is given to the deliverer by the sender until it is given by the deliverer to the recipient.

- (12) In this section:

**agent**, in relation to a delivery service provider, includes:

- (a) any person performing services for the delivery service provider otherwise than under a contract of service; and
- (b) an employee of the person mentioned in paragraph (a).

**article** means any object reasonably capable of being sent through the post.

**delivery service provider** means a person whose business is or includes delivering articles.

27A Warrants for the performance of functions under paragraph 17(1)(e)

- (1) Where:
- (a) the Director-General gives a notice in writing to the Minister requesting the Minister to issue a warrant under this section in relation to premises, a person, a computer or a thing identified in the notice authorising the Organisation to do acts or things referred to in whichever of subsections 25(4) or (5), 25A(4), 26(3) or (4), 26B(3), 26C(3), 27(2) or (3) or 27AA(5) or (8) is or are specified in the notice for the purpose of obtaining foreign intelligence relating to a matter specified in the notice; and
  - (b) the Minister is satisfied, on the basis of advice received from the relevant Minister, that the collection of foreign intelligence relating to that matter is important in relation to the defence of the Commonwealth or to the conduct of the Commonwealth's international affairs;
- the Minister may, by warrant under his or her hand, authorise the Organisation, subject to any conditions or restrictions that are specified in the warrant, to do such of those acts or things in relation to those premises, that person, that computer or those things as the Minister considers appropriate in the circumstances and are specified in the warrant for the purpose of obtaining that intelligence.
- (2) The warrant must:
- (a) authorise the use of any force that is necessary and reasonable to do the things mentioned in subsection (1); and
  - (b) state whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night.
- (3) A warrant under this section shall specify the period for which it is to remain in force, being a period not exceeding:
- (a) in a case where the warrant authorises the doing of acts or things referred to in subsection 25(4) or (5)—28 days;
  - (b) in a case where the warrant authorises the doing of acts or things referred to in subsection 25A(4), 26(3) or (4), 26B(3) or 26C(3)—6 months; or
  - (c) in a case where the warrant authorises the doing of acts or things referred to in subsection 27(2) or (3) or 27AA(5) or (8)—90 days;
- but may be revoked by the Minister at any time before the end of the period so specified.

27A Warrants for the performance of functions under paragraph 17(1)(e)

- (1) Where:
- (a) the Director-General gives a notice in writing to the Minister requesting the Minister to issue a warrant under this section in relation to premises, a person, a computer or a thing identified in the notice authorising the Organisation to do acts or things referred to in whichever of subsections 25(4) or (5), 25A(4), 26(3) or (4), 26B(3), 26C(3), 27(2) or (3) or 27AA(5) or (8) is or are specified in the notice for the purpose of obtaining foreign intelligence relating to a matter specified in the notice; and
  - (b) the Minister is satisfied, on the basis of advice received from the relevant Minister, that the collection of foreign intelligence relating to that matter is important in relation to the defence of the Commonwealth or to the conduct of the Commonwealth's international affairs;
- the Minister may, by warrant under his or her hand, authorise the Organisation, subject to any conditions or restrictions that are specified in the warrant, to do such of those acts or things in relation to those premises, that person, that computer or those things as the Minister considers appropriate in the circumstances and are specified in the warrant for the purpose of obtaining that intelligence.
- (2) The warrant must:
- (a) authorise the use of any force that is necessary and reasonable to do the things mentioned in subsection (1); and
  - (b) state whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night.
- (3) A warrant under this section shall specify the period for which it is to remain in force, being a period not exceeding:
- (a) in a case where the warrant authorises the doing of acts or things referred to in subsection 25(4) or (5)—90 days ~~28 days~~;
  - (b) in a case where the warrant authorises the doing of acts or things referred to in subsection 25A(4), 26(3) or (4), 26B(3), 26C(3), 27(2) or (3) or 27AA(5) or (8)—6 months; ~~or 26C(3)—6 months; or~~
  - (c) ~~in a case where the warrant authorises the doing of acts or things referred to in subsection 27(2) or (3) or 27AA(5) or (8)—90 days;~~
- but may be revoked by the Minister at any time before the end of the period so specified.



- (3A) If a listening device is installed in accordance with a warrant under this section authorising the doing of acts referred to in subsection 26(3) or (4), the Organisation is authorised to do any of the following:
- (a) enter any premises for the purpose of recovering the listening device;
  - (b) recover the listening device;
  - (c) use any force that is necessary and reasonable to do either of the above;
- at the following time:
- (d) at any time while the warrant is in force or within 28 days after it ceases to be in force;
  - (e) if the listening device is not recovered at a time mentioned in paragraph (d)—at the earliest time, after the 28 days mentioned in that paragraph, at which it is reasonably practicable to do the things concerned.
- (3B) If a tracking device is applied to a target object in accordance with a warrant under this section authorising the doing of acts referred to in subsection 26B(3) or 26C(3), the Organisation is authorised to do any of the following:
- (a) enter any premises in which the target object is or is likely to be found, for the purpose of recovering the tracking device;
  - (b) enter or alter the target object for the purpose of recovering the tracking device;
  - (c) recover the tracking device;
  - (d) use any force that is necessary and reasonable to do any of the above;
- at the following time:
- (e) at any time while the warrant is in force or within 28 days after it ceases to be in force;
  - (f) if the tracking device is not recovered at a time mentioned in paragraph (e)—at the earliest time, after the 28 days mentioned in that paragraph, at which it is reasonably practicable to do the things concerned.
- (4) Subsection (3) shall not be construed as preventing the issue of any further warrant.
- (5) Nothing in this section, or in a warrant under this section, applies to or in relation to the use of a listening device for a purpose that would, for the purposes of the *Telecommunications (Interception) Act 1979*, constitute the interception of a communication passing over a telecommunications system controlled by Telstra Corporation Limited.
- (6) Where the Director-General is informed under section 32 of the issue of a warrant under this section authorising the doing of acts or things referred to in subsection 27(2) or (3), the Director-General must:
- (a) cause the Australian Postal Corporation to be informed of the issue of the warrant without delay; and
  - (b) where, under section 32, the Director-General receives the warrant—cause a certified copy of the warrant to be given to the Australian Postal Corporation as soon as practicable.

- (3A) If a listening device is installed in accordance with a warrant under this section authorising the doing of acts referred to in subsection 26(3) or (4), the Organisation is authorised to do any of the following:
- (a) enter any premises for the purpose of recovering the listening device;
  - (b) recover the listening device;
  - (c) use any force that is necessary and reasonable to do either of the above;
- at the following time:
- (d) at any time while the warrant is in force or within 28 days after it ceases to be in force;
  - (e) if the listening device is not recovered at a time mentioned in paragraph (d)—at the earliest time, after the 28 days mentioned in that paragraph, at which it is reasonably practicable to do the things concerned.
- (3B) If a tracking device is applied to a target object in accordance with a warrant under this section authorising the doing of acts referred to in subsection 26B(3) or 26C(3), the Organisation is authorised to do any of the following:
- (a) enter any premises in which the target object is or is likely to be found, for the purpose of recovering the tracking device;
  - (b) enter or alter the target object for the purpose of recovering the tracking device;
  - (c) recover the tracking device;
  - (d) use any force that is necessary and reasonable to do any of the above;
- at the following time:
- (e) at any time while the warrant is in force or within 28 days after it ceases to be in force;
  - (f) if the tracking device is not recovered at a time mentioned in paragraph (e)—at the earliest time, after the 28 days mentioned in that paragraph, at which it is reasonably practicable to do the things concerned.
- (4) Subsection (3) shall not be construed as preventing the issue of any further warrant.
- (5) Nothing in this section, or in a warrant under this section, applies to or in relation to the use of a listening device for a purpose that would, for the purposes of the *Telecommunications (Interception) Act 1979*, constitute the interception of a communication passing over a telecommunications system controlled by Telstra Corporation Limited.
- (6) Where the Director-General is informed under section 32 of the issue of a warrant under this section authorising the doing of acts or things referred to in subsection 27(2) or (3), the Director-General must:
- (a) cause the Australian Postal Corporation to be informed of the issue of the warrant without delay; and
  - (b) where, under section 32, the Director-General receives the warrant—cause a certified copy of the warrant to be given to the Australian Postal Corporation as soon as practicable.

(6A) Where:

- (a) the Director-General has been informed under section 32 of the issue of a warrant under this section authorising the doing of acts or things referred to in subsection 27(2) or (3); and
- (b) the Director-General is informed under section 32 that the warrant has been revoked;

the Director-General must:

- (c) cause the Australian Postal Corporation to be informed of the revocation without delay; and
- (d) where, under section 32, the Director-General receives the instrument of revocation—cause a certified copy of the instrument of revocation to be given to the Australian Postal Corporation as soon as practicable.

- (7) The Australian Postal Corporation shall give to a person acting pursuant to a warrant under this section authorising the doing of acts or things referred to in subsection 27(2) or (3) all reasonable assistance.
- (8) Nothing in Part VIIA of the *Crimes Act 1914* or the *Australian Postal Corporation Act 1989* shall be taken to prohibit the doing of anything pursuant to, or for the purposes of, a warrant under this section.
- (9) The Director-General shall not request the issue of a warrant under this section for the purpose of collecting information concerning an Australian citizen or a permanent resident.
- (10) The reference in subsection (1) to conditions or restrictions includes a reference to conditions or restrictions designed to minimise the obtaining by the Organisation, pursuant to a warrant issued under that subsection, of information that is not publicly available concerning Australian citizens or permanent residents, or to minimise the retention of information of that kind.

(6A) Where:

- (a) the Director-General has been informed under section 32 of the issue of a warrant under this section authorising the doing of acts or things referred to in subsection 27(2) or (3); and
- (b) the Director-General is informed under section 32 that the warrant has been revoked;

the Director-General must:

- (c) cause the Australian Postal Corporation to be informed of the revocation without delay; and
- (d) where, under section 32, the Director-General receives the instrument of revocation—cause a certified copy of the instrument of revocation to be given to the Australian Postal Corporation as soon as practicable.

- (7) The Australian Postal Corporation shall give to a person acting pursuant to a warrant under this section authorising the doing of acts or things referred to in subsection 27(2) or (3) all reasonable assistance.
- (8) Nothing in Part VIIA of the *Crimes Act 1914* or the *Australian Postal Corporation Act 1989* shall be taken to prohibit the doing of anything pursuant to, or for the purposes of, a warrant under this section.
- (9) The Director-General shall not request the issue of a warrant under this section for the purpose of collecting information concerning an Australian citizen or a permanent resident.
- (10) The reference in subsection (1) to conditions or restrictions includes a reference to conditions or restrictions designed to minimise the obtaining by the Organisation, pursuant to a warrant issued under that subsection, of information that is not publicly available concerning Australian citizens or permanent residents, or to minimise the retention of information of that kind.

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**Division 3—Special powers relating to terrorism offences**

*CCL note: intervening sections not reproduced*

**Subdivision B—Questioning, detention etc.**

*CCL note: intervening sections not reproduced*

**34G Giving information and producing things etc.**

- (1) A person must appear before a prescribed authority for questioning, as required by a warrant issued under section 34D or a direction given under section 34F.

Penalty: Imprisonment for 5 years.

- (2) Strict liability applies to the circumstance of an offence against subsection (1) that:
- (a) the warrant was issued under section 34D; or
  - (b) the direction was given under section 34F.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) A person who is before a prescribed authority for questioning under a warrant must not fail to give any information requested in accordance with the warrant.

Penalty: Imprisonment for 5 years.

- (4) Subsection (3) does not apply if the person does not have the information.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

- (5) If:
- (a) a person is before a prescribed authority for questioning under a warrant; and
  - (b) the person makes a statement that is, to the person's knowledge, false or misleading in a material particular; and
  - (c) the statement is made in purported compliance with a request for information made in accordance with the warrant;

the person is guilty of an offence.

Penalty: Imprisonment for 5 years.

*CCL note: intervening sections not reproduced*

**Division 3—Special powers relating to terrorism offences**

*CCL note: intervening sections not reproduced*

**Subdivision B—Questioning, detention etc.**

*CCL note: intervening sections not reproduced*

**34G Giving information and producing things etc.**

- (1) A person must appear before a prescribed authority for questioning, as required by a warrant issued under section 34D or a direction given under section 34F.

Penalty: Imprisonment for 5 years.

- (2) Strict liability applies to the circumstance of an offence against subsection (1) that:
- (a) the warrant was issued under section 34D; or
  - (b) the direction was given under section 34F.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) A person who is before a prescribed authority for questioning under a warrant must not fail to give any information requested in accordance with the warrant.

Penalty: Imprisonment for 5 years.

- (4) Subsection (3) does not apply if the person does not have the information.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

- [10.21] (5) If:
- (a) a person is before a prescribed authority for questioning under a warrant; and
  - (b) the person makes a statement that is, to the person's knowledge, false or misleading ~~in a material particular~~; and
  - (c) the statement is made in purported compliance with a request for information made in accordance with the warrant;

the person is guilty of an offence.

Penalty: Imprisonment for 5 years.

- [10.22] (5A) Subsection (5) does not apply if the statement is not false or misleading in a material particular.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (5A) (see subsection 13.3(3) of the *Criminal Code*).

- (6) A person who is before a prescribed authority for questioning under a warrant must not fail to produce any record or thing that the person is requested in accordance with the warrant to produce.

Penalty: Imprisonment for 5 years.

- (7) Subsection (6) does not apply if the person does not have possession or control of the record or thing.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

- (8) For the purposes of subsections (3) and (6), the person may not fail:

- (a) to give information; or
- (b) to produce a record or thing;

in accordance with a request made of the person in accordance with the warrant, on the ground that the information, or production of the record or thing, might tend to incriminate the person or make the person liable to a penalty.

- (9) However, the following are not admissible in evidence against the person in criminal proceedings other than proceedings for an offence against this section:

- (a) anything said by the person, while before a prescribed authority for questioning under a warrant, in response to a request made in accordance with the warrant for the person to give information;
- (b) the production of a record or thing by the person, while before a prescribed authority for questioning under a warrant, in response to a request made in accordance with the warrant for the person to produce a record or thing.

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- (6) A person who is before a prescribed authority for questioning under a warrant must not fail to produce any record or thing that the person is requested in accordance with the warrant to produce.

Penalty: Imprisonment for 5 years.

- (7) Subsection (6) does not apply if the person does not have possession or control of the record or thing.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

- (8) For the purposes of subsections (3) and (6), the person may not fail:

- (a) to give information; or
- (b) to produce a record or thing;

in accordance with a request made of the person in accordance with the warrant, on the ground that the information, or production of the record or thing, might tend to incriminate the person or make the person liable to a penalty.

- (9) However, the following are not admissible in evidence against the person in criminal proceedings other than proceedings for an offence against this section:

- (a) anything said by the person, while before a prescribed authority for questioning under a warrant, in response to a request made in accordance with the warrant for the person to give information;
- (b) the production of a record or thing by the person, while before a prescribed authority for questioning under a warrant, in response to a request made in accordance with the warrant for the person to produce a record or thing.

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Subdivision C—Miscellaneous

*CCL note: intervening sections not reproduced*

34N Power to remove, retain and copy materials etc.

- (1) In addition to the things that the Organisation is authorised to do that are specified in the warrant, the Organisation is also authorised:
- (a) to remove and retain for such time as is reasonable any record or other thing produced before a prescribed authority in response to a request in accordance with the warrant, for the purposes of:
    - (i) inspecting or examining it; and
    - (ii) in the case of a record—making copies or transcripts of it, in accordance with the warrant; and
  - (b) subject to section 34M, to examine any items or things removed from a person during a search of the person under this Division; and
  - (c) to retain for such time as is reasonable, and make copies of, any item seized under paragraph 34L(8)(b); and
  - (d) to do any other thing reasonably incidental to:
    - (i) paragraph (a), (b) or (c); or
    - (ii) any of the things that the Organisation is authorised to do that are specified in the warrant.
- (2) A police officer may retain for such time as is reasonable any seizable item seized by the officer under paragraph 34L(8)(a).

*CCL note: intervening sections not reproduced*

Subdivision C—Miscellaneous

*CCL note: intervening sections not reproduced*

34N Power to remove, retain and copy materials etc.

- (1) In addition to the things that the Organisation is authorised to do that are specified in the warrant, the Organisation is also authorised:
- (a) to remove and retain ~~for such time as is reasonable~~ any record or other thing produced before a prescribed authority in response to a request in accordance with the warrant, for the purposes of:
    - (i) inspecting or examining it; and
    - (ii) in the case of a record—making copies or transcripts of it, in accordance with the warrant; and
  - (b) subject to section 34M, to examine any items or things removed from a person during a search of the person under this Division; and
  - (c) to retain ~~for such time as is reasonable~~, and make copies of, any item seized under paragraph 34L(8)(b); and
  - (d) to do any other thing reasonably incidental to:
    - (i) paragraph (a), (b) or (c); or
    - (ii) any of the things that the Organisation is authorised to do that are specified in the warrant.
- (2) A police officer may retain for such time as is reasonable any seizable item seized by the officer under paragraph 34L(8)(a).
- [10.24] (3) A record or other thing, or an item, retained as mentioned in paragraph (1)(a) or (c) may be retained for only such time as is reasonable, unless returning the record, thing or item would be prejudicial to security.

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Part IV—Security assessments

Division 1—Preliminary

35 Interpretation

In this Part, unless the contrary intention appears:

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*prescribed administrative action* means:

- (a) action that relates to or affects:
  - (i) access by a person to any information or place access to which is controlled or limited on security grounds; or
  - (ii) a person's ability to perform an activity in relation to, or involving, a thing (other than information or a place), if that ability is controlled or limited on security grounds;including action affecting the occupancy of any office or position under the Commonwealth or an authority of the Commonwealth or under a State or an authority of a State, or in the service of a Commonwealth contractor, the occupant of which has or may have any such access or ability;
- (b) the exercise of any power, or the performance of any function, in relation to a person under the *Migration Act 1958* or the regulations under that Act; or
- (c) the exercise of any power, or the performance of any function, in relation to a person under the *Australian Citizenship Act 1948*, the *Australian Passports Act 2005* or the regulations under either of those Acts; or
- (d) the exercise of a power under section 58A, or subsection 581(3), of the *Telecommunications Act 1997*.

Part IV—Security assessments

Division 1—Preliminary

35 Interpretation

[10.26] **(1)** In this Part, unless the contrary intention appears:

*CCL note: intervening definitions not reproduced*

*prescribed administrative action* means:

- (a) action that relates to or affects:
  - (i) access by a person to any information or place access to which is controlled or limited on security grounds; or
  - (ii) a person's ability to perform an activity in relation to, or involving, a thing (other than information or a place), if that ability is controlled or limited on security grounds;including action affecting the occupancy of any office or position under the Commonwealth or an authority of the Commonwealth or under a State or an authority of a State, or in the service of a Commonwealth contractor, the occupant of which has or may have any such access or ability;
- (b) the exercise of any power, or the performance of any function, in relation to a person under the *Migration Act 1958* or the regulations under that Act; or
- (c) the exercise of any power, or the performance of any function, in relation to a person under the *Australian Citizenship Act 1948*, the *Australian Passports Act 2005* or the regulations under either of those Acts; or
- (d) the exercise of a power under section 58A, or subsection 581(3), of the *Telecommunications Act 1997*.

[10.27] **Note:** An obligation, prohibition or restriction imposed by a control order is not prescribed administrative action: see subsection (2).

*CCL note: intervening definitions not reproduced*

[10.28] (2) To avoid doubt, an obligation, prohibition or restriction imposed on a person by a control order made under Division 104 of the *Criminal Code* is not prescribed administrative action.

Other Acts modified

Bill	Act
[1.1]	<i>Crimes (Foreign Incursions &amp; Recruitment) Act 1978</i>
[1.24]	<i>Customs Act</i>
[3.3]	<i>Financial Transaction Reports Act 1988</i>
[4.20]	<i>Administrative Decisions (Judicial Review) Act 1977</i>
[7.13]	<i>Migration Act 1958</i>
[7.14]	
[7.14]	<i>Surveillance Devices Act 2004</i>
[7.15]	
[7.16]	
[7.17]	
Sch 8	<i>Aviation Transport Security Act 2004</i>
Sch 9	<i>Financial Transaction Reports Act 1988</i> <i>Proceeds of Crime Act 2002</i> <i>Surveillance Devices Act 2004</i>
[10.29]	<i>Customs Act 1901</i>
[10.30]	<i>Customs Administration Act 1985</i>
[10.31]	<i>Migration Act 1958</i>
[10.32]	